

THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

"Tribalizing Indian Education"

**Federal and State Laws regarding Tribal Education Departments
1984-1999**



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October, 1999

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INTRODUCTION

These materials are a compilation of federal and state laws that have provisions regarding tribal education departments. Most of the federal laws were enacted between 1984 and 1994, and their legislative history is detailed in these materials. The materials are intended to be a general resource for

tribal, state, and federal officials, schools, and other interested persons. For further information and reference about Indian education law and policy and the rights and roles of tribal governments in education, please see the first four sets of materials under this project dated October, 1993, October, 1994, October, 1997, and October, 1998. None of these materials is intended to be legal advice for any particular tribe. Tribes should consult their legal counsel for specific advice about the existence and scope of their sovereign authority in education.

The Native American Rights Fund's Indian Education Legal Support Project, "*Tribalizing Indian Education*," is supported by a grant from the W.K. Kellogg Foundation to build the capacity of Indian tribes to control education and improve student academic performance.

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NATIVE AMERICAN RIGHTS FUND
INDIAN EDUCATION LEGAL SUPPORT PROJECT
EXECUTIVE SUMMARY

The Native American Rights Fund

The Native American Rights Fund (NARF) is the national legal defense fund for American Indian and Alaska Native tribes. Founded in 1970, NARF concentrates on bringing cases and reforming laws that are of major importance to a great many Native people. NARF has been consistently at the forefront of issues and developments in Indian law in areas such as Indian treaty rights to land and water, Native religious freedom rights, and the rights of tribes as sovereign governments including tribal rights in education.

The NARF Indian Education Legal Support Project - Tribalizing Indian Education

NARF historically has represented Indian clients on a variety of education issues. Most recently, NARF has represented the Rosebud Sioux Tribe of South Dakota in establishing a precedent-setting tribal education code and implementing that code through a tribal education department. As a result of its success with the Rosebud Sioux Tribe, NARF started a new project funded by the Carnegie Corporation of New York and the W.K. Kellogg Foundation. The project advances Native American education by emphasizing the legal rights of tribes to control the formal education of tribal members in all types of schools -- federal, state, and tribal.

NARF seeks to "tribalize" formal education through developing tribal education laws and reforming state and national Indian education legislation. Tribal education laws are essential to effective tribal control of education, yet few tribes have such laws. Tribal laws are essential to defining each tribe's education rights and goals. Tribal laws are essential to delineating the forum and process for establishing tribal and non-tribal government-to-government relationships and working agreements on common education issues and goals.

The Need is Evident but Affirmative Steps Must Be Taken

Indian tribes are sovereign governments just as their state and federal counterparts. Many federal reports and some federal and state laws have focused on Indian education problems. Some reports and laws have pointed out the need to increase the role of tribal governments to address the problems. But instead of requiring active tribal government involvement, most federal and state education programs and processes circumvent tribal governments and maintain non-Indian federal and state government control over the intent, goals, approaches, funding, staffing, and curriculum for Indian education. And there are no effective programs to establish tribal education codes or operate tribal education departments.

The three sovereign governments in this country have a major stake in Indian education. Common sense dictates that tribal governments have the most at stake because it involves their children, their most precious resource, and their future for perpetuating tribes. Some progress has been made because of Indian education programs, Indian parent committees, Indian school boards, and tribally-controlled colleges. Some progress has been made through a measured amount of tribal control and input under laws that include the Indian Education Act of 1988, the Indian Self-Determination and Education Assistance Act of 1975, the Elementary and Secondary Education Act of 1965, and the Impact Aid Laws of 1950.

Conclusion

More direct tribal control of Indian education is needed, and more direct control is the next logical step for many tribes. Federal reports and recommendations call for partnerships between tribes and state schools, tribal approval of state education plans, and tribal education codes, plans, and standards. Tribal control of education is a fact of life in a small number of tribes and more tribal communities want to assume this control. But tribes have been denied this opportunity and responsibility and have been "out of the loop" for decision-making and accountability. For Indian education to succeed, federal and state governments must allow tribes the opportunity to regain control and make decisions, be accountable, and help shape their children's future and their own future as tribes. NARF intends to ensure that tribes gain the legal control over education that they deserve as sovereign governments and that they must have for Indian education success.

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INDIAN EDUCATION LEGAL SUPPORT PROJECT

**Federal and State Laws regarding Tribal Education Departments
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**GOALS OF THE PROJECT - TRIBALIZING
INDIAN EDUCATION**

1. To promote sovereign tribal rights and responsibilities in education, including the government-to-government interactions of tribal governments with the federal and state governments;
2. To increase the number of tribal governments that assess their education situation, develop education goals, and exercise sovereign rights through developing and implementing tribal education laws, tribal education standards, and tribal education plans;
3. To increase the number of tribal governments that take more education responsibility, control, and accountability;
4. To assist the federal and state governments in increasing their government-to-government education work with tribal governments and in monitoring that increase within their federal and state agencies and federal and state funded education programs; and,
5. To assist tribes in reforming federal and state Indian education laws and policies and in passing new laws and adopting new policies which enable tribal decision-making, ensure access to resources, and enhance other improvements in Indian education.

