

**A MANUAL FOR CHIEF STATE SCHOOL OFFICERS  
AND STATE EDUCATION AGENCIES**

On

**AMERICAN INDIAN AND ALASKA NATIVE TRIBAL SOVEREIGNTY,  
FEDERAL EDUCATION PROGRAMS FOR TRIBAL STUDENTS,  
and TRIBAL EDUCATION DEPARTMENTS**

**With an Appendix Including  
*A Model Protocol***

***For State Education Agencies to Address Education Issues  
On a Government-to-Government Basis  
With Tribal Governments / Tribal Education Departments***

***Prepared by***

**The Tribal Education Departments National Assembly**

***With assistance from***

**The Native American Rights Fund**

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FEDERAL EDUCATION PROGRAMS FOR TRIBAL STUDENTS, and  
TRIBAL EDUCATION DEPARTMENTS

TABLE OF CONTENTS

	<u>Page</u>
<b>PART ONE: INTRODUCTION .....</b>	<b>1</b>
A. The CCSSO, TEDNA, and NARF .....	1
B. Purpose of this Manual.....	3
C. Background of Development of the Manual .....	3
D. Overview of Manual: Organization and Contents .....	4
 <b>PART TWO: TWENTY FREQUENTLY ASKED QUESTIONS AND BRIEF ANSWERS</b>	
1. <i>What is meant by the term "Tribal sovereignty?" .....</i>	<i>5</i>
2. <i>What is meant by the term "tribal governments"?</i> .....	<i>6</i>
3. <i>What is meant by the term "tribal leaders"?</i> .....	<i>7</i>
4. <i>What is the political relationship of tribal governments with the federal government?</i> .....	<i>8</i>
5. <i>What is the political relationship of tribal governments with the state governments?</i> .....	<i>9</i>
6. <i>What impact has Tribal sovereignty had on the education of tribal students, including students in the state public schools?</i> .....	<i>10</i>

7.	<i>Why are there so many different federal Indian education programs? .....</i>	<i>11</i>
8.	<i>What is the relationship between the Office of Indian Education in the U.S. Department of Education and the Bureau of Indian Education / Office of Indian Education Programs in the U.S. Department of the Interior?.....</i>	<i>12</i>
9.	<i>What is meant by the term "Indian (or Native) educators"?.....</i>	<i>13</i>
10.	<i>What are Tribal Education Departments (TEDs) and what exactly do TEDs do?.....</i>	<i>14</i>
11.	<i>Why and how should TEDs be involved in state public school education?.....</i>	<i>15</i>
12.	<i>Why do some Tribes have Tribal Education Codes and what do the Codes mean for the public schools? .....</i>	<i>16</i>
13.	<i>What are "Bureau of Indian Affairs (BIA)-funded" schools?.....</i>	<i>17</i>
14.	<i>Are BIA-funded schools subject to state laws? .....</i>	<i>18</i>
15.	<i>What are TEDs doing to help BIA-funded schools? .....</i>	<i>19</i>
16.	<i>What are TEDs doing in areas of educational research and planning, curriculum development, and teacher training? .....</i>	<i>20</i>
17.	<i>Why do some states have Indian Education Offices, Divisions, Programs, etc.? .....</i>	<i>21</i>
18.	<i>What is the relationship of State Indian Education Offices, Divisions, Programs, etc., to TEDs? .....</i>	<i>22</i>
19.	<i>How can SEAs benefit from working with TEDs; or, How can TEDs help SEAs and LEAs help tribal students?.....</i>	<i>23</i>
20.	<i>Are there any good examples of state-tribal government-to-government relationships in education, or SEA-TED working partnerships? .....</i>	<i>25</i>

<b>PART THREE:</b>	<b>DISCUSSION .....</b>	<b>26</b>
<b>A.</b>	<b>A Brief History of Federal Indian Education Law and Policy .....</b>	<b>26</b>
1.	The Treaty Era (1776 – 1871) .....	26
2.	The Allotment and Assimilation Era (1871-1934).....	27
3.	The Indian "New Deal" Era (the 1920s and 1930s) .....	27
a.	The Meriam Report .....	28
b.	The Indian Reorganization Act and the Johnson O'Malley Act.....	28
4.	The Termination Era (the 1940s and 1950s).....	29
5.	The Indian Self-Determination Era (the 1960s – present).....	30
a.	The Elementary and Secondary Education Act .....	30
b.	The Kennedy Report .....	30
c.	The Indian Education Act.....	31
d.	1974 Changes .....	32
e.	The Indian Self-Determination and Education Assistance Act.....	32
f.	The Late 1970s.....	32
g.	The 1980s .....	33
h.	The 1990s .....	33
i.	The Twenty-First Century .....	35
<b>B.</b>	<b>Selected Federal Indian Education Programs Today.....</b>	<b>36</b>
1.	U.S. Department of Education Programs .....	36
a.	Title I.....	36
b.	Title III .....	36
c.	Title IV.....	37
d.	Title VII.....	37
e.	Title VIII.....	38
f.	Chart.....	39

2.	U.S. Department of the Interior Programs.....	40
a.	Johnson O'Malley .....	40
b.	BIA-Funded Schools .....	40
c.	Chart .....	41
3.	Other Federal Agency Education Programs .....	41
C.	Tribal Sovereignty and Elementary and Secondary Education, Including the State Public Schools .....	42
1.	Direct Contracts and Grants.....	42
a.	Johnson O'Malley Contracts .....	42
b.	Indian Education Act Formula Grants .....	43
c.	Indian Education Act Demonstration and Professional Development Grants .....	43
d.	English Language Acquisition Grants.....	44
2.	BIA-Funded Schools .....	45
a.	BIA-Operated Schools .....	46
b.	Tribal Contract Schools .....	46
c.	Tribal Grant Schools .....	46
3.	Other Rights and Roles of Tribes in Federal Education Programs.....	46
a.	Set-Asides for BIA-Funded Schools in Titles I, III, IV, and VII.....	46
b.	Title VIII Impact Aid Funding .....	47

4.	Rights and Roles of Tribes under Federal and State Native Language Laws .....	48
a.	The Native American Languages Acts of 1990 and 1992 .....	48
b.	No Child Left Behind Title III.....	49
c.	State Laws.....	49
5.	Other Instances of Tribal Sovereignty and State-Tribal Government-to-Government Relations in K-12 Education.....	51
a.	State Laws about Teaching Tribal Sovereignty .....	51
b.	Intergovernmental Agreements.....	51
D.	Tribal Education Departments .....	52
1.	Brief Summary of the Federal Law Provisions regarding TEDs.....	52
a.	Indian Self-Determination and Education Assistance Act Grants .....	52
b.	Authorization for Appropriations through the U.S. Department of the Interior.....	52
c.	Authorization for Appropriations through the U.S. Department of Education .....	52
d.	All NCLB Provisions.....	53
2.	State Law Provisions regarding TEDs.....	54
a.	Wisconsin.....	54
b.	Montana.....	54
c.	New Mexico .....	54
3.	TEDs' Roles Defined by Tribal Law.....	55
E.	State Indian Education Offices, Divisions, and Programs .....	56

**APPENDIX A      A MODEL PROTOCOL FOR STATE EDUCATION  
AGENCIES TO ADDRESS EDUCATION ISSUES  
ON A GOVERNMENT-TO-GOVERNMENT BASIS  
WITH TRIBAL GOVERNMENTS / TRIBAL EDUCATION  
DEPARTMENTS ..... I**

<b>Section</b>	<b>Title</b>	<b>Page</b>
<b>I.</b>	<b>Introduction .....</b>	<b>I</b>
<b>II.</b>	<b>Objectives .....</b>	<b>I</b>
<b>III.</b>	<b>Suggested Guiding Principles .....</b>	<b>I</b>
<b>IV.</b>	<b>Suggested Steps for Resolution of Issues .....</b>	<b>II</b>

**APPENDIX B      REFERENCES AND RESOURCES.....IV**

## **PART ONE: INTRODUCTION**

### **A. The CCSSO, TEDNA, and NARF**

#### **1. THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS**

ONE MASSACHUSETTS AVENUE, NW, SUITE 700  
WASHINGTON, DC 20001-1431  
(202) 336-7000  
FAX (202) 408-8072  
WWW.CCSSO.ORG

The Council of Chief State School Officers (CCSSO) is a nonpartisan, nationwide, nonprofit organization of public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education Activity, and five U.S. extra-state jurisdictions. CCSSO provides leadership, advocacy, and technical assistance on major educational issues. The Council seeks member consensus on major educational issues and expresses their views to civic and professional organizations, federal agencies, Congress, and the public.

### **STRENGTHENING PARTNERSHIPS FOR NATIVE AMERICAN STUDENT EDUCATION**

CCSSO recognizes the importance of focusing attention on the educational needs and strengths of Native American students through a concerted effort to improve academic outcomes. Commitment to high standards for Native American youth can successfully be achieved with meaningful partnerships among key stakeholders. The purpose of the initiative is to foster partnerships regionally and within states designed to address the challenges posed by the No Child Left Behind Act for those state leaders.

Under the Strengthening Partnerships for Native American Student Education initiative, the CCSSO has established a Native American Task Force, designed to allow chiefs and deputies to share ideas for state activities, programs, and policies that focus on increasing the academic achievement of Native American students. Task Force members also address technical assistance priority needs that guide the CCSSO's overall scope of work. We acknowledge the leadership and dedication of the Task Force members:

RICK MELMER, SOUTH DAKOTA, CHAIR  
TOM HORNE, ARIZONA  
LINDA MCCULLOCH, MONTANA  
KEITH RHEAULT, NEVADA  
RITA HOCOG INOS, NORTHERN MARIANA ISLANDS  
JIM MCBRIDE, WYOMING



## **2. THE TRIBAL EDUCATION DEPARTMENTS NATIONAL ASSEMBLY**

P.O. BOX 18000  
BOULDER, CO 80308  
[www.tedna.org](http://www.tedna.org)

The Tribal Education Departments National Assembly (TEDNA) is a relatively new national, non-profit membership organization for the Education Departments, Divisions, Agencies, and Offices of American Indian and Alaska Native Tribes. In only its second year of taking members, Fiscal Year 2006, TEDNA has over thirty federally-recognized tribes as voting members. TEDNA strives to facilitate communication and cultivate consensus among members on common educational issues and to represent collectively their views to other governmental and educational agencies, organizations, and entities.

## **3. THE NATIVE AMERICAN RIGHTS FUND**

1506 BROADWAY  
BOULDER, CO 80302  
(303) 447-8760  
FAX (303) 443-7776  
[www.narf.org](http://www.narf.org)

The Native American Rights Fund (NARF) is the national legal defense fund for American Indian and Alaska Native tribes and Native American individuals. Founded in 1970, NARF enforces and advocates for Native American legal rights in international, federal, state, and tribal forums. NARF concentrates on precedent-setting legal matters in areas of tribal sovereignty, protection of tribal natural resources, promotion of Native American human rights, the accountability of governments to Native Americans, and the development of Indian law.

NARF's recent work in advancing Native American rights, policies, and partnerships in education has been funded by the Carnegie Corporation, the W.K. Kellogg Foundation, the U.S. Department of Education, and the U.S. Administration for Native Americans. The information provided by NARF and contained in this document is not specific legal advice.

## **B. Purpose of this Manual**

The purpose of this Manual is to provide general information to Chief State School Officers and State Education Agencies (SEAs) about American Indian and Alaska Native tribal sovereignty, various federal education programs for tribal students, and Tribal Education Departments (TEDs). This Manual is intended to assist Chief State School Officers and SEAs in their understanding of tribal sovereignty, federal education programs for tribal students, and TEDs.

While the information in this Manual is not necessarily specific to any particular state, it is intended to guide Chief State School Officers and SEAs in the assessment, development, and implementation of the education laws, regulations, and policies within each state. Most importantly, the purpose of this Manual is to help foster intergovernmental partnerships and relationships between state and tribal governments as they address matters of education in their efforts to serve effectively schools and students.

## **C. Background of Development of the Manual**

This publication was produced at the suggestion of TEDNA to the CCSSO Native American Task Force and to Dr. Julia Lara, former Deputy Executive Director, Division of State Services and Technical Assistance of the CCSSO. With assistance from NARF, which had some funding from the U.S. Administration for Native Americans, TEDNA wanted to partner with the Task Force on a specific project at the SEA – TED level that would enhance the schooling of the over 500,000 Native American elementary and secondary students in this country, the vast majority of whom are served by state public school systems. After several discussions, it was agreed that a Manual for Chief State School Officers and SEAs that discussed generally tribal sovereignty, federal education programs for tribal students, and TEDs would be an innovative and useful project product.