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Tribal Education Departments in the 1980s and 1990s—An Overview

Since 1987, NARF has been helping Indian tribes to establish Tribal Education Departments (TEDs) and develop tribal education codes. NARF was first contacted about TEDs by the Rosebud Sioux Tribe (RST) in South Dakota. The Education Committee of the Tribal Council requested NARF's assistance in establishing its authority as a sovereign government over education on its Reservation, including the public schools that serve a majority of tribal students. The RST wanted to enact a tribal education code and also needed a TED to implement and enforce its code. At that time, the idea of direct tribal governmental regulation as a means to improve education was relatively new, and the RST had been unable to find a suitable model tribal law to meet its needs.

With NARF's assistance, the RST established its TED in 1990 and enacted its tribal education code in 1991. The RST's education code regulates all education entities on the Reservation, including the public schools. The code targets areas such as curriculum, education standards, and parental involvement. These are areas where the RST believes that tribal education law, policy, and programs must supplement existing state education law, policy, and programs for tribal students to progress and succeed in terms of educational opportunities and performance.

Upon the RST's suggestion, a national gathering of TEDs was first held in 1994. Since that time, NARF has helped sponsor National Tribal Education Department Forums along with the RST, other tribes with TEDs, and various national Indian organizations. The National TED Forums are now held twice a year, typically in conjunction with another major Indian conference. The National TED Forums are unique opportunities to share information and strategize on common issues. Through the Forums, NARF to date has identified over ninety tribes with TEDs. With over 550 federally recognized tribes, that amounts to about one in every six tribes having a TED.

The roles and responsibilities of TEDs vary widely. Most TEDs provide leadership and advocate for education generally within their tribes and with non-tribal governments. TED leadership and advocacy is often provided in coordination with local Indian and public school boards, educators, and parents. Many TEDs regularly prepare education reports and conduct forums or public hearings on tribal education needs and issues. Many help develop or establish the budgets for education programs that serve tribal students, and some TEDs are involved in evaluating these programs. Some TEDs operate, administer, or oversee programs such as higher education scholarships, native language programs, and truancy intervention programs.

Because tribal populations differ, the number of tribal students served by any one TED ranges from under fifty to over 100,000. TEDs may serve students of all education levels, from pre-school to post-secondary and adult education, or they may serve only one level or a few levels of students. TED staff numbers also vary, from a single Director to over one hundred employees. TEDs often coordinate their work with other tribal agencies such as social services, juvenile programs, and health care offices.

As the next Section of these materials shows, to date eleven federal statutes specifically provide for TEDs. The two most important of these statutory provisions are those that authorize direct federal appropriations for TEDs. These appropriations authorizations were enacted in 1988 (Pub. L. No. 100-297, currently codified at 25 U.S.C. § 2024) and in 1994 (Pub. L. No. 103-382, currently codified at 20 U.S.C. § 7835). The 1988 law authorizes appropriations for TEDs through the Bureau of Indian Affairs (BIA) within the Department of the Interior. The 1994 law authorizes appropriations for TEDs through the Department of Education. No appropriations by Congress have ever been made under either of these provisions.

Most of the other federal statutory provisions acknowledge the contributions of TEDs along with those of state education departments and local education agencies in establishing education and accreditation standards, developing and disseminating education research and technology, coordinating and improving education programs, and interacting with non-tribal agencies and schools. Many of these statutory provisions were enacted as part of the Goals 2000: Education America Act and the Improving America's Schools Act of 1994. Despite the lack of congressional appropriations for TEDs, the recognition by Congress of the roles and responsibilities that TEDs can and do assume and perform is encouraging. As Representative Kildee (D-MI), one of the original congressional proponents of TEDs has stated:

[We recognize] the need to encourage and strengthen tribal divisions of education. This is particularly important due to recent congressional actions which have placed growing emphasis on tribal involvement in the education of Indian students. Many tribes have already taken the first steps to develop these divisions. However, more needs to be done in this area.

133 Cong. Rec. H3817-02 (1987).

As Section 5 of these materials shows, to date only one state law specifically mentions 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 must also 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.

The Carnegie Corporation of New York, long a leader in funding education improvement research and projects, recently funded an external evaluation of the RST TED. The evaluation report, issued in April, 1999 confirmed that TEDs can positively impact educational opportunities for tribal students. The evaluation found that since the RST established its TED, the drop out rates for tribal secondary students have decreased by thirty per cent and graduation rates have increased by fifty per cent. The evaluation credits the Truancy Intervention Project, developed and administered by the TED, with this progress in addressing a core problem in Indian education. The evaluation commended the RST TED's leadership and collaboration with non-tribal governments, schools, parents, and students in implementing the tribal education code and other education initiatives. And, the evaluation noted that the RST's efforts could likely be adopted by other tribes and expanded into areas of improving tribal student educational achievement and attainment levels.

Thus, while many TEDs are still evolving, their effectiveness and potential has now been demonstrated. For more tribes to build on the success of the RST TED, the evaluation recommended more funding for TEDs, including direct federal funding. The evaluation noted that to date the RST TED has operated largely on an annual budget from tribal revenues of about \$76,000. Phil Baird, former President of the National Indian Education Association, also agrees that:

Tribes need federal funding to help develop tribal departments of education which can engage in developmental work and place them in better positions to negotiate or enter into agreements with state and local governments as equal partners in our nation's school reform efforts.

Testimony of the National Indian Education Association before the Senate Committee on Indian Affairs on the Reauthorization of Elementary and Secondary Education Programs, 1994 WL 232500 (F.D.C.H. May 4, 1994). These materials have been prepared primarily to capture the TEDs' history in federal and state legislation, and to help them prepare for the future.

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Federal Law Provisions regarding Tribal Education Departments

A. The Indian Self-Determination and Education Assistance Act

25 U.S.C. § 2010(c) provides that:

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

Analysis

This provision allows the BIA to fund tribal education departments and codes from general Indian Self-Determination and Education Assistance Act (also known as “‘638”’) funds.

History

In 1975, Section 104 of the original Indian Self-Determination and Indian Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975), authorized the BIA to contract with tribes for technical assistance and training funds that would improve a tribe’s ability to enter into ‘638 contracts for the planning, operation, training, and evaluation of federal programs serving the tribe.

In 1978, Section 1129(c) of the Education Amendments, Pub. L. No. 95-561, 92 Stat. 2143 (1978), conditioned the use of the technical assistance and training funds upon an agreed upon plan between a tribe and the BIA. The plan had to provide that control of education programs would be transferred to the tribe within a specified period of time.

The House of Representatives Committee on Education and Labor reported that this remedial condition was necessary because BIA policy “has led to distribution of these funds on a political basis, for purposes other than technical assistance and training.” H.R. Rep. No. 95-1137 (1978). In the view of the Committee, the BIA’s policy violated the law and had resulted in a shortage of funds for tribes. *Id.*; *see also* H.R. Conf. Rep. No. 95-1753 (1978).

In 1984, Section 506(b) of the Education Amendments, Pub. L. No. 98-511, 99 Stat. 2366 (1984), clarified the remedial condition by adding a provision directing the BIA to institute a program for funding tribal education departments and the development of tribal education codes.

The House of Representatives Committee on Education and Labor reported that this clarification was needed to encourage the growth of tribal education departments and the development of tribal education codes. H.R. Rep. No. 98-748 (1984). “The Committee supports these activities and will closely oversee the implementation of this provision.” *Id.*

In 1985, Section 6(b) of the Indian Education Technical Amendments, Pub. L. No. 99-89, 99 Stat. 379 (1985), amended the clarification to replace the language “shall institute a program” with “may approve applications.”

The House of Representatives Committee on Education and Labor reported that this amendment was needed to clarify that the 1984 clarification did not make a new program, but made tribal education departments and codes an eligible activity under ‘638. H.R. Rep. No. 99-231 (1985).

Other Comments

Interestingly, in 1984, the House of Representatives Committee on Education and Labor reported that it had declined to include “tribal standards” among the options for education standards for BIA and contract schools. H.R. Rep. No. 98-748 (1984). The Committee stated that it

regretted this because it supports such standards. However, until there are more tribal divisions of education and codes of standards available, such an option would neither satisfy the skeptics nor adequately reinforce the schools and their supporters.

Id.

On October 2, 1989, the committee of conference submitted its report, H.R. Conf. Rep. No. 101-264 (1989), on H.R. 2788, 101st Cong. (1989), the Department of the Interior and Related Agencies Appropriations Act of 1990. 135 Cong. Rec. H6385-01 (1989). The report stated that

[w]ith respect to contract support funds provided to the Bureau of Indian Affairs, the managers direct the Bureau and the Inspector General to take steps to notify tribes that indirect cost rates may be negotiated to include the administrative costs of operation of tribal departments of education. Because of the specific situation of the

Mississippi Band of Choctaw Indians, the managers have included \$100,000 for a one-year pilot projects (sic) for establishment of a reservation-wide education system. The Committees will review the results of this project before providing any additional funds for tribal departments of education....

Id.

B. The Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. No. 100-297, 102 Stat. 130 (1988)

1. 25 U.S.C. § 2024 provides that:

(a) In general

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

(b) Grants provided under this section shall—

- (1) be based on applications from the governing body of the tribe,
- (2) reflect factors such as geographic and population diversity,
- (3) facilitate tribal control in all matters relating to the education of Indian children on Indian reservations and on former Indian reservations in Oklahoma,
- (4) provide for the development of coordinated educational programs on Indian reservations (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) by encouraging tribal administrative support of all Bureau funded educational programs as well as encouraging tribal cooperation and coordination with all educational programs receiving financial support from State agencies, other Federal agencies, or private entities,
- (5) provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs, and
- (6) otherwise comply with regulations for grants under section 450h(a) of this title that are in effect on the date application for such grants are made.