This publication was produced under the direction of the CCSSO, TEDNA, and NARF. NARF Staff Attorney Melody McCoy is the primary author of this publication. Melody has extensive experience in understanding the historical and contemporary legal and political complexities of federal, state, and tribal sovereignty with respect to the education of Native American students. Drafts of this publication were examined and shaped by review and comment groups established by both the CCSSO and TEDNA. The CCSSO in particular acknowledges the work of its Native American Task Force and a subgroup of State Indian Education Directors and Coordinators who took a special interest in furthering this project. TEDNA acknowledges its Board of Directors, its State-Tribal Relations Committee, and all of its members for their input on and support for this project. The CCSSO, TEDNA, and NARF also acknowledge the contributions of their staff and consultants on this project.

## D. Overview of Manual: Organization and Contents

This Manual has three Parts and an Appendix. Part One is the Introduction, which explains the partner organizations, the purpose of the Manual, the background of the Manual's development, and the organization and contents of the Manual.

Part Two is entitled *"Twenty Frequently Asked Questions and Brief Answers"* about tribal sovereignty, federal education programs for tribal students, and TEDs. This Part is intended to be a general and quick reference guide to common questions that Chief State School Officers and SEAs may encounter in their business, the answers to which are not always readily available from other reference sources.

Part Three is a more in-depth discussion of tribal sovereignty, federal education programs for tribal students, and TEDs. Part Three begins with a brief overview of the history of federal Indian education law and policy as this background is essential to understanding the Manual topics. For several major federal education programs for tribal students, charts are provided to show their administering agency and funding flow to eligible grantees. Then, specific examples of tribal sovereignty over education under federal, state, and tribal law are given, along with a section specifically on TEDs. Finally, there is a brief general discussion of State Indian Education Offices which, for those states that have them, play a critical role in the education of tribal students and in fostering the intergovernmental relationships that serve these students. Of course, many states nevertheless address Indian education issues without such Offices.

APPENDIX A is a *Model Protocol for State Education Agencies to Address Education Issues on a Government-to-Government Basis with Tribal Governments / Tribal Education Departments*. The *Model Protocol* is intended to be an example of a "how to" guide for states that choose to address education issues with Tribes on a cooperative government-to-government basis. It is intended to be a generic document that can be adapted for use by specific states.

APPENDIX B is a list of Reference and Resource materials that were used in preparing this Manual, and which might be helpful to users of the Manual for more information.

## PART TWO: TWENTY FREQUENTLY ASKED QUESTIONS AND BRIEF ANSWERS

### 1. Question: *What is meant by the term "Tribal sovereignty?"*

#### Brief Answer:

Federal law, including the U.S. Constitution, generally recognizes American Indian and Alaska Native tribes as sovereign nations. This means that Tribes are separate and independent political units from the federal government and the states.

Tribes are not "local governments" in the same sense as are counties, cities, and school districts which are political subdivisions of states; in fact, many larger tribes have their own political subdivisions such as districts or chapters.

Federal law recognizes that tribal sovereignty is inherent, it is not something that another government "gives" to tribes.

But federal law also recognizes tribal sovereignty as being limited, especially when federal, state, and / or non-tribal members' interests are affected.

Federal law recognizes that tribal sovereignty generally operates within a Tribe's land base or geographic territory, such as an Indian reservation, land allotments, pueblos, and other areas. In special circumstances tribal sovereignty also may operate outside of Indian country.

2. Question: *What is meant by the term "tribal governments"?*

**Brief Answer:**

Like the state and federal governments, American Indian and Alaska Native Tribes have governments – organized political bodies -- that make laws and policies, exercise authority, regulate conduct and activities, perform public functions, provide services, resolve disputes, and administer justice.

Similar to the state and federal governments, many tribal governments today have a three branch system: a legislative, executive, and judicial branch. But not all tribal governments follow this model, and federal law recognizes that tribes generally are free to establish and maintain their own forms of government.

Most, but not all, tribal governments today also have constitutions and legal codes that are written in the English language. They may also operate law enforcement and / or justice systems, and they may have various administrative agencies.

Remember, tribal governments actually pre-date the state and federal governments. Although tribal governments have evolved and adapted over time, their origins are quite historic, and tradition and culture still play a role in modern tribal governments.

3. Question: *What is meant by the term "tribal leaders"?*

Brief Answer:

The term "tribal leaders" typically refers to the *legislators* (law makers) of Tribes who likely (but not necessarily) are elected by tribal members, much like state and federal legislative representatives and senators. They often are referred to as "tribal council-people," because many Tribes refer to their legislative branches of government as "tribal councils."

"Tribal leaders" also refers to those individuals who serve in official positions that are somewhat analogous to state governors and the United States President; that is, "chief executive officers." These tribal leaders include Tribal Presidents, Governors, Chairpeople, and Chiefs. These tribal leaders may be elected by tribal members, selected by or from among the tribal legislators, or appointed by traditional leadership methods. But individual tribal leaders may or may not have independent decision-making authority depending on the laws, structure, and traditions of their tribal government.

4. Question: *What is the political relationship of tribal governments with the federal government?*

**Brief Answer:**

From the founding of the United States of America, the federal – tribal relationship always has been government-to-government.

This is reflected in The U.S. Constitution, treaties and agreements, legislation, Executive Orders and administrative rules, and judicial decisions. The federal government when it was founded recognized tribal governments as separate sovereigns and entered into treaties with them on an inter-sovereign basis. Since that time, federal law consistently has recognized Tribes as separate sovereign governments.

In many instances, the federal government also has assumed a role as the "trustee" for Indian land, natural resources, and other assets. In these instances, the United States is required to implement this trust relationship to Tribes and Indian individuals whereby the federal government is the trustee for Indian beneficiaries.

5. Question: *What is the political relationship of tribal governments with the state governments?*

**Brief Answer:**

Originally, federal law provided for quite a "jurisdictional separation" between tribal governments and state governments.

Over time, federal law and policy has eroded somewhat the separateness of tribal and state jurisdictions, especially in the area of public school education.

Under federal law today, both tribal governments and state governments generally have to take into account each other's rights and interests.

Some states on their own have developed remarkable government-to-government relationships with tribal governments, even in the area of public school education.



6. Question: *What impact has Tribal sovereignty had on the education of tribal students, including students in the state public schools?*

**Brief Answer:**

Tribal sovereignty has impacted profoundly the education of tribal students in many ways. The following are some of the major examples.

There are provisions in treaties and agreements between the United States and Tribes, and provisions in federal statutes and other acts of Congress that the federal government will "provide" for Indian education.

There are federal programs by which Tribes can operate education programs and schools by contracts and grants.

There are provisions in the No Child Left Behind (NCLB) Act Title VIII (Impact Aid Basic Support Program) that require Local Education Agencies (LEAs) to involve Tribes in the planning for and evaluation of education in their school districts, and provide an administrative complaint process for Tribes who believe that LEAs are not in compliance with the Impact Aid law Indian Policies and Procedures provisions.

There are provisions in NCLB Title III (Limited English Proficient (LEP) Student Programs) that treat Tribes as LEAs for purposes of certain LEP (bilingual) funding.

Several states have Indian education offices, divisions, and programs within their State Education Agencies (SEAs) because of the unique sovereign status of tribes under federal law.

There are provisions in the education laws of many states regarding the teaching of Native languages and the certification of teachers thereof (largely based on the federal Native American Languages Act of 1990 which encourages states to waive teacher certification requirements when necessary to allow teaching of Native languages by Native speakers, and encourages teaching of Native languages in the same manner and with the same status as foreign languages).

There are provisions in the education laws of five state requiring the teaching of tribal sovereignty in public school curricula.

There are several federal and state laws acknowledging Tribal Education Departments (TEDs) and the role that TEDs play in elementary and secondary education, including public school education.

7. Question: *Why are there so many different federal Indian education programs?*

Brief Answer:

In general, Congress authorizes federal programs to deal with specific national problems or needs. There are perhaps over a dozen different major federal Indian education programs that are administered by various federal agencies.

But it is important to remember that each program is authorized separately by Congress, and each program has its own specific purpose(s). Congress does not authorize "duplicative" programs.

Admittedly, however, there could be better coordination of the Indian education programs at the national, state, tribal and local levels.

8. **Question:** *What is the relationship between the Office of Indian Education in the U.S. Department of Education and the Bureau of Indian Education / Office of Indian Education Programs in the U.S. Department of the Interior?*

**Brief Answer:**

There is no overall formal relationship between the Office of Indian Education (OIE) in the U.S. Department of Education and the Office of Indian Education Programs (OIEP, recently renamed the "Bureau of Indian Education (BIE)"). Each is a separate agency within a separate Cabinet department that operates under separate authorizing legislation from Congress. The OIE and the OIEP / BIE are each charged with administering several separate and distinct programs.

There are, however, specific instances of different kinds of relationships between the OIE and the OIEP / BIE.

For example, Congress' annual appropriations to the U.S. Department of Education typically include funding for NCLB programs. Under many of the programs in NCLB Titles I, II, IV, VI, and VII which generally are available to SEAs and LEAs, Congress requires a "set-aside" allocation from the annual appropriations for these programs for schools that are funded by the Bureau of Indian Affairs (BIA). The set-aside funding is appropriated to the Department of Education which then transfers it to the Department of the Interior.

Pursuant to these statutory provisions, the Departments of Education and the Interior sometimes enter into Memoranda of Agreement regarding the terms and conditions by which the funds are transferred. See Final Agreement between the Department of Education and the Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs under Section 9204 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (June 2005).

Also under NCLB, the OIE has worked closely with the OIEP / BIE on program and administrative improvements to assist the BIE in meeting Title I's accountability requirements. OIE rewrote (and ultimately approved) OIEP's / BIE's draft improvement plan to enhance OIEP's / BIE's ability to address student achievement and accountability under Title I.

Finally, under Executive Order No. 13336, *American Indian and Alaska Native Education* (Apr. 30, 2004), the Secretaries of the Education and the Interior Departments Co-Chair the Interagency Working Group that is charged with overseeing the implementation of the Executive Order

9. Question: *What is meant by the term "Indian (or Native) educators"?*

**Brief Answer:**

Generally, the term "Indian (or Native) educators" refers to school teachers and administrators who are American Indian or Alaska Native individuals.

But the term "Indian educators" may also refer to tribal parents, elders, community members, spiritual leaders, and public officials who are viewed in their Tribe or community as serving in a teaching role for other members.

10. **Question:** *What are Tribal Education Departments (TEDs), and what exactly do TEDs do?*

**Brief Answer:**

TEDs typically are executive branch departments or administrative agencies which have been assigned responsibility for education by their sovereign tribal governments.

TEDs are not schools and they are not programs; they are executive branch departments or administrative agencies of tribal governments much like SEAs are agencies of state governments.

Over 125 of the over 560 federally-recognized Tribes today have a TED.

What TEDs do varies according to each Tribe's governmental organization, laws, and resources. The following are some general examples.

TEDs may administer a single federal contract or grant program. They may administer several contract or grant programs.

TEDs may administer and implement the education laws and policies of the Tribe.

TEDs may have authority to make recommendations to the Tribal lawmakers, and TEDs may have rule-making authority.

TEDs may be involved in curriculum development, teacher training, or other education initiatives.

TEDs may be engaged in education regulatory and policy development and administration, data collection and analysis, and developing academic standards and student progress assessments and testing.

TEDs may coordinate various education and education-related programs and services.

TEDs may serve as the primary contact for the Tribe on all matters of education.

TEDs may engage in advocacy on behalf of education matters for tribal students, parents, families, communities, and the tribal government.

11. Question: *Why and how should TEDs be involved in state public school education?*

**Brief Answer:**

There are many good reasons why TEDs should be involved in state public school education. The following are some important examples.

TEDs provide leadership and advocacy on behalf of tribes, parents, students, and communities on education issues.

TEDs can help coordinate among various school systems and programs.

TEDs can help with conflict resolution among the state, federal, and tribal governments or their agencies or political subdivisions. TEDs also can help with conflict resolution among various school systems – BIA-funded, state public, parochial, and private.

TEDs can help evaluate and can provide comprehensive reporting on various school systems and programs.

TEDs can develop curriculum, especially language and culture curriculum, as well as the standards, assessments and teacher training to support the curriculum.

TEDs can serve as a resource for language and cultural matters of the Tribe.

Tribes often operate directly early childhood and pre-school programs, and thus are in the best position to align the kindergartens into which these children transfer with the early childhood and pre-school programs operated by the Tribe.

TEDs can help federal, state, and LEA officials and administrators to bring issues to and resolve matters with other tribal government departments, agencies, and programs that are outside of education.

**12. Question: *Why do some Tribes have Tribal Education Codes and what do the Codes mean for state public schools?***

**Brief Answer:**

As sovereign governments, Tribes generally can enact their own laws such as Tribal Education Codes.