(c) Priorities

- (1) In approving and funding applications for grants under this section, the Secretary shall give priority to any application that—

(A) includes assurances from the majority of Bureau funded schools located within the boundaries of the reservation of the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools, including the submission to each applicable agency of a unified application for funding for all of such schools which provides that—

- (i) no administrative costs other than those attributable to the individual programs of such schools will be associated with the unified application, and
- (ii) the distribution of all funds received under the unified application will be equal to the amount of funds provided by the applicable agency to which each of such schools is entitled under law,

(B) includes assurances from the tribal governing body that the tribal department of education funded under this section will administer all contracts or grants (except those covered by the other provisions of this chapter and the Tribally Controlled Community College Assistance Act of 1978 [25 U.S.C.A. § 1801 et seq.]) for education programs administered by the tribe and will coordinate all of the programs to the greatest extent possible,

(C) includes assurances for the monitoring and auditing by or through the tribal department of education of all education programs for which funds are provided by contract or grant to ensure that the programs meet the requirements of law, and

(D) provides a plan and schedule for--

- (i) the assumption over the term of the grant by the tribal department of education of all assets and functions of the Bureau agency office associated with the tribe, insofar as those responsibilities relate to education, and
- (ii) the termination by the Bureau of such operations and office at the time of such assumption, except that when mutually agreeable between the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

(2) Subject to the availability of appropriated funds, grants provided under this section shall be provided for a period of 3 years and the grant may, if performance by the grantee is satisfactory to the Secretary, be renewed for additional 3-year terms.

(d) Terms, conditions, or requirements

The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

(e) Authorization of appropriations

For the purpose of carrying out the provisions of this section, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

Analysis

This section authorizes the BIA an appropriation of \$2 million to fund tribal education departments and codes through the Department of the Interior. The funds are to be used to plan and coordinate all education programs within a tribe's territory. Funding priority will be given to tribes that: 1) have BIA operated and funded school support; 2) will administer federal education program contracts and grants, except tribal colleges; 3) have contract and grant audit assurances; and 4) have a plan and schedule for assuming BIA education assets and functions.

History

The House of Representatives has reported that this authorization for appropriations for funding tribal education departments through the Department of the Interior was the result of an amendment by the Senate to the House of Representatives bill that became the Elementary and Secondary School Improvement Amendments of 1988. H.R. Conf. Rep. No. 100-567 (1988). The House of Representatives agreed to the authorization if the funding priority factors were added. *Id.* A more specific history of this authorization provision is as follows.

On January 6, 1987, Representative Hawkins (D-CA), introduced in the House of Representatives H.R. 5, 100th Cong. (1987), a bill to improve elementary and secondary education. 133 Cong. Rec. H101-01 (1987). H.R. 5 was referred to the House of Representatives Committee on Education and Labor. *Id.*

On April 22, 1987, the House Committee on Education and Labor ordered H.R. 5, now entitled the School Improvement Act of 1987, to be reported. 133 Cong. Rec. D00000-03 (1987).

On May 21, 1987, Representative Kildee (D-MI), proposed, among other things, adding an appropriations authorization provision that would fund, through the Department of Education, tribal education departments. 133 Cong. Rec. H3817-02 (1987).

In support of his proposed amendment, Congressman Kildee stated that it:

[r]ecognizes the need to encourage and strengthen tribal divisions of education. This is particularly important due to recent congressional actions which have placed growing emphasis on tribal involvement in the education of Indian students. Many tribes have already taken the first steps to develop these divisions. However, more needs to be done in this area.

Id. That same day, the House of Representatives passed H.R. 5, as amended. 133 Cong. Rec. D00000-03 (1987).

On December 1, 1987, Senator Deconcini (D-NM), proposed the Indian Education Amendments of 1987 to S. 373, 100th Cong. (1987), a bill entitled the Robert T. Stafford Elementary and Secondary Education Improvement Act of 1987. 133 Cong. Rec. S16775-02 (1987); 133 Cong. Rec. S16880-02 (1987). The Amendments contained a section authorizing appropriations to fund tribal education departments through the Department of the Interior. 133 Cong. Rec. S16880-02 (1987).

In support of the Indian Education Amendments, Senator Daschle (D-SD), stated:

In addition to a number of other important provisions, this title also contains a provision for special projects that could enable South Dakota's Pine Ridge Reservation to operate its own tribal department of education and assume fully (sic) responsibility for the education of its children in a more coordinated fashion.

133 Cong. Rec. S16802-02 (1987).

The tribal education department funding authorization provision became Section 11118 of S. 373. 133 Cong. Rec. S17008-01 (1987). That same day, H.R. 5 was passed by the Senate as amended by S. 373, as amended. 133 Cong. Rec. S17008-01 (1987).

On December 8, 1987, the House of Representatives received a message from the Senate announcing that the Senate insisted upon its amendment (S. 373) to H.R. 5, and requesting a conference with the House on the disagreeing versions of the two bills. 133 Cong. Rec. H11019-03 (1987). On February 9, 1988, the House disagreed to the Senate amendment to H.R. 5 (S. 373), but agreed to a conference on the two bills. 134 Cong. Rec. H275-03 (1988).

On April 13, 1988, the conferees recommended that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment. 134 Cong. Rec. H1488-02 (1988).

The conferees recommended entitling the bill the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. *Id.* Regarding tribal education department funding, the conferees recommended keeping the Senate version which authorized appropriations through the Department of the Interior. *Id.*

On April 19, 1988, the House of Representatives, by H.R. Res. 427, 100th Cong. (1988), added the priority factors for tribal education department funding. 134 Cong. Rec. H1707-02 (1988). In support of the conferee recommendations and H.R. Res. 427, Congressman Richardson (D-NM), stated that he had:

[w]orked to insure that all Indian tribes would be eligible to apply for grants to establish tribal departments of education to coordinate both Federal and tribal education programs, and to develop education standards and policies.