Congress recognizes Tribes as being capable of developing Tribal Education Codes, policies, and standards, and not just for BIA-funded schools but for state public schools, too.

Tribal Education Codes and laws do not necessarily supersede federal and state education laws. They may address areas or fill in the gaps where the federal and state laws are not meeting the needs of tribal students, particularly in areas of tribal language and culture.

Tribal Education Codes and laws may establish a TED as an executive branch department or administrative agency of the Tribal Government and charge the TED with various duties including interactions with SEAs and LEAs.

Tribal Education Codes and laws are particularly important where Tribes are setting education standards and / or developing student progress assessments.

Tribal Education Codes can help ensure better coordination between LEAs and tribal education programs, and Tribal Education Codes can help coordinate multiple tribal programs when their joint efforts are needed to assist LEAs.

Tribal Education Codes and laws can help ensure consistency among and within the various school systems that serve tribal students.

13. Question: *What are "Bureau of Indian Affairs (BIA)-funded" schools?*

**Brief Answer:**

There are presently 184 BIA-funded schools, that is, schools that are funded through annual congressional appropriations to the U.S. Department of the Interior. The term "BIA-funded schools" includes three specific types of schools:

1. "BIA-Operated Schools" are operated directly by the BIA with an elected local Indian school board.
2. "Tribal Contract Schools" -- the Indian Self-Determination and Education Assistance Act of 1975 authorizes Tribes to contract for the operation of formerly BIA-Operated schools.
3. "Tribal Grant Schools" -- Congress authorized these in 1988. Eligible Tribes may operate former BIA-Operated, Contract, or other tribally-controlled schools as Grant Schools. In general, Grant Schools receive annual grants (not quarterly Contract payments), and they may invest their grant funds and use the interest earnings for school operations, support services, and education improvement.

Together, the 184 BIA-funded schools serve over eight percent (8%) of the total nationwide K-12 tribal student population.

BIA funded schools receive direct federal operational and construction funding through the U.S. Department of the Interior. In addition, BIA funded schools are eligible for supplemental federal education programs such as Title I through set aside allocations from the U.S. Department of Education to the BIA, much like the SEAs get funding that they then distribute to LEAs.

Some BIA-funded schools are boarding schools and some are day schools. Some are K-12, some are K-8, or other variations of grade levels. Most, but not all, are located on Indian land.

Some state education laws treat BIA-funded schools in various ways for various purposes (funding and finance, data and reporting), so it is best to check each state's laws for treatment status.



14. Question: *Are BIA-funded schools subject to state laws?*

Brief Answer:

Generally, no, unless federal law allows otherwise.

But federal law does allow BIA-funded schools to be accredited by a state or regional accreditation agency, or a tribal accrediting body whose accreditation capabilities have been acknowledged by a recognized state or regional accreditation agency.

In addition, federal law allows BIA-funded schools to meet either BIA or state basic education standards; they may meet tribal education standards only if the tribal standards have been approved by a state or federally recognized regional accreditation agency.

Finally, NCLB Title I requires BIA-funded schools receiving Title I funds to show Adequate Yearly Progress (AYP) and to adopt the standardized tests used by state or regional accreditation associations through which they are accredited, alternative assessments approved by the Secretary of the Interior, or tribal assessments approved by the Secretary.

15. Question: *What are TEDs doing to help BIA-funded schools?*

Brief Answer:

In general, TEDs are more directly involved with BIA funded schools than they are with state public schools.

TEDs can train school board members, help recruit highly qualified staff; enforce personnel policies, enforce facilities standards, develop good financial management systems; help with audit standards and other federal requirements; do more direct monitoring of all aspects of schools.

TEDs can also help BIA-funded schools in the implementation of the federal statutory provisions regarding consultation and negotiated rule-making. These provisions (currently in NCLB Title X) generally require the federal government to consult with Tribes before taking action regarding BIA-funded schools, and to develop rules and regulations governing BIA-funded schools through a negotiated process with Tribes.

NCLB Titles I and X have specific provisions about the role of TEDs vis-à-vis BIA-funded schools in terms of education standards, academic assessments, and school accreditation.

16. Question: *What are TEDs doing in areas of educational research and planning, curriculum development, and teacher training?*

**Brief Answer:**

Some TEDs are doing these things, but most are stymied by lack of resources.

They may also be hindered by jurisdictional unclarities and / or legal impediments, such as shortcomings in the Family Educational Rights and Privacy Act (FERPA), which governs the release of personally identifiable student data and information kept by state public schools and state higher education institutions.

In general, FERPA prohibits the release of such data and information without advance written parental or student consent, except to federal education agencies, SEAs, and LEAs. But there is no comparable provision for TEDs, and thus, TEDs typically must get the advance parental or student consent in order to obtain personally identifiable data and information kept by the public schools on tribal students.

17. Question: *Why do some states have Indian Education Offices, Divisions, Programs, etc.?*

Brief Answer:

Largely because of the unique legal and political sovereign status of tribes as recognized in federal law, some states have established specific Offices, Divisions, or Programs of Indian Education, which typically are located within their SEAs.

State Indian Education Offices, Divisions, or Programs typically are managed by a State Director or Coordinator of Indian Education who is appointed by the Chief State School Officer.

Some State Indian Education Offices, Divisions, or Programs are charged with administering specific state Indian education programs.

Some State Indian Education Offices, Divisions, or Programs, in addition to working with Tribes and tribal students located on Indian reservations or other tribal land bases, work with tribal students located in off-reservation or urban locations, and with non-Indians who are located on-reservation or within tribal territory.

Some State Indian Education Offices, Divisions, or Programs provide various forms of educational training, technical assistance, or support services.

Most State Indian Education Offices, Divisions, or Programs provide a variety of informational, coordinating or networking, and outreach services, including web sites, publications, and conferences.

Most State Indian Education Offices, Divisions, or Programs operate on funding from both state and federal sources.

18. Question: *What is the relationship of State Indian Education Offices, Divisions, Programs, etc., to TEDs?*

**Brief Answer:**

Some states (e.g., Arizona, New Mexico, Wisconsin) by law require their SEAs and Indian Education Offices, Divisions, or Programs to work directly with tribal governments and / or TEDs.

Other states have developed informal but collaborative working relationships with tribal governments and TEDs.

Most importantly, virtually all State Indian Education Offices, Divisions, or Programs are charged with providing leadership to and public advocacy on behalf of state governments generally with respect to Indian education matters. In this respect, State Indian Education Offices, Divisions, or Programs can have a profound and positive effect on the relationship between SEAs and TEDs.

19. Question: *How can SEAs benefit from working with TEDs; or, How can TEDs help SEAs and LEAs help tribal students?*

**Brief Answer:**

TEDs have direct contact with and access to tribal students, parents, families, communities, and other tribal departments, agencies, and programs. This can be important for developing and disseminating information. It can also be important because TEDs can help SEAs and LEAs to bring issues to and resolve matters with other tribal departments, agencies, and programs that are outside of education.

TEDs are in a unique position to coordinate federal, state, and tribal resources for tribal students to achieve education goals such as closing achievement gaps under NCLB. Where public schools are serving tribal students, SEAs and LEAs can formally involve TEDs in state and federal compliance reviews and in making recommendations on school improvement, reform, and corrective actions in those schools.

TEDs may have access to resources that can help SEAs and LEAs assess and improve schools, education programs, and services to tribal students.

TEDs and SEAs can work together to use state statutory authority for charter schools, and to resolve issues under federal education programs such as Impact Aid.

Tribes often operate directly early childhood and pre-school programs that serve children who then transition into public school kindergartens. TEDs can help SEAs and LEAs align their kindergartens and early primary grades with tribal early childhood and pre-school programs.

At least three states now have laws specifically acknowledging the role of TEDs in state public school education systems:

- Wisconsin (1995) requires TED involvement in optional language and culture programs;
- Montana (1999) involves TEDs in in-service training for American Indian studies instruction, and in state-wide drop-out studies research; and
- New Mexico (2003) recognizes TEDs as stakeholders and collaborators generally in K-12 education.

Other state education laws provide for specific roles of tribal governments in various fundamental aspects of state public school education such as school accreditation and teacher certification, and tribal governments in turn may delegate the authority for these roles to TEDs.

TEDs and SEAs can work together to support changes in federal education law and policy that will improve education for tribal students.

20. Question: *Are there any good examples of state-tribal government-to-government relationships in education, or SEA-TED working partnerships?*

**Brief Answer:**

Yes, there are several good examples of state-tribal government-to-government relationships in education. The following are some of these examples.

Arizona's new Indian Education Act requires collaboration with Tribes in providing technical assistance to schools and in generally evaluating education.

Idaho's Education Code allows Tribes to establish their own systems of tribal language teacher certification.

Montana's Indian Education for All Act requires LEAs to work with Tribes generally.

Nebraska's and Oregon's Education Codes allow Tribes to develop their own tests for tribal language teacher qualification.

Nevada's Education Code requires the Chief State School Officer to work with Tribes in establishing programs and curricula for American Indians.

New Mexico's Indian Education Act provides for a formal government-to-government relationship between the state and Tribes, requires the state board of education to consult with Tribes in developing Indian Education Act rules, and requires state-tribal agreements on teaching native languages in the public schools.

Washington's Education Code encourages LEAs to partner / collaborate with Tribes to develop optional curricula in tribal history, culture, and government.

Washington's Administrative Code provides for the state board of education to work in collaboration with Tribes to establish pilot programs for tribal language / culture teacher certification.

Wyoming's Administrative Code allows Tribes to determine their own language instructors.



## **PART THREE: DISCUSSION**

### **A. A Brief History of Federal Indian Education Law and Policy**

#### **1. The Treaty Era (1776 - 1871)**

When the United States of America was founded as a country, it entered into treaties with Indian tribes. It did so pursuant to the U.S. Constitution which recognizes Indian tribes as separate sovereign nations. And, it did so as a means of acquiring Indian land.

Many Indian treaties had provisions regarding education. In exchange for the vast amounts of land that treaties transferred from tribes to the federal government, the government typically would "reserve" small portions of the land for tribes, whereon it promised to provide, among other things, education to the Indians.

The U.S. Congress began to make appropriations for Indian education in 1802. Some treaty provisions on education were fulfilled by the federal government funding or contracting with religious denominations (churches and missions) to provide schools and instruction (which was typically technical, vocational, and Christian). By 1820 Congress was using funds that it received from selling Indian lands that it had gotten through treaties to enact laws that provided for Indian education to tribes generally, regardless of whether they had specific treaty education provisions. These laws were part of a general federal Indian policy at the time that sought to "civilize" Indians. In general implementation of these education laws and treaty provisions was minimal, but there was some schooling of various types provided by federal agents, religious denominations, and even tribes.

In 1871 Congress passed a law that ended treaty making with Indian tribes. The law provided however, that existing treaties were not to be invalidated or impaired. Thus, in general, federal law continues to recognize that the original treaty provisions on education serve as a basis for a federal obligation to provide for Indian education. The early federal laws providing for Indian education generally also are part of that basis.

## 2. The Allotment and Assimilation Era (1871 - 1920)

After the American Civil War, federal Indian policy was less inclined to recognize tribes as separate sovereigns, and it was less inclined to "offer" civilization to Indians. Instead, Indians were viewed as heathen wards who **required** assimilation into the ever-growing mainstream American society and economy. This view was used to justify transferring massive amounts of remaining Indian land into private property owned by non-Indians; subjecting Indians to state laws rather than to their own tribal laws; and, suppressing tribal cultures. The federal policies of Indian land allotment and assimilation were very unilateral; they were forced on tribes by an increasingly powerful federal government. As the federal government sought to abolish tribal governments, it dramatically increased its own control over Indians.

Formal education was a primary means used by the federal government to destroy tribes and assimilate Indians. The government still contracted with religious denominations for Indian schools but it began to operate directly many Indian schools itself. Off-reservation federal Indian boarding schools for Indian children removed from their homes began in 1879. In the 1880s vacant federal military facilities (often the very same ones that had been used in U.S. wars against tribes) were turned into Indian boarding schools. By 1900 there were also hundreds of on-reservation day schools, including some schools which had been established by tribes but were taken over by the federal government. By 1915 a system-wide curriculum had been adopted, deviation from which was not allowed. Even more so than the mission schools, the federal Indian schools emphasized technical and vocational training according to strict regimentation and routine. Tribal languages and cultures were prohibited.

## 3. The Indian "New Deal" Era (the 1920s and 1930s)

Before 1900, the federal government would reimburse the few state public school districts that accepted Indians for the cost of educating them. By 1912 there were already more tribal children in public schools than in federal Indian schools. By 1917 federal policy was increasingly of the view that Indians should go to public schools. This movement was mostly driven by the high costs of the federal Indian schools. It was also driven by the notion that Indians would assimilate "better" if they went to public schools.

In 1924 Congress made all Indians citizens of the United States in part to clarify that states must allow Indians into their public schools. In 1926 the federal government estimated that of the approximately 70,000 elementary and secondary tribal students nationwide, slightly more than one-third were in the federal Indian schools; already well over half were in the public schools.

#### a. The Meriam Report

In 1928 the results of a federally-commissioned study of federal Indian policy were published. Known as "*The Meriam Report*," the study was highly critical of the allotment and assimilation policies. It concluded that while these policies had effectively destroyed many aspects of tribalism, they nevertheless were ineffective because nothing meaningful had been substituted for what was destroyed and they were heavily based on false expectations of cultural change.

*The Meriam Report* was particularly critical of the condition of Indian education. It condemned the deplorable policy of removing Indian children from their homes, and found the physical and psychological conditions at Indian boarding schools "grossly inadequate."

*The Meriam Report's* major recommendation for Indian education was literally a "Change in Point of View." It emphasized the need to have formal education of Indians occur in the natural setting of "local Indian life," including families, communities, and tribes. Remarkably, it also emphasized the need to adapt curriculum and teaching to meet the special needs of Indian students, and suggested that meaningful curriculum and teaching for Indians should be based on tribal histories, geographies, and arts. It even recognized that there are differences among tribes and among individual Indians, and cautioned against a "standard" Indian curriculum.

Unfortunately, *The Meriam Report* viewed the options for governance over Indian education as being limited to either the federal government or the states. As between the federal Indian schools and the state public schools, it clearly favored the latter. While it recognized that many Indians in the public schools would need special curricula and services, it did this with the ultimate vision that Indians would understand and fit better into American society, and that Indian education would cease to be a federal obligation.

#### b. The Indian Reorganization Act and the Johnson O'Malley Act

With the stage set by *The Meriam Report* Congress passed the Indian Reorganization Act (IRA) in 1934. The IRA was intended to halt the allotment of Indian land, reduce forced assimilation, and provide some recognition of tribal governments, economies, and cultures. The comprehensive law – offered as an "option" to all tribes – dealt with land and natural resources, financial credit, employment, and economic development.

The Johnson O'Malley (JOM) Act of 1934 was the health, education, and welfare component of the Indian New Deal. The JOM Act allowed the federal government to contract with states, private entities, and Indian tribes for services formerly provided by the government to Indians. The federal government continued to provide funds, facilities, and standards for the services. Under the JOM Act the government contracted out education programs specifically to assist Indians. Despite tribes expressly being among those with whom the government could contract, until the 1970s most of the JOM education contracts went to states and public school districts.

Many other recommendations of *The Meriam Report* regarding Indian education were implemented in the 1930s. The remaining federal Indian schools reduced their uniformity and regimentation; more day schools replaced boarding schools; and, more Indians began to attend local public schools.

#### **4. The Termination Era (the 1940s and 1950s)**

The IRA was controversial from its beginning, and it was increasingly attacked in the 1940s and 1950s by assimilationists, anti-Indian business interests, and policy-makers. What followed was a series of laws that ended or reduced important federal obligations to Indians.

Congressional appropriations for the federal Indian agency (that is, the Bureau of Indian Affairs (BIA)) declined. In 1946 the two full standing congressional Committees on Indian Affairs were abolished. The Indian Health Service was transferred from the BIA to the U.S. Department of Health, Education, and Welfare. Laws such as "Public Law 280" in 1953 transferred jurisdiction over many civil and criminal matters on Indian land to the states. Other laws transferred control over rights-of-way across Indian land, Indian natural resources, and other Indian property to the states. Large populations of reservation and rural Indians were "relocated" to major cities in the Midwest and West with promises of economic and employment assistance.

"Termination" became the official federal Indian policy from 1953 - 1958. The harshest form of this policy was reserved for over one hundred specific tribes whose government-to-government relationship with the U.S. was ended and whose lands were sold. The individual Indians of these tribes and their property were placed under state jurisdiction.

As in earlier eras, education was an important means of coerced assimilation during the Termination Era. Most of the remaining federal Indian schools were closed and many were transferred to the states and public school districts. Federal Indian schools remained primarily where there were no public schools, such as on the Navajo Reservation (in New Mexico, Arizona, and Utah). In exchange for assuming the primary responsibility of schooling Indians, states

demanded remuneration from the federal government. Some of this was handled through JOM contracts with the states.

A major federal education subsidy program, Impact Aid, began in the 1950s. The Impact Aid laws authorize funds through what is now the U.S. Department of Education to compensate the public schools for large amounts of non-taxable federal land, including Indian land, within their districts. Although Impact Aid funds are based expressly on the number of children residing on federal land, schools are to use Impact Aid funds for basic support, including general operating expenses, not for special Indian education programs.

## **5. The Indian Self-Determination Era (the 1960s –present)**

The current federal policy of Indian self-determination was both fueled by and became a part of the larger civil rights, anti-war, and other political, social, and economic reform movements that emerged in America in the 1960s. Tribal leaders and Indian groups increasingly asserted their legal rights and called for change. New socio-economic legislation aimed at reducing poverty and increasing community development specifically included Indian tribes as among the local government units eligible for program grants. The success of these programs eventually would effect wholesale changes in federal Indian policy generally.

### **a. The Elementary and Secondary Education Act**

Education once again was a fundamental part of changing national policy. The landmark 1965 Elementary and Secondary Education Act (ESEA) established the Title I and what would become the Title III education programs for economically disadvantaged children. In 1966 the BIA schools were granted an express "set aside" amount of the Title I program grants. In 1969 the BIA schools received a status equal to the public school districts (also known as local education agencies or LEAs) in terms of eligibility for Title III program grants. Eventually, virtually all federal Indian education programs would come under various Titles of the ESEA.

### **b. The Kennedy Report**

In 1969 the results of a Special Senate Subcommittee study on Indian Education were released. Entitled "*Indian Education: A National Tragedy – A National Challenge*," the report became known as "*The Kennedy Report*" because of the leadership on the Subcommittee by both Senators Robert and Edward Kennedy. *The Kennedy Report's* characterization of Indian education referred both to its failures (the tragedy) and its potential (the challenge).

*The Kennedy Report* noted that of the approximately 160,000 elementary and secondary tribal students nationwide, one third were in the BIA schools; two thirds were in public schools. *The Kennedy Report* expressed grave concern over the low quality of virtually every aspect of Indian education in both the BIA schools and the public schools: inadequate facilities, irrelevant curricula and teaching materials; and indifferent or hostile attitudes of teachers and administrators. With respect to the public schools, *The Kennedy Report* denounced them for preventing Indians from getting on their local school boards and from participating in their JOM programs. With respect to the BIA schools, the Report noted a lack of Indian participation in and community control over them; only a few even had elected school boards.

*The Kennedy Report* made sixty suggestions for improving Indian education. Many were quite similar to those made in *The Meriam Report*, which in itself suggested the failure of the federal government and the states to improve Indian education. Indeed, the primary recommendation of *The Kennedy Report* was "increased Indian participation and control over their own education programs." Specific suggestions included Indian school boards for BIA schools; contracting of BIA schools and programs to tribes; increased Indian involvement in JOM programs and basic education programs; culturally relevant curriculum; better training for teachers of Indians; and, more Indian teachers.

### **c. The Indian Education Act**

Congress' primary response to *The Kennedy Report* was the Indian Education Act (IEA) in 1972. The IEA authorized federal funding for three new special supplemental programs to assist Indian students: 1) the formula grant program for the special educational needs of Indians; 2) the discretionary grant program for a broad range of educational improvement opportunities; and; 3) special Indian adult education and literacy grants.

Of equal if not more significance is that the IEA established for its own implementation an Office of Indian Education, then within the U.S. Department of Health, Education, and Welfare. The IEA is not and never has been administered by the BIA within the U.S. Department of the Interior. The IEA also created the National Advisory Council on Indian Education (NACIE) to advise the Office of Indian Education on coordination of all programs affecting Indian education within the Department of (then HEW; now Education), and make annual recommendations to Congress.

**d. 1974 Changes**

In 1974, to curb abuses by states and public school districts the BIA adopted new JOM program regulations. They sharply restricted the use of JOM funds for basic support / general operating expenses. They also increased Indian parent control over JOM programs. Finally, the new regulations instituted a more equitable system for allocating JOM funds among school districts nationwide.

Also in 1974, amendments to the IEA authorized grants for special Indian teacher training programs and graduate school education fellowships for Indians.

**e. The Indian Self-Determination and Education Assistance Act**

President Nixon's Special Message to Congress in 1970 formally enunciated the federal policy of Indian Self-Determination. This policy is based on the premise that sovereignty over tribal Indians is vested first and foremost in their tribal governments, which the federal government has an obligation to affirmatively support and strengthen. Many of President Nixon's specific recommendations were subsequently adopted into the Indian Self-Determination and Education Assistance (ISDEA) Act passed by Congress in 1975.

The ISDEA Act contains bold policy statements about Indian control and participation in education and other services. Title I of the ISDEA Act is the authority for tribes to contract and administer, among other things, BIA schools and education programs. Title II of the ISDEA Act significantly reformed the JOM Act by, among other things, emphasizing contracts with tribes as well as with states and public school districts

**f. The Late 1970s**

As with most federal programs, ESEA programs periodically must be "reauthorized" by Congress. Reauthorization typically occurs every five, six, or seven years. Regrettably, with successive ESEA reauthorizations, compartmentalization and fragmentation of Indian education programs and the federal agencies that administer them have multiplied. For example, the 1978 reauthorization of the ESEA contained significant amendments to the Impact Aid laws, the IEA, and BIA-funded school laws, but failed to provide comprehensive coordination of elementary and secondary Indian education.

Congress also passed the landmark Tribally Controlled Community College Act (TCCCA) in 1978. In general, the TCCCA authorizes the Secretary of the Interior to make grants for the establishment, operation, and improvement of tribal colleges. The TCCCA is based on the trust obligation of the United States to Indian tribes to provide Indian education.

In 1979, the U.S. Department of Education was established. Part of this new cabinet reorganization included transferring the Office of Indian Education created by the IEA in 1972 from the former Department of Health, Education, and Welfare to the new Department of Education.

#### **g. The 1980s**

The 1984 reauthorization of the ESEA made several amendments to provisions regarding standards for BIA-funded schools. At that time, these schools served about 40,000 tribal students nationwide.

Much of the 1988 ESEA reauthorization also affected BIA-funded schools. One notable amendment was a new authorization for coordinated programs between BIA-operated schools and state public schools. Agreements would be negotiated by tribes or the Indian school boards and implemented by the BIA.

Another important new authorization in 1988 was for grants from the BIA for TEDs. Yet another important amendment authorized Tribal Grant Schools. Finally, the 1988 amendments authorized a White House Conference on Indian Education which was in fact held in January 1992.

#### **h. The 1990s**

Although they are not often viewed as "Indian education laws" Congress passed two Native American Languages Acts (NALA) in 1990 and 1992. NALA 1990 sets forth the basic federal policy regarding tribal languages: a recognition of the right of Native Americans to use their own languages and to have that right respected by other governments.



With respect to education, NALA 1990 states that Congress has found convincing evidence that student achievement and performance, community and school pride, and educational opportunity is clearly and directly tied to respect for and support of the first language of the child or student, and that it is clearly in the interests of the United States, individual states, and territories to encourage full academic and human potential achievements of all students and citizens and to take steps to realize these ends. Eight specific policies support the broad basic policy of NALA 1990. NALA 1990 also contains the bold statement that "The right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs."

NALA 1992 is the means of implementing the policy and goals of NALA 1990. Through the Administration for Native Americans within the U.S. Department of Health and Human Services, NALA 1992 authorizes grants to tribes and Indian organizations to help ensure the survival and continuing vitality of tribal languages, including programs for teaching tribal languages. It expressly encourages tribes and other grantees to collaborate with schools and higher education institutions in seeking such grants.

In 1991 the Indian Nations at Risk Task Force submitted to the U.S. Secretary of Education its final report, entitled "*Indian Nations at Risk: An Educational Strategy for Action.*" Notwithstanding all of the new federal Indian education laws and policies of the 1970s and 1980s, the Report revealed the startlingly low achievement and high drop out rates of the approximately 400,000 tribal elementary and secondary students in both the BIA-funded and public schools. The Task Force attributed these problems to schools that had failed to educate large numbers of Indians and that had contributed to the erosion of tribal languages and cultures by discouraging the use of tribal languages in the classroom. Unfortunately, to date there has been no comprehensive adoption and implementation of the specific strategy recommendations of the Indian Nations at Risk Report to improve tribal student academic performance.