Id.

The House of Representatives also made clear that, although tribal education departments would be encouraged to administer all federal Indian education program contracts and grants, this provision was not intended to be a requirement of a single education contract per tribe. 134 Cong. Rec. S4336-01 (1988). *Id.* Also, tribal college funding was to be exempt from tribal education department administration.

On April 20, 1988, Senator Daschle (D-SD), speaking in favor of the conference agreement on the bills, stated that:

[t]he [compromise] bill would permit the establishment of a tribal department of education to oversee schools run by the BIA and by tribes. This provision will enable the Oglala Sioux at Pine Ridge to actively plan and better coordinate all of its educational programs. It would further the concept of self-determination by insuring the maximum participation of the Oglala in determining their future educationally.

134 Cong. Rec. S4336-01 (1988).

On April 28, 1988, with passage by the House of Representatives, H.R. 5, as amended by S. 373 and H.R. Res. 427, became Pub. L. No. 100-297, 102 Stat. 130 (1988). The provision authorizing tribal education department funding is currently codified at 25 U.S.C. § 2024. To date no appropriations have been made under this authorization provision.

Other comments

Interestingly, Representative Kildee's (D-MI) original proposed amendments to H.R. 5 would have set aside ten percent (10%) of annual funding under the "Demonstration Projects" of The Indian Education Act of 1972 administered through the Department of Education, for tribal education departments. 133 Cong. Rec. H3817-02 (1987).

Such a provision was not part of S. 373 or of H.R. Res. 427. 134 Cong. Rec. H1488-02 (1988); 134 Cong. Rec. H1707-02 (1988). Ultimately, the House receded on this provision after conference. 134 Cong. Rec. S4336-01 (1988).

On October 2, 1990, the House of Representatives Committee on Appropriations submitted its report, H.R. Rep. No. 101-789 (1990), on H.R. 5769, 101st Cong. (1990), the Department of the Interior and Related Agencies Appropriations Bill, 1991. 136 Cong. Rec. H8604-05 (1990). Regarding tribal education departments, the Committee on Appropriations recommended \$100,000 "to restore funds for the Choctaw Tribal Department of Education." H.R. Rep. No. 101-789 (1990). The Committee also reported that "[t]he Bureau should work with other tribes that have requested funding to establish tribal departments of education, to identify the funding needed to do so, and the source of such funds." *Id.*

2. 25 U.S.C. § 2506(c)(1)(A)(i) to (ii)(III) provides that:

The Secretary [of the Interior] shall not revoke a determination that a [tribally controlled grant] school is eligible for assistance under this chapter if — the Indian tribe or tribal organization submits the reports required under subsection (b) of this section with respect to the school, and at least one of the following subclauses applies with respect to the school; The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.

Analysis

This section prohibits the BIA from revoking a tribal grant school's eligibility for grant school status and assistance provided that the school has made proper annual reporting and has been accredited by a state or federally recognized tribal education department.

History

On January 6, 1987, Representative Hawkins (D-CA), introduced H.R. 5, 100th Cong. (1987), a bill to improve elementary and secondary education. H.R. 5 was referred to the House of Representatives Committee on Education and Labor. 133 Cong. Rec. H101-01 (1987).

Among other things, H.R. 5 had a part entitled the Indian Self-Determination Grants Act of 1987. This part was directed at improving and enhancing tribal contracting of BIA funded schools. It allowed eligible tribally controlled school boards to operate the schools under annual grants, rather than under quarterly contract payments. Tribes could also invest the grant funds under certain restrictions, and use the interest gained for further educational costs in the schools. 133 Cong. Rec. H3817-02 (1987).

One of the conditions for eligibility for grant status and assistance was that the school be accredited. Section 8207(c)(1)(B) of H.R. 5 provided for this condition to be met if the school was “accredit[ed] by a Tribal Division of Education.” *Id.*

On April 22, 1987, the House Committee on Education and Labor reported on H.R. 5, now entitled the School Improvement Act of 1987. 133 Cong. Rec. D00000-03 (1987).

On May 21, 1987, the House of Representatives passed H.R. 5, as amended. 133 Cong. Rec. D00000-03 (1987).

On August 7, 1987, Senator Deconcini (D-NM), introduced S. 1645, 100th Cong. (1987), a bill entitled the Indian Education Act Amendments of 1987. 133 Cong. Rec. S11651-01 (1987). Similarly to H.R. 5, Title II of S. 1645 dealt with improving and enhancing tribal contracting of BIA funded schools. It allowed eligible tribally controlled school boards to operate the schools under annual grants, rather than under quarterly contract payments. Tribes could also invest the grant funds, with certain restrictions, and use the interest gained for further educational costs in the schools. 133 Cong. Rec. S11651-01 (1987).

One of the conditions for eligibility for grant status and assistance was that the school be accredited. Section 207(c)(1)(B) of S. 1645 provided that this condition would be met if the school was “accredit[ed] by a Tribal Division of Education.” 133 Cong. Rec. S11651-01 (1987).

On December 1, 1987, Senator Deconcini (D-NM), proposed the Indian Education Amendments of 1987, formerly S. 1645, as an amendment to S. 373 100th Cong. (1987), a bill amending H.R. 5 and entitled the Robert T. Stafford Elementary and Secondary Education Improvement Act of 1987. 133 Cong. Rec. S16880-02 (1987).

Part B of the Amendments authorized grant school status and assistance. Section 11206(d)(2)(A)(ii)(III) provided that once grant school eligibility had been determined,

the BIA could not revoke that determination if the school had been “accredited by a tribal division of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.” 133 Cong. Rec. S16880-02 (1987). That same day, the Senate passed H.R. 5 as amended by S. 373, as amended. 133 Cong. Rec. S17008-01 (1987).

On December 8, 1987, the House of Representatives received a message from the Senate announcing that the Senate insisted upon its amendment (S. 373) to H.R. 5, and requesting a conference with the House on the disagreeing versions of the two bills. 133 Cong. Rec. H11019-03 (1987). On February 9, 1988, the House disagreed to the Senate amendment to H.R. 5 (S. 373), but agreed to a conference on the two bills. 134 Cong. Rec. H275-03 (1988).

On April 13, 1988, the conferees recommended that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment. 134 Cong. Rec. H1488-02 (1988).

The conferees recommended entitling the bill the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. 134 Cong. Rec. H1488-02 (1988). Regarding tribal education department accreditation of grant schools, the conferees recommended keeping the Senate version which allowed such accreditation to prevent eligibility determination revocation only if the tribal education department accreditation was accepted by a generally recognized regional or State accreditation agency. H.R. Conf. Rep. No. 100-567 (1988); *accord* 134 Cong. Rec. S4336-01 (1988).

On April 19, 1988, the House of Representatives, by H.R. Res. 427, 100th Cong. (1988), added to H.R. 5 the provision that tribal education department accreditation of a grant school prohibited the BIA from revoking the school’s eligibility determination, and added the condition that the tribal education department accreditation must be “accepted by a generally recognized regional or State accreditation agency.” 134 Cong. Rec. H1707-02 (1988).

On April 28, 1988, with passage by the House of Representatives, H.R. 5, as amended by S. 373 and H.R. Res. 427, became Pub. L. No. 100-297, 102 Stat. 130 (1988). The provisions on tribal education department accreditation of tribal grant schools are currently codified at 25 U.S.C. § 2506(c)(1)(A)(ii)(III). To the best of NARF’s knowledge, to date no grant school has relied on this provision to prohibit the BIA from revoking its grant school status or assistance eligibility determination.

20 U.S.C. § 7404 provides that:

(a) Eligible entities

For the purpose of carrying out programs under this part for individuals served by elementary, secondary, and postsecondary schools operated predominately for Native American or Alaska Native children and youth, an Indian tribe, a tribally sanctioned educational authority, a Native Hawaiian or Native American Pacific Islander native language education organization, or an elementary or secondary school that is operated or funded by the Bureau of Indian Affairs shall be considered to be a local educational agency as such term is used in this part, subject to the following qualifications:

(1) Indian tribe

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) Tribally sanctioned educational authority

The term "tribally sanctioned educational authority" means—

(A) any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe; and

(B) any nonprofit institution or organization that is—

(i) chartered by the governing body of an Indian tribe to operate any such school or otherwise to oversee the delivery of educational services to members of that tribe; and

(ii) approved by the Secretary for the purpose of this section.

(b) Eligible entity application

Notwithstanding any other provision of this part, each eligible entity described in subsection (a) of this section shall submit any application for assistance under this part directly to the Secretary along with timely comments on the need for the proposed program.

Analysis

This section treats tribal education departments as local education agencies for purposes of receiving grants for and administering bilingual education programs in schools with predominately Indian students.

History

On January 6, 1987, Representative Hawkins (D-CA) introduced H.R. 5, 100th Cong. (1987), a bill to improve elementary and secondary education. H.R. 5 was referred to the House of Representatives Committee on Education and Labor. 133 Cong. Rec. E80-02 (1987).

On January 21, 1987, Senator Pell (D-RI) introduced S. 373, 100th Cong. (1987), a bill to reauthorize elementary and secondary education programs in the United States, entitled the Elementary and Secondary Education Amendments of 1987. 133 Cong. Rec. S1053-03 (1987); 133 Cong. Rec. S1054-02 (1987). S. 373 was referred to the Senate Committee on Labor and Human Resources. 133 Cong. Rec. S1053-03 (1987).

On April 22, 1987, the House Committee on Education and Labor ordered H.R. 5, now entitled the School Improvement Act of 1987, to be reported. 133 Cong. Rec. D00000-03 (1987).

On May 21, 1987, the House of Representatives passed H.R. 5, as amended. 133 Cong. Rec. D00000-03 (1987).