The 1994 reauthorization of the ESEA (also known as Goals 2000: Educate America Act and the Improving America's Schools Act) contained an important new authorization for grants from the U.S. Department of Education for the development and operation of TEDs. Overall, the 1994 ESEA reauthorization emphasized school improvement and reform, and voluntary national standards, thus setting the stage for the subsequent ESEA reauthorization in 2001.

In 1998 President Clinton signed Executive Order No. 13096, entitled "*American Indian and Alaska Native Education.*" The Research Agenda component of this Executive Order has made lasting impacts on the U.S. Department of Education's keeping and reporting of statistics on Indian education in both the public schools and the BIA-funded schools.

## **i. The Twenty-First Century**

The reauthorization of the ESEA in 2001 is also known as the No Child Left Behind (NCLB) Act. NCLB significantly reforms the ESEA by requiring greater accountability of schools for teacher quality and results of testing and other assessments; increasing local control of schools and their flexibility in using federal funding; providing new information to and options for parents; and, emphasizing scientifically based research instruction and other methods in schooling.

Under NCLB, IEA programs are in Title VII; Impact Aid programs are in Title VIII, and BIA schools and education programs are in Title X. In these and other Titles, NCLB provides for strengthening tribal sovereignty over education while at the same time recognizing the federal responsibilities to provide for Indian education.

With the passage of NCLB and a change in Administrations came a new Executive Order on Indian Education. In April 2004 President George W. Bush signed Executive Order No. 13336, entitled "*American Indian and Alaska Native Education*." Executive Order No. 13336 is intended to assist tribal students in meeting the challenging student academic standards of NCLB in a manner that is consistent with tribal traditions, languages, and cultures.

## **B. Selected Federal Indian Education Programs Today**

### **1. U.S. Department of Education Programs**

#### **a. Title I**

i. **Brief description:** Title I LEA Grants for Improving Basic Programs provide financial assistance through SEAs to LEAs with high numbers of percentages of poor students to help them meet challenging state academic standards. Individual public schools with poverty rates above forty percent (40%) may use Title I funds to operate school-wide programs. Schools with poverty rates below forty percent (40%) offer targeted assistance programs to students who are failing or most at risk of failing. Both school-wide and targeted assistance programs must be designed in consultation with parents, based on effective means of improving student achievement, and must include strategies to support parental involvement. Schools receiving Title I funds must show adequate yearly progress based on standardized tests each year between grades three and eight, with significant penalties for non-compliance.

#### **ii. For more information:**

(A) [www.ed.gov/](http://www.ed.gov/)

(B) The Catalog of Federal Domestic Assistance, No. 84.010

(C) Council of Chief State School Officers and Native American Rights Fund, *Major Elementary and Secondary Federal Education Programs Serving Tribal Students: What Are They And What Are The Roles of SEAs, LEAs, and Indian Tribes?* (April 2005)

#### **b. Title III**

i. **Brief description:** English Language Acquisition (ELA) Formula Grants are designed to help limited English proficient (LEP) students be proficient in English and meet challenging state academic standards. Through their SEAs, LEAs may get ELA Formula Grants based on their numbers of LEP and immigrant students. SEAs must develop annual measurable achievement objectives for LEP students that measure their success in achieving English language proficiency and meeting state academic standards. With ELA Formula Grant funds, LEAs may develop and implement a variety of language instruction programs based on scientifically-based research in achieving English proficiency.

ELA competitive discretionary Project Grants are available to develop high levels of academic attainment in English among LEP students and to promote parental and community participation in language instruction educational programs.

#### **ii. For more information:**

(A) [www.ed.gov/](http://www.ed.gov/)

(B) The Catalog of Federal Domestic Assistance, No. 84.365

(C) Council of Chief State School Officers and Native American Rights Fund, *Major Elementary and Secondary Federal Education Programs Serving Tribal Students: What Are They And What Are The Roles of SEAs, LEAs, and Indian Tribes?* (April 2005)

c. **Title IV**

i. **Brief description:** Title IV Safe and Drug-Free Schools and Communities State Formula Grants provide financial assistance to LEAs through their SEAs for a variety of drug and violence prevention activities that help prevent violence in and around schools and strengthen programs that prevent the illegal use of alcohol, tobacco, and drugs.

ii. **For more information:**

(A) [www.ed.gov](http://www.ed.gov)

(B) The Catalog of Federal Domestic Assistance, No. 84.186.

d. **Title VII**

i. **Brief description:** The Indian Education Act Formula Grant program provides grants to support LEAs, BIA-funded schools, and, in some instances, Tribes, in their efforts to address the unique educational and culturally related academic needs of American Indian and Alaska Native students. Formula Grant funds may be used for a variety of programs, as long as they address the unique educational and culturally related academic needs and help tribal students meet challenging academic standards.

Indian Education Act Demonstration Grants are discretionary competitive grants for SEAs, LEAs, Tribes, and BIA-funded schools, and are for scientifically-based and culturally appropriate programs and projects designed to improve the educational opportunities and achievement of preschool, elementary, and secondary school tribal students by developing, testing, and demonstrating effective services and programs.

ii. **For more information:**

(A) [www.ed.gov](http://www.ed.gov)

(B) The Catalog of Federal Domestic Assistance, Nos. 84.060 and 84.299A

(C) Council of Chief State School Officers and Native American Rights Fund, *Major Elementary and Secondary Federal Education Programs Serving Tribal Students: What Are They And What Are The Roles of SEAs, LEAs, and Indian Tribes?* (April 2005)

(D) Native American Rights Fund, *Major Federal Programs for American Indian, Alaska Native, and Native Hawaiian Education: What Are They and How Do They Involve Tribes? Part II: Programs under the No Child Left Behind Act of 2001, Titles VII (Indian Education Act); VIII (Impact Aid); and, X (Bureau of Indian Affairs)* (June 2004)

(E) National Advisory Council on Indian Education, c/o Office of Indian Education, U.S. Department of Education, 400 Maryland Ave., SW, Washington, DC 20202, (202) 260-3774

(F) National Indian Education Association, 110 Maryland Ave., N.E., Ste. 104, Washington, DC 20002, [www.niea.org](http://www.niea.org); (T) (202) 544-7290; (F) (202) 544-7293; [niea@niea.org](mailto:niea@niea.org)

e. **Title VIII**

i. **Brief description:** Impact Aid Basic Support Formula Grants provide funding to LEAs for the education of children who reside on federal lands, including Indian lands. Impact Aid funds are intended to compensate for the non-taxability of the lands by state governments and their political subdivisions. LEAs may deposit Impact Aid Formula Grant funds into their general operating expense fund accounts.

Additional Impact Aid funding is provided for children with disabilities and limited additional funding is provided for school facilities maintenance.

ii. **For more information:**

(A) [www.ed.gov](http://www.ed.gov)

(B) The Catalog of Federal Domestic Assistance, Nos. 84.041 and 84.040

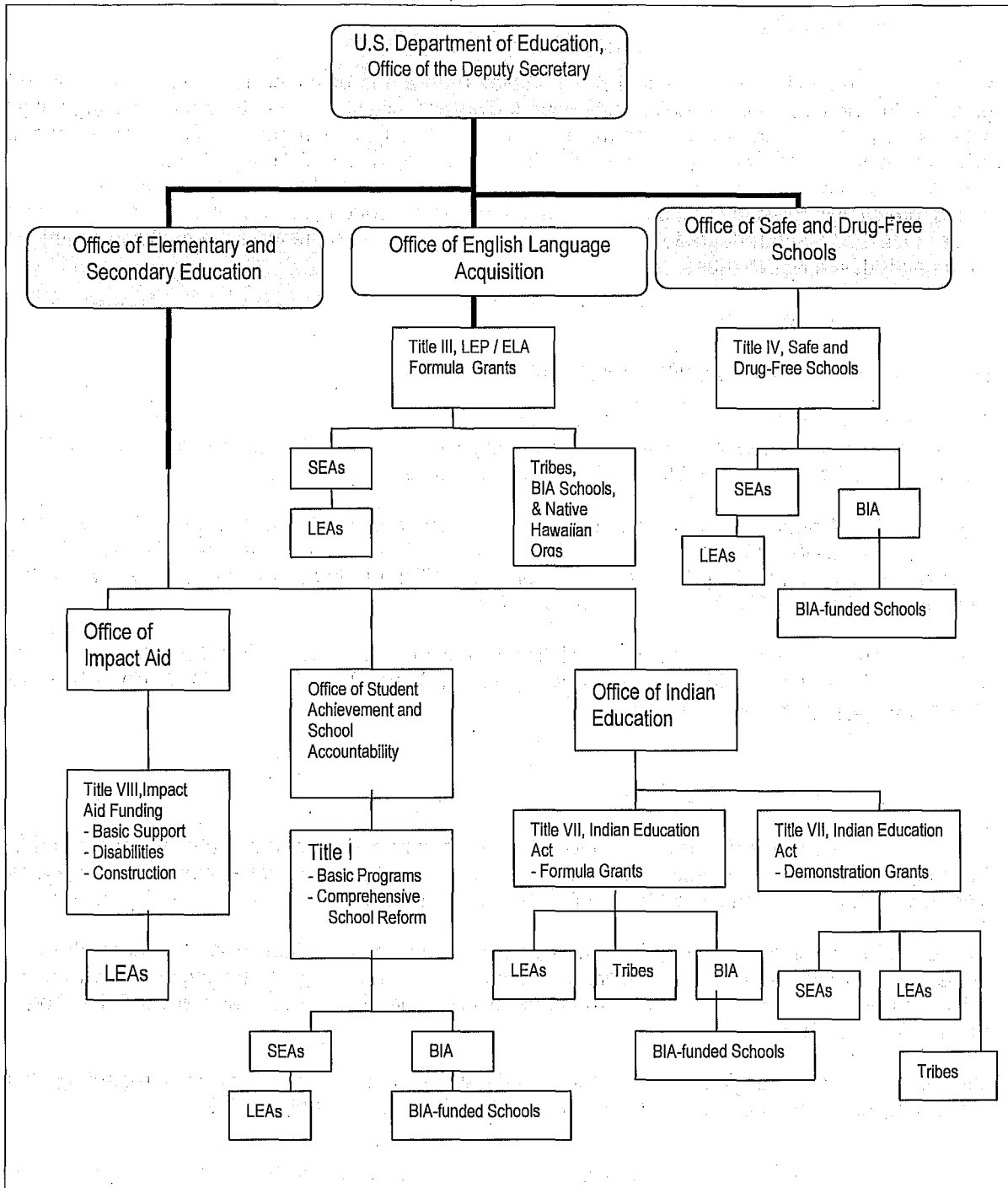
(C) Council of Chief State School Officers and Native American Rights Fund, *Major Elementary and Secondary Federal Education Programs Serving Tribal Students: What Are They And What Are The Roles of SEAs, LEAs, and Indian Tribes?* (April 2005)

(D) Native American Rights Fund, *Major Federal Programs for American Indian, Alaska Native, and Native Hawaiian Education: What Are They and How Do They Involve Tribes? Part II: Programs under the No Child Left Behind Act of 2001, Titles VII (Indian Education Act); VIII (Impact Aid); and, X (Bureau of Indian Affairs)* (June 2004)

(E) National Association of Federally Impacted Schools, 444 N. Capitol St., NW, Ste. 419, Washington, DC 20001, [www.nafisdc.org](http://www.nafisdc.org); (T) (202) 624-5455; (F) (202) 624-5468

(F) National Indian Impacted Schools Association, P.O. Box 30, Naytahwaush, MN 56566, [www.niisaonline.org](http://www.niisaonline.org); (T) (218) 935-5848; [brentgish@niisaonline.org](mailto:brentgish@niisaonline.org)

f. Chart



## **2. U.S. Department of the Interior Programs**

### **a. Johnson O'Malley**

**i. Brief description:** The Johnson O'Malley program is designed to meet the special and unique educational needs of eligible American Indian and Alaska Native students attending public schools. The JOM program provides funds by contract to supplement the regular school program. JOM funds may be used for activities including tutoring, academic support, cultural activities, summer education programs and after school activities. Tribes, and in certain instances LEAs and states, are eligible to receive funds for students ages three through grade twelve who are members of, or at least one-fourth degree Indian blood from a descendant of, federally recognized American Indian and Alaska Native tribes.