Title VII of H.R. 5 dealt with Bilingual Education Programs. 133 Cong. Rec. H3817-02 (1987). Section 7022 of Title VII provided that, in elementary, secondary, and postsecondary schools operated predominately for American Indian or Alaska Native students, tribally sanctioned educational authorities, including tribal education departments, would be considered local educational authorities eligible to receive and administer bilingual education grants. *Id.*

On October 14, 1987, the Senate Committee on Labor and Human Resources ordered S. 373 as amended favorably reported. 133 Cong. Rec. D1329-02 (1987).

On November 19, 1987, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 100-222 (1987), on S. 373. 133 Cong. Rec. S16544-01 (1987); 133 Cong. Rec. D1529-02 (1987).

Title VII of S. 373 dealt with Bilingual Education Programs. S. Rep. No. 100-222 (1987). Section 7022 of Title VII provided that, in elementary and secondary schools operated predominately for American Indian or Alaska Native students, tribally sanctioned educational authorities, including tribal education departments, would be

considered local educational authorities eligible to receive and administer bilingual education grants. *Id.* This section was virtually identical to the counterpart provision in H.R. 5.

On December 1, 1987, the Senate passed H.R. 5 as amended by S. 373 as amended. 133 Cong. Rec. S17008-01 (1987); 133 Cong. Rec. D1550-01 (1987).

On December 8, 1987, the House of Representatives received a message from the Senate announcing that the Senate insisted upon its amendment (S. 373 as amended) to H.R. 5, and requesting a conference with the House on the disagreeing versions of the two bills. 133 Cong. Rec. H11019-03 (1987). On February 9, 1988, the House disagreed to the Senate amendment to H.R. 5 (S. 373 as amended), but agreed to a conference on the two bills. 134 Cong. Rec. H275-03 (1988).

On April 13, 1988, the conferees filed their report, H.R. Conf. Rep. No. 100-567 (1988), on H.R. 5, recommended by the conferees to be entitled the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments. 134 Cong. Rec. H1488-02 (1988).

The report recommended generally that the House of Representatives recede from its disagreement to the amendment of the Senate and agree to the same with an amendment. H.R. Conf. Rep. No. 100-567 (1988). Regarding bilingual education programs and tribal education departments, the conferees recommended keeping in the virtually identical provisions of H.R. 5 and S. 373. *Id.*; *accord* 134 Cong. Rec. S4336-01 (1988).

On April 28, 1988, with passage by the House of Representatives, H.R. 5, as amended by S. 373 and H.R. Res. 427, became Pub. L. No. 100-297, 102 Stat. 130 (1988). The provision on bilingual education and tribal education departments is currently codified at 20 U.S.C. § 7404.

C. Goals 2000: Educate America Act of 1994, Pub. L. No. 103-227, 108 Stat. 125 (1994).

1. 20 U.S.C. § 5894 provides that:

(a) Technical assistance and integration of standards

From funds reserved in each fiscal year under section 5884(a)(2)(A) of this title, the Secretary may, directly or through grants or contracts—

- (1) provide technical assistance to States, local educational agencies, and tribal agencies developing or implementing school improvement plans, in a manner that ensures that such assistance is broadly available;

- (2) gather data on, conduct research on, and evaluate systemic education improvement and how such improvement affects student learning, including the programs assisted under this subchapter;
- (3) disseminate research findings and other information on outstanding examples of systemic education improvement in States and local communities through existing dissemination systems within the Department of Education, including through publications, electronic and telecommunications mediums, conferences, and other means;
- (4) provide grants to tribal divisions of education for coordination efforts between school reform plans developed for schools funded by the Bureau and public schools described in section 5886(g)(2) of this title, including tribal activities in support of such plans;
- (5) support national demonstration projects that unite local and State educational agencies, institutions of higher education, government, business, and labor in collaborative arrangements in order to make educational improvements systemwide; and
- (6) support model projects to integrate multiple content standards, if—
 - (A) such standards are approved by the National Goals Panel for different subject areas, in order to provide balanced and coherent instructional programs for all students; and
 - (B) such projects are appropriate for a wide range of diverse circumstances, localities (including both urban and rural communities), and populations.

(b) Reservation of funds

(1) In general

The Secretary shall use at least 50 percent of the funds reserved each year under section 5884(a)(2)(A) of this title to make grants, in accordance with the provisions of section 5889(a) of this title that the Secretary determines appropriate, and provide technical and other assistance to urban and rural local educational agencies with large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency, to assist such agencies in developing and implementing local school improvement plans, except that any school that received funds under section 5889(a) of this title shall not receive assistance pursuant to this paragraph other than technical assistance.

(2) Survey

The Secretary shall use not less than \$1,000,000 of the funds reserved for fiscal year 1994 under section 5884(a)(2)(A) of this title to replicate coordinated services programs that have been found to be successful in helping students and families and improving student outcomes, and shall disseminate information

about such programs to schools that plan to develop coordinated services programs.

(c) Administration

Any activities assisted under this section that involve research shall be administered through the Office of Educational Research and Improvement.

Analysis

This provision authorizes the Department of Education to provide grants to tribal education departments to coordinate Goals 2000 school reform plans between BIA and public schools.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as “Goals 2000,” is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 promote systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement. These changes include the development and adoption of a voluntary national system of skill standards and certifications. States can apply for federal grants if they develop and implement plans for restructuring and improving education in accordance with these standards and certifications.