#### **ii. For more information:**

**(A)** [http://www.oiep.bia.edu/programs\\_jom](http://www.oiep.bia.edu/programs_jom)

**(B)** Council of Chief State School Officers and Native American Rights Fund, *Major Elementary and Secondary Federal Education Programs Serving Tribal Students: What Are They And What Are The Roles of SEAs, LEAs, and Indian Tribes?* (April 2005)

**(C)** Native American Rights Fund, *Major Federal Programs for American Indian, Alaska Native, and Native Hawaiian Education: What Are They and How Do They Involve Tribes? Part II: Programs under the No Child Left Behind Act of 2001, Titles VII (Indian Education Act); VIII (Impact Aid); and, X (Bureau of Indian Affairs)* (June 2004)

**(D)** National Johnson O'Malley Association, c/o Virginia Thomas, Board President, P.O. Box 126, Okmulgee, OK 74447, [www.NJOMA.com](http://www.NJOMA.com), (T) (918) 732-7844 (F) (918) 732-7839, [vthomas@muscogeenation-nsn.gov](mailto:vthomas@muscogeenation-nsn.gov)

### **b. BIA-Funded Schools**

**i. Brief description:** The BIA funds 184 elementary and secondary schools, located on 63 Indian reservations in 23 states. 122 schools are operated by Tribes under contracts and grants. The BIA operates the remaining 62 schools. The BIA funded schools serve over 47,500 students.

BIA-funded schools receive direct federal operational and construction funding through the U.S. Department of the Interior. In addition, BIA-funded schools are eligible for supplemental federal education programs such as Title I through set-asides from the U.S. Department of Education to the Interior Department.

BIA-funded schools are subject to various federal, state, and / or tribal laws regarding their accreditation, standards, and assessments. See Part II of this Manual, at FAQ 14.

ii. For more information:

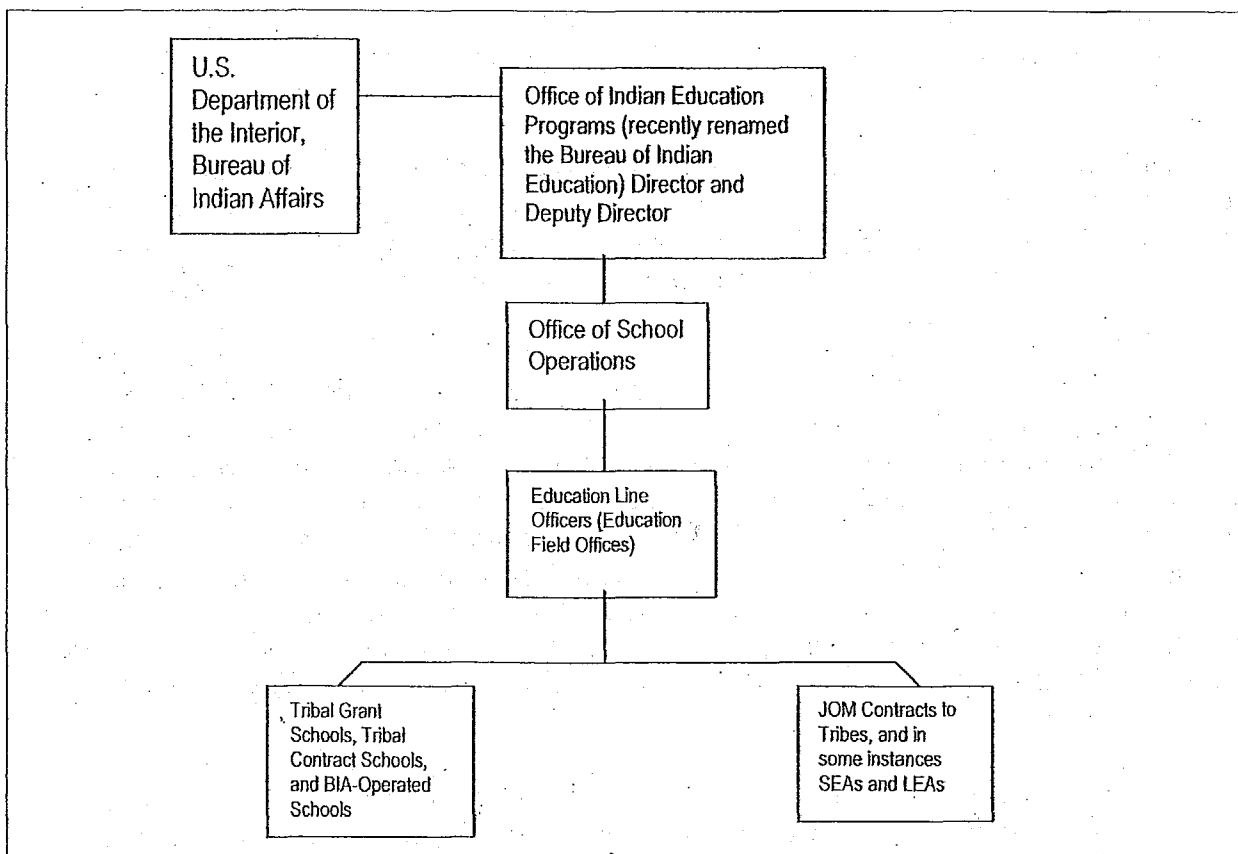
(A) <http://www.oiep.bia.edu>

(B) Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, *OIEP National Directory* (2005-2006)

(C) National Indian School Board Association, P.O. Box 790, Polson, MT 59860, , [www.skcbia.org](http://www.skcbia.org), (T) (406) 883-3603 (F) (406) 275-4987, [carmen.Taylor@skcbia.org](mailto:carmen.Taylor@skcbia.org)

(D) Association of Community Tribal Schools, 616 4<sup>th</sup> Ave. West, Ste 900, Sisseton, SD 57262, [www.wambdi.bia.edu](http://www.wambdi.bia.edu), (T) (605) 698-3112 (F) (605) 698-7686, [roger@www.wambdi.bia.edu](mailto:roger@www.wambdi.bia.edu)

c. Chart<sup>1</sup>



3. **Other Federal Agency Education Programs.** For a complete listing, see Council of Chief State School Officers and Native American Rights Fund, *Major Elementary and Secondary Federal Education Programs Serving Tribal Students: What Are They And What Are The Roles of SEAs, LEAs, and Indian Tribes?* APPENDIX E (April 2005)

<sup>1</sup> At the time of publication of this Manual, the Bureau of Indian Affairs is proposing to restructure some aspects of the Office of Indian Education Programs / Bureau of Indian Education. Such a restructure likely would affect this Chart.



### **C. Tribal Sovereignty and Elementary and Secondary Education, Including the State Public Schools**

Tribal sovereignty has impacted elementary and secondary education, including the state public schools, in a number of ways. The following are selected examples of how some of the major programs and schools have been impacted by tribal sovereignty.

#### **1. Direct Contracts and Grants**

##### **a. Johnson O'Malley Contracts**

Since it began in 1934, the JOM program has included Tribes as being among the entities with whom the federal government could contract for health, education, and welfare services for Indians. Until the 1970s, however, as a matter of practice, most JOM education contracts went to SEAs and LEAs.

In 1974 in part in response to *The Kennedy Report* (1969) and at the insistence of several Indian organizations, the BIA adopted new JOM program regulations. The new regulations sharply restricted the use of JOM funds by SEAs and LEAs for basic support / general operating expenses. They also increased Indian parent control over JOM programs.

In 1975, Title II of the Indian Self-Determination and Education Assistance Act significantly reformed the JOM program. It emphasized JOM contracts with Tribes. It also required SEAs and LEAs to submit plans that show how their JOM funds will meet the special and unique educational needs of Indian students. It also provided that where LEA school boards are not majority Indian, the affected Tribe(s) must establish Indian parent education committees. Indian parent education committees must participate fully in the development of JOM programs and have authority to approve or disapprove JOM programs. Where SEAs are receiving JOM contracts, they must establish an Indian advisory council on education.

These rights and roles of Tribes and Indian parents remain today. Tribes and tribal entities, especially those on or near Indian lands, have priority over SEAs and LEAs for JOM program funds. Indian Education Committees (IECs) are required for LEAs with non-Indian majority school boards. IECs have the right to participate fully in the planning, development, approval, and evaluation of all JOM programs. JOM funds must be used only for supplemental programs for the benefit of eligible Indian students.

Significantly, JOM is a "stand-alone" program. It is *not* part of the ESEA / NCLB and thus is not subject to their reauthorizations.

## **b. Indian Education Act Formula Grants**

First enacted in 1972, the Indian Education Act (IEA) Formula Grants program today provides supplemental funding for basic programs to help LEAs meet the unique educational and culturally relevant academic needs of eligible Indian students and to help the students meet the schools' challenging academic standards.

Originally, Formula Grants were available only to eligible LEAs that openly consulted with Indian parents and established Indian parent advisory committees. Today, LEAs must have written approval of elected Indian parent committees who have participated in the development of the program, been consulted in the operation and evaluation of the program, and who have had input into the hiring of program personnel.

Since 1994, where LEAs do not establish elected parent committees and a Tribe represents more than fifty percent (50%) of the eligible Indian students, the Tribe may apply for a Formula Grant.

BIA-funded schools are eligible for Formula Grant program funding through an annual set-aside of appropriations for the U.S. Department of the Interior.

## **c. Indian Education Act Demonstration and Professional Development Grants**

Since 1972, discretionary demonstration grants have been available to SEAs, LEAs, BIA-funded schools, Tribes, Indian organizations, and higher education institutions for a broad range of educational improvement opportunities for Indian students. Tribes, Indian organizations, and Indian higher education institutions have a statutory preference among eligible applicants. All applicants must involve affected Tribes and Indian parents.

Today, Demonstration Grant programs must be for culturally appropriate and scientifically-based programs to develop, test, and show the effectiveness of services and projects to improve educational opportunities for and academic achievement of Indian students. By regulation, the U.S. Department of Education has stated that under NCLB it will focus Demonstration Grant funding on projects and activities that emphasize school readiness of preschoolers, and high school graduation and transition to post-secondary education.

Professional development may be a part of any Demonstration Grant. In addition, there are separate and specific IEA Professional Development grants for the training of Indian teachers, administrators, teachers aides, social workers, and other education professionals and personnel. SEAs, LEAs, BIA-funded schools, Indian higher education institutions, and certain Tribes and Indian organizations are eligible for these Professional Development Grants. Tribes, Indian organizations, and Indian higher education institutions have a statutory preference among eligible applicants. By regulation, the U.S. Department of Education has stated that under NCLB it will focus Professional Development Grant funding on projects and activities that emphasize pre-service training for Indian teachers and administrators. The original Indian Education Act in 1972 established a preference for the training of Indians.

#### **d. English Language Acquisition Grants**

Since 1969 the BIA-funded schools have had status equal to LEAs in terms of eligibility for what is now Title III ELA Formula Grant funding.

In 1990, Congress passed the Native American Languages Act (NALA). NALA specifically recognizes the importance of indigenous languages, and the policy of the United States to ensure their survival. NALA authorizes the federal government to waive teacher certification requirements when necessary to allow teaching of Native languages by Native speakers, and encourages states to do the same. It recognizes the right of Tribes to use Native languages as a medium of instruction and as official governmental languages. It also encourages teaching Native languages in the same manner and with the same status as foreign languages. Finally, it protects the rights of Native Americans to express themselves through their Native languages, and prohibits the restriction of such expression in public proceedings, including publicly supported education programs.

NALA has impacted Title III ELA Grants. The overall goal of Title III under NCLB is to help LEP students learn and be proficient in English so they can meet challenging state academic standards. Because of NALA, this goal is modified for tribal students with respect to the preservation and use of their Native languages.

Also under NCLB, Tribes, Tribally Sanctioned Educational Authorities (TSEAs), BIA-funded schools, and Native Hawaiian native language educational organizations are eligible to receive Title III ELA Formula Grants directly, or they can choose to receive within-state Formula Grant subgrants as LEAs.

Tribes, TSEAs, BIA-funded schools, and Native Hawaiian native language education organizations also are eligible for Title III ELA competitive discretionary Project Grants for Language Instruction Programs for Native American LEP students who are learning their Native languages and who need to increase fluency in English as a second language. Recipients of Project Grants, however, cannot also get within-state Formula Grant subgrants.

## 2. BIA-Funded Schools

There are presently one hundred eighty-four (184) BIA-funded schools, that is, schools that are funded through annual congressional appropriations to the U.S. Department of the Interior. BIA-funded schools are three types: 1) BIA-operated schools; 2) Tribal Contract schools; and 3) Tribal Grant Schools. These three types are discussed separately below.

Some BIA-funded schools are boarding schools and some are day schools. Some are K-12 and some are K-8 or other variations of grade levels. Most, but not all, BIA-funded schools are located on Indian land. The BIA-funded schools serve about 47,500 students – less than nine percent (9%) of all tribal elementary and secondary students nationwide.

BIA-funded schools receive operational support funding and construction / facilities maintenance funding. The operational support funding is also known as Indian School Equalization Program (ISEP) funding. Historically and presently, both ISEP and construction / facilities maintenance funding for BIA-funded schools are quite less than the known amounts needed. In addition, BIA-funded schools are eligible for supplemental federal education funding such as Titles I and III through annual set-aside allocations from the U.S. Department of Education to the Interior Department. BIA-funded schools also are eligible for Title VII IEA Formula Grant funds through a set aside to the Interior Department.

Federal statutory provisions govern the accreditation of and standards for all BIA-funded schools. In general, BIA funded schools must be accredited by states or regional accreditation agencies; they may be accredited by tribal accreditation bodies whose accreditation is recognized by a state or regional accreditation agency.

Under NCLB, schools receiving Title I funds, including BIA-funded schools, must show Adequate Yearly Progress (AYP) by subjecting their students to standardized assessments each year between grades three and eight with significant penalties if they fail to comply. BIA-funded schools that are accredited by state or regional accreditation agencies must use state or regional assessments, or they may use alternative assessments approved by the Secretary of the Interior. BIA-funded schools that are accredited by tribal accreditation bodies may use tribal academic assessments, although the BIA must ensure that such assessments are in compliance with NCLB. In addition, NCLB allows Tribes to waive inappropriate definitions of AYP set by the Secretary of the Interior for BIA-funded schools, but Tribes must then submit proposed alternative AYP definitions to the Secretary within sixty days.

**a. BIA-Operated Schools**

These schools are operated directly by the BIA with elected local Indian school boards that must cooperate and consult with affected Tribes. About one-third of the 184 BIA-funded schools are still BIA-operated, and most of these are located within the Navajo Indian Reservation, which encompasses portions of the states of Arizona, New Mexico, and Utah. Since 1978, the Secretary of the Department of the Interior must consult with Tribes in the development of basic education standards for BIA-operated schools. Tribes may waive and revise inappropriate or ill-conceived standards developed by the Secretary but since 1984 if they do so they must present alternative tribal standards.

**b. Tribal Contract Schools**

As early as the 1960s, Tribes began to contract with the Secretary of the Department of the Interior to manage BIA-operated schools. This process was formalized with the passage of the ISDEA Act of 1975. The ISDEA Act expressly authorizes tribes to contract the operation and administration of schools formerly operated by the BIA.

**c. Tribal Grant Schools**

In 1988, Congress enacted the Tribally Controlled School Grants Act. Under this Act, eligible Tribes may apply for grants to operate and administer former BIA-operated, Contract, or other tribally controlled schools as Grant schools. In general, grants represent one-year funding for schools, rather than the quarterly payments for Contract schools. Tribes may invest their grant funds and use the earned interest and investment income for school operations, support services, and education improvement.

**3. Other Rights and Roles of Tribes in Federal Education Programs**

**a. Set-Asides for BIA-Funded Schools in Titles I, III, IV, and VII**

Many of the major federal education programs that fund LEAs through their SEAs now have express set asides of allocations of the annual appropriations for BIA-funded schools. The Education Department transfers the set-aside from its appropriation to the Interior Department. The Interior Department then subgrants program funds to the BIA-funded schools, much like SEAs subgrant program funds to LEAs. Such set aside provisions are found in Titles I, Improving Basic Programs Grants, Title III ELA Formula Grants, Title IV Safe and Drug Free Schools and Communities State Formula Grants, and Title VII, IEA Formula Grants.

**b. Title VIII Impact Aid Funding**

Since the 1978 reauthorization of the ESEA, LEAs receiving Impact Aid Basic Support funds must ensure increased participation of Indian parents and Tribes in the planning and operation of education programs that they offer according to statutory provisions for Indian policies and procedures (IPPs). Indian parents and Tribes can try to enforce the IPPs through a statutory administrative complaint procedure.

The IPP provisions generally require: equal participation of Indian students in all school programs; consultation with Indian parents and Tribes in the planning, development, and operation of the programs; opportunities for Indian parents and Tribes to make recommendations regarding the needs of tribal students and the methods used to meet the needs; and, adequate and timely dissemination to Indian parents and Tribes of the program plans and evaluations.

The administrative complaint procedure applies in instances where the LEA elected school boards are not a majority Indian. Tribes or their designees may file complaints with the U.S. Secretary of Education against the LEAs if they feel that an LEA is not in compliance with the IPPs. Complaints are reviewed by an examiner appointed by but outside the Education Department who must hold a public hearing on the record and make findings of fact and recommendations. The Secretary must make final determinations based on the examiner's work and must set a date by which the LEA will comply. Where LEAs refuse to comply or refuse to comply by the prescribed date, Tribes may choose to remove their children from the LEA and either contract with the BIA to operate a school under the ISDEA Act or request the BIA to provide the schooling.

#### **4. Rights and Roles of Tribes under Federal and State Native Language Laws**

##### **a. The Native American Languages Acts of 1990 and 1992**

The Native American Languages Act of 1990 (NALA 1990) is a prominent statement of federal policy regarding tribal languages. It is intended to help prevent the extinction of tribal languages and to help tribal language and culture programs. It generally recognizes the right of Native Americans to use their own languages and to have that right respected by other governments.

With respect to education, NALA 1990 states that Congress has found convincing evidence that student achievement and performance, community and school pride, and educational opportunity is clearly and directly tied to respect for and support of the first language of the child or student, and that it is clearly in the interests of the United States, individual states, and territories to encourage full academic and human potential achievements of all students and citizens and to take steps to realize these ends.

NALA 1990 authorizes the federal government to waive teacher certification requirements when necessary to allow teaching of Native languages as a medium of instruction and as official governmental languages. It also encourages teaching Native languages in the same manner and with the same status as foreign languages. NALA 1990 also contains the bold statement that "The right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs."

A second Native American Languages Act was passed in 1992 (NALA 1992). NALA 1992 is the means of implementing the policy and goals of NALA 1990. Through the Administration for Native Americans within the U.S. Department of Health and Human Services, NALA 1992 authorizes grants to Tribes and Indian organizations to help ensure the survival and continuing vitality of tribal languages, including programs for teaching tribal languages. It expressly encourages Tribes and other grantees to collaborate with schools and higher education institutions in seeking such grants.

**b. No Child Left Behind Title III**

In recognition of NALA 1990, Title III of NCLB (Language Instruction for Limited English Proficient and Immigrant Students) expressly provides in the Accountability and Administration subpart of Part A, English Language Acquisition, Language Enhancement, and Academic Achievement Act, that "Nothing in this part shall be construed . . . to limit the preservation or use of Native American languages." It also expressly provides that programs under this part that serve Native American children "may include programs of instruction, teacher training, curriculum development, evaluation, and assessment designed for children learning and studying Native American languages . . . except that the outcome of programs serving such children shall be increased English proficiency among such children."

Title III Part B, Improving Language Instruction Education Programs also has express modifications "relative to the unique status of Native American languages under Federal law." For example, under Title III Part B, there are specific Research, Evaluation, and Dissemination grants for the development, publication, and dissemination of high-quality instruction materials in Native American languages.

**c. State Laws**

When NALA 1990 was passed, only three states – Hawaii, Minnesota, and Wisconsin – had express provisions in their laws regarding Native language in school curricula or the certification of teachers of Native languages. Within ten years after NALA 1990's passage, more than a dozen more states had addressed these matters in their laws. Most of these states involve Tribes directly or indirectly in the process of certifying, licensing, or endorsing the teachers of Native languages in the state public schools.

Hawaii is the only state that constitutionally recognizes that Hawaiian, along with English, is an official language of the state. Hawaii's constitution also provides that the state shall provide for a Hawaiian education program consisting of language, culture, and history in the public schools.

States such as Idaho, Nebraska, New Mexico, Oklahoma, Oregon, and Washington expressly encourage the use, study, and teaching of tribal languages in their public schools. States such as Alaska and Wisconsin expressly allow LEAs the option of establishing tribal language education curricula.



Idaho allows Tribes to establish their own systems of qualifying teachers of tribal languages. States such as Arizona, Maine, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Washington, Wisconsin, and Wyoming involve Tribes in state processes to certify teachers of tribal languages, typically by allowing Tribes to verify the language competency / proficiency of tribal language teachers.

States such as Alaska, Maine, New Mexico, and North Dakota allow for limited or conditional state teacher certificates for teachers of tribal languages. Several other states waive many of the regular teacher certification requirements for tribal language teachers.

States such as Oklahoma and Washington grant Native American languages a status equivalent to that of foreign languages.

States such as Iowa, Montana, and Wyoming expressly exempt Native American languages from their "English Only" laws.

See generally The Native American Rights Fund, *Compilation of State Indian Education Laws* (updated Oct. 2005); see also The Native American Rights Fund, *A Compilation of Federal and State Education Laws regarding Native Language in Curriculum and Certification of Teachers of Native Languages* (Nov. 2003).

5. **Other instances of Tribal Sovereignty and State-Tribal Government-to-Government Relations in K-12 Education**

a. **State Laws about Teaching Tribal Sovereignty**

Five states now provide for the teaching of tribal sovereignty in their public school curricula. This is even more remarkable than the language laws since tribal sovereignty certainly is recognized in federal law but no federal law requires or even encourages states to teach it.

Maine requires teaching about tribal governments in Maine for each grade at the elementary and secondary levels. Wisconsin requires instruction about tribal governments in Wisconsin at least twice in the elementary grades and once in the secondary grades. Montana and Oregon require instruction in the tribal governments in their states. California has a policy law that states that "California residents and pupils need to know more about the contemporary status of . . ." Indian tribal governments in California. At least one of these states, Wisconsin, has statutory teacher education program standards in tribal sovereignty as well. See The Native American Rights Fund, *Compilation of State Indian Education Laws* (updated Oct. 2005).

b. **Intergovernmental Agreements**

The 1988 ESEA reauthorization contained a new authorization for coordinated programs between BIA-operated schools and state public schools. Agreements may be negotiated by Tribes or Indian school boards and implemented by the BIA. Examples of some agreements negotiated pursuant to this authorization may be found in The Native American Rights Fund, *Cooperative Agreements in Indian Education* (Oct. 1998).

Eleven states – Arizona, Colorado, Florida, Minnesota, Montana, Nebraska, New Mexico, New York, North Dakota, Oregon, and Wyoming – have laws that authorize cooperative agreements with Tribes in some area of K-12 education. See The Native American Rights Fund, *Compilation of State Indian Education Laws* (updated Oct. 2005).

Other examples of actual education agreements between Tribes and LEAs may be found in National Congress of American Indians, *A Compilation of Papers on Tribal-State Partnerships: Models of Cooperation in Government* 109-117 (June 2000); also available as Native American Rights Fund, *Tribal-State Partnerships: Cooperating to Improve Indian Education* (June 2000).

**D. Tribal Education Departments**

**1. Brief Summary of the Federal Law Provisions regarding TEDs**

**a. Indian Self-Determination and Education Assistance Act Grants**

As early as 1984, Congress was of the view that there were insufficient TEDs and insufficient Tribal Education Codes to justify allowing Tribal Contract Schools to be governed by Tribal Education Standards. In part to address this concern, in the 1984 ESEA Reauthorization, Congress clarified expressly that ISDEA Act grants can be used for TEDs and Tribal Education Code development and administration. To date, however, few Tribes have taken advantage of this opportunity.

**b. Authorization for Appropriations through the U.S. Department of the Interior**

In the 1988 ESEA Reauthorization, Congress authorized a new program for grants from the BIA for TEDs. Congress contemplated that with such grants TEDs would coordinate all education programs (federal grant and other) and develop education codes, standards, and policies. To date, however, no appropriations have been made by Congress for this authorization.

**c. Authorization for Appropriations through the U.S. Department of Education**

In the 1994 ESEA Reauthorization Congress added a second authorization for funding the development and operation of TEDs through the U.S. Department of Education. Congress contemplated that with such grants TEDs would conduct administrative planning and development to coordinate all education programs operated by Tribes and within tribal territorial jurisdiction; develop tribal education codes; and, provide support services and technical assistance to schools. Unfortunately, to date, this authorization, like its counterpart on the BIA side, has never been funded by Congress.

**d. All NCLB Provisions**

**i. TED Appropriations**

Significantly, the 2001 ESEA Reauthorization (NCLB) retains both authorizations for TED funding (through the Department of Education in Title VII and through the BIA in Title X). The authorization for TED funding through the Department of Education was moved, along with the authorizations for certain other discretionary programs to a new "national activities" section. The authorization for TED funding through the BIA was amended slightly to add as a new priority to be considered by the Secretary of the Interior that the funding applicants serve "3 or more" separate BIA-funded schools.

**ii. BIA-Funded Schools**

There are several provisions in Titles I and X of NCLB that are specific to the role of TEDs vis-à-vis BIA-funded schools. Title I provides that where BIA-funded schools are accredited by TEDs, the schools must use the TED's academic assessments, and the Secretary of the Interior must ensure that the assessment is in compliance with NCLB.

Title X provides that the Secretaries of the Education and Interior Departments must, in consultation with Tribes, Indian education organizations, and accrediting agencies, develop and submit to Congress a report on the desirability and feasibility of establishing a tribal accreditation agency that would, among other things, establish accreditation procedures for, among other things, recognizing qualified and credible TEDs as accrediting bodies serving Tribal Contract and Grant Schools.

**iii. Title III**

Title III of NCLB also contains a number of TED-specific provisions. TEDs are among the eligible grantees for direct grants under Part A, English Language Acquisition, Language Enhancement, and Academic Achievement Act, Grants and Subgrants for English Language Acquisition and Language Enhancement and Part B, Improving Language Instruction Educational Program, Program Development and Enhancement. There are also provisions in these Parts that encourage LEAs that receive Title III subgrants to collaborate with TEDs.

## **2. State Law Provisions regarding TEDs**

In less than the last ten years, three state legislatures – without federal mandate – have recognized roles for TEDs in their public schools systems.

### **a. Wisconsin**

Wisconsin was the first state in the Union to statutorily mention TEDs. In 1995 Wisconsin enacted a statutory American Indian Language and Culture Education Program. This program encourages school districts with Native American students to establish American Indian language and culture programs as part of the regular education curriculum. Where such programs are established, a parent advisory committee also must be established to advise the school board of the committee's views of the program. By statute, the school board must include on the committee representatives of existing TEDs, and must get recommendations from the TEDs for other committee member appointments.

### **b. Montana**

In 1999 Montana became the second state to mention TEDs. Montana's new law is intended to help implement Montana's unique express constitutional recognition of the importance of Indian education. "The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity." Mont. Const. art. X, § 1(2). Among other things, the new law requires public schools and their staff to work with tribes and to include tribal heritage and contributions in providing instruction, implementing educational goals, and adopting education rules. For purposes of this instruction in American Indian studies, the definition of "instruction" includes "inservice training provided by a local board of trustees of a school district, which is developed and conducted in cooperation with tribal education departments, tribal community colleges, or other recognized Indian education resources specialists".

Even more recently, the Montana legislature has adopted a Joint Resolution requesting the State-Tribal Relations Committee to gather information about drop out rates, graduation rates, and at risk factors among Indian students in the state's public schools, and to develop a strategic plan to address the findings. In implementing this project, the Committee must collaborate with the State Board of Education, the State Board of Regents, the Office of Public Instruction, school districts, education organizations, and TEDs.

### **c. New Mexico**

In 2003, in its new Indian Education Act, New Mexico became the third state to statutorily mention TEDs. This pathmarking state legislation lists TEDs as among the stakeholders and collaborators who can improve education for tribal students.

### 3. TEDs' Roles Defined by Tribal Law

Of the over five hundred and fifty federally-recognized Tribes today, it is estimated that over one-hundred twenty five have a TED (also known as Tribal Education Divisions, Agencies, Offices, etc.). This is remarkable given the lack of direct federal appropriations for TEDs.

And, while Congress has stated clearly the role that it envisions for TEDs, and several states have acknowledged roles for TEDs in their public school systems, there are no federal (or state) requirements for TEDs *per se*. The role of TEDs is defined first and foremost by tribal law. Just as each Tribe largely defines its own overall political processes and governmental structure, each Tribe creates and develops its TED according to its own systems, needs, and traditions.

In July 2005, the Navajo (Dine') Nation, one of the largest federally-recognized Tribes (and the federally-recognized tribe with the largest land base), enacted its "Sovereignty in Education Act." This comprehensive Act, among other things, establishes the Navajo Nation Department of Dine Education. The Department of Dine Education is the administrative agency within the Navajo Nation with responsibility and authority for implementing and enforcing the education laws of the Navajo Nation. The Department is under the immediate direction of the Navajo Nation Superintendent of Schools and is subject to the overall direction of the Navajo Nation Board of Education.

Within the Department of Dine Education there are about a dozen offices, including an Office of Dine Culture, Language, and Community Services, an Office of Educational Research and Statistics, an Office of Dine Science, Math, and Technology, an Office of Special Education and Rehabilitation Services, an Office of Monitoring, Evaluation, and Technical Assistance, and an Office of Early Childhood Development. The Department of Dine Education staffing level at present exceeds one thousand people.

Of course, not all TEDs are like that of the Navajo Nation. Small TEDs may administer a single federal contract or grant program. Some TEDs administer several contract or grant programs, as well as developing tribal education programs and initiatives that focus on curriculum development, teacher training, or early childhood. Only a few TEDs are engaged actively in regulatory and policy development and administration, data collection and analysis, and developing academic standards and student progress assessments and testing.

TEDs collectively serve thousands of tribal students nationwide, in BIA-funded and state public schools. Congress and several states recognize the roles that TEDs can and do play in closing the reported achievement gaps for tribal students, and those roles include setting meaningful education policies and regulations, collecting and analyzing education data, engaging in planning, setting academic standards and developing student progress assessments. These roles are important particularly where TEDs have special expertise and interest in matters such as preserving tribal languages and cultures and protecting tribal sovereignty over education.

For information about specific TEDs, one should contact the TED or Tribe itself. The BIA maintains a list of federally-recognized tribes and a Tribal Leaders Directory which is posted on the Department of the Interior website at <http://library.doi.gov/internet/native.html>. Some states maintain directories of federally and state recognized tribes. Since 1994, the Native American Rights Fund (NARF) has maintained a list of self-identified TEDs, which is available for informational purposes upon request.

NARF and the Tribal Education Departments National Assembly (TEDNA) have many publications on TEDs generally. Most of these are available through their websites, [www.narf.org](http://www.narf.org), and [www.tedna.org](http://www.tedna.org).

#### **E. State Indian Education Offices, Divisions, and Programs**

Largely because of the unique legal and political sovereign status of Tribes as recognized in federal law, some states have established specific Offices, Divisions, or Programs of Indian Education, which typically are located within their SEAs. These State Indian Education Offices, Divisions, or Programs typically are managed by a State Director or Coordinator of Indian Education who is appointed by the Chief State School Officer.

Arizona is the state that most recently has established an Indian Education Office through its education code. See Ariz. S. 1363, amending Title 15, Chapter 2, Article 2 of Ariz. Rev. Stats. By adding Section 15-244, relating to the Office of Indian Education (June 28, 2006)

Some State Indian Education Offices, Divisions, or Programs are charged with administering various federal Indian education programs, and some also are charged with administering specific state Indian education programs.

Some State Indian Education Offices, Divisions, or Programs provide various forms of educational training, technical assistance, or support services. Most State Indian Education Offices, Divisions, or Programs provide a variety of informational, coordinating or networking, and outreach services, including web sites, publications, and conferences.

Some State Indian Education Offices, Divisions, or Programs, in addition to working with Tribes and tribal students located on Indian reservations or other tribal land bases, work with tribal students located in off-reservation or urban locations, and with non-Indians who are located on-reservation or within tribal territory.

Most State Indian Education Offices, Divisions, or Programs operate on funding from both state and federal sources.

Some states (e.g., Arizona, New Mexico, Wisconsin) by law require their SEAs and Indian Education Offices, Divisions, or Programs to work directly with tribal governments and TEDs. Other states have developed informal but collaborative working relationships with tribal governments and TEDs.

Information about specific State Indian Education Offices, Divisions, or Programs may be found on many of the websites of the SEAs that have such offices, divisions, or programs. Through its Strengthening Partnerships for Native American Students initiative and its Native American Task Force, the Council of Chief State School Officers (CCSSO), [www.ccsso.org](http://www.ccsso.org), also has begun to maintain a self-identified contact list of these offices, divisions, and programs.



## **APPENDIX A**

### **A MODEL PROTOCOL FOR STATE EDUCATION AGENCIES TO ADDRESS EDUCATION ISSUES ON A GOVERNMENT-TO-GOVERNMENT BASIS WITH TRIBAL GOVERNMENTS / TRIBAL EDUCATION DEPARTMENTS**

#### **Section I Introduction**

Although federal law does not specifically require or provide for addressing education issues between states and American Indian and Alaska Native Tribes on a government-to-government basis, both states and Tribes generally have the power as sovereigns to so address education issues. Given the complexity, cost, and importance of education, as well as their mutual interest in having tribal students succeed in school, states and Tribes both may benefit from such an arrangement.

#### **Section II Objectives**

Addressing education issues within a state on a government-to-government basis with tribal governments offers both sets of governments the opportunity to meet effectively the needs of schools, students, families, and communities by:

- Coordinating, facilitating, and respecting their respective exercises of authority;

- enhancing and improving communication and information-sharing;

- sharing and maximizing resources;

- delivering services, including the provision of training, technical assistance, and information, efficiently and in culturally appropriate ways;

- engaging in cooperative implementation, assessment and monitoring, research and planning, policy-making, management, and sustainable reform efforts; and

- providing a mutual means of dispute resolution.

#### **Section III Suggested Guiding Principles**

Understand generally that federal law acknowledges tribes as separate sovereign governments.

Commit to working with tribal governments on a government-to-government basis.

Understand generally that historic tribal traditions, federal policies, and state actions are relevant and important to working with Tribes today.

Understand generally that each Tribe has a distinct history, culture, and governmental structure.

Agree to disagree about specific issues regarding the precise scope of tribal government legal jurisdiction over education.

Know which school districts in your state serve tribal students and which districts have the highest numbers and percentages of tribal students.

Know whether your state has executive, administrative, or agency orders, directives, proclamations or policies regarding government-to-government relations between states and tribes, and whether these documents pertain to education.

Know whether your state has specific Indian education legislation and what it addresses generally.

Know whether your State Education Agency has an Indian Education Office, Department, or Program, and what it encompasses.

Know whether your State Education Agency has a policy or protocol for working with tribal governments or Tribal Education Departments.

If a state-tribal intergovernmental or cooperative agreement or compact is being contemplated, know whether your state has legislation authorizing state-tribal intergovernmental or cooperative agreements or compacts, and whether these laws pertain to education.

When formulating laws, promulgating regulations, recommending policies, developing programs and budgets, and when implementing laws, regulations, policies, and programs and budgets take into consideration these principles.

Actively promote to all citizens and residents of your state the necessity of fostering a constructive and harmonious relationship between state and tribal governments, and that this government-to-government relationship must be founded on trust and mutual respect for the rights, responsibilities, cultures, and interests of all parties.

#### **Section IV Suggested Steps for Resolution of Issues**

Strive for consensus to the extent possible before decisions are made or actions are taken.

Acknowledge the education laws, regulations, policies, and traditions of Tribes.

Understand who or what entity is authorized by each Tribe to represent and make decisions about education.

Deal with Tribes separately or collectively, as the Tribes desire, but coordinate interactions by the state with all affected Tribes.

Know generally on what other issues other state agencies are working with the same Tribes.

Train staff on these guiding principles and suggested steps for resolving issues, and hold them accountable for acting in a manner consistent with the principles and steps.

Integrate these guiding principles and suggested steps for resolving issues into management and planning activities.

Commit to regular, timely, and respectful meetings and dialogue with Tribes.

Accommodate requests by Tribes for meaningful and timely consultation and negotiation

Share information, research, and expertise necessary for effective issue resolution, provision of services, and planning.

Jointly identify or establish mutual priorities and goals.

Jointly identify obstacles to achieving priorities and goals, and options for overcoming the obstacles

Jointly identify all available resources – federal, state, and tribal.

Jointly develop processes for establishing and assigning tasks and deadlines.

Jointly develop processes for resolving misunderstandings, conflicts, and concerns.

Jointly develop recommendations and strategies.

Jointly prepare written background materials and supporting documents

Jointly present recommendations and strategies publicly whenever possible, especially to the federal government.

Jointly develop a network and process to get input and involvement of constituencies, stakeholders, and those most affected by decisions and actions.

Jointly develop means to review and evaluate issues that are resolved, and to make needed changes.

Consider formalizing in writing understandings and agreements as they occur.

Jointly review periodically past agreed-upon actions and their implementation status, and jointly revisit periodically pending matters with a goal of reaching closure on them.

Consider developing joint policies and programs to achieve mutual priorities and goals.

Consider inviting qualified tribal representatives to serve on boards, committees, councils, workgroups, or similar bodies established by state law or by the SEA

Share accomplishments, success stories, and best practices of government-to-government relationships, and jointly publicize these whenever possible.

## APPENDIX B

### REFERENCES AND RESOURCES

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