On April 22, 1993, Representative Kildee (D-MI), introduced H.R. 1804, 103rd Cong. (1993), a bill to improve learning and teaching by providing a national framework for educational reform; to promote the research, consensus building, and systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement for all American students; to provide a framework for reauthorization of all Federal education programs; to promote the development and adoption of a voluntary national system of skill standards and certifications; and other purposes. 139 Cong. Rec. H2022-02 (1993). H.R. 1804 was referred to the House of Representatives Committee on Education and Labor. *Id.*

Section 313(a) of H.R. 1804 authorized the Secretary of Education, through the Office of Educational Research and Improvement, to provide grants to tribal education departments to coordinate efforts between BIA funded schools and public schools that developed school reform plans under Goals 2000. H.R. Rep. No. 103-168 (1993); 139 Cong. Rec. H7740-03, H7764 (1993).

On May 6, 1993, the House of Representatives Subcommittee on Elementary, Secondary, and Vocational Education approved H.R. 1804, now entitled Goals 2000: Education America Act, for action by the House Committee on Education and Labor. 139 Cong. Rec. D473-01 (1993).

On June 23, 1993, following continued Subcommittee hearings, the House Committee on Education and Labor ordered H.R. 1804 to be reported as amended. 139 Cong. Rec. D706-01 (1993). On July 1, 1993, the House Committee on Education and Labor filed a report, H. R. Rep. No. 103-168 (1993), on H.R. 1804 as amended. In its report, the Committee stated that:

from 6 percent of the amount appropriated to carry out Title III, the Secretary is authorized, directly or through grants and contracts, to provide technical assistance, gather data and conduct research on systemic reform, disseminate information, and promote coordination of local BIA and public school reform plans through grants to tribal divisions of education.

H.R. Rep. No. 103-168 (1993).

Also on June 23, 1993, Senator Kennedy (D-MA), introduced from the Senate Committee on Labor and Human Resources, S. 1150, 103rd Cong. (1993), the counterpart to H.R. 1804, in the Senate. 139 Cong. Rec. S7756-01 (1993); 139 Cong. Rec. S7757-02 (1993); 139 Cong. Rec. D703-02 (1993).

On July 13, 1993, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-85 (1993), on S. 1150. 139 Cong. Rec. S8617-03 (1993). On August 23, 1993, the Senate Committee on Labor and Human Resources presented a second version of S. 1150.

On October 12, 1993, the House of Representatives Committee on Rules submitted a report, H.R. Rep. No. 103-288 (1993), on H.R. Res. 274, 103rd Cong. (1993), providing for consideration of H.R. 1804. 139 Cong. Rec. H7703-17 (1993); 139 Cong. Rec. H7706-05 (1993); 139 Cong. Rec. D1114-02 (1993).

On October 13, 1993, the House of Representatives adopted H.R. Res. 274, and passed H.R. 1804 as amended. 139 Cong. Rec. D1120-01 (1993).

On October 18, 1993, the House of Representatives sent a message to the Senate that it had passed H.R. 1804, and requested the concurrence of the Senate therein. 139 Cong. Rec. S13832-04 (1993).

On February 8, 1994, the Senate passed H.R. 1804, as amended by S. 1150 as amended. 140 Cong. Rec. S1128-02 (1994); 140 Cong. Rec. D92-02 (1994); 140 Cong. Rec. S1422-02 (1994).

The Senate version of H.R. 1804, as amended by S. 1150 as amended, did not contain the provision for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000. 140 Cong. Rec. S1753-02 (1994).

On February 9, 1994, the Senate sent a message to the House of Representatives that it had passed H.R. 1804, as amended by S. 1150 as amended, and requested the concurrence of the House therein. 140 Cong. Rec. H366-01 (1994).

On February 23, 1994, the House of Representatives agreed, with an amendment, to the Senate amendment to H.R. 1804. 140 Cong. Rec. H582-04 (1994). Section 163 of the House version of 1804 did contain the provision for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000. 140 Cong. Rec. H582-04 (1994); 140 Cong. Rec. S2258-01 (1994).

The House of Representatives insisted on its amendment to the Senate amendment to H.R. 1804, passed a motion to go to conference on H.R. 1804, and asked the Senate for a conference on the disagreeing versions of the bills. 140 Cong. Rec. S1859-03 (1994); 140 Cong. Rec. D141-01 (1994).

On March 2, 1994, the Senate disagreed to the amendment of the House of Representatives to the amendment of the Senate to H.R. 1804, but agreed to the request of the House for a conference thereon. 140 Cong. Rec. D179-01 (1994). On March 3, 1994, the Senate sent this message to the House. 140 Cong. Rec. H998-02 (1994).

On March 17, 1994, the conferees agreed to file a conference report on the differences between the Senate and House of Representatives passed versions of H.R. 1804. 140 Cong. Rec. D275-01.

On March 21, 1994, the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec. H1625-03 (1994). The report recommended keeping the provision, Section 314, for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000. *Id.*

On March 23, 1994, the House of Representatives, by H.R. Res. 393, 103rd Cong. (1994), considered the conference report accompanying H.R. 1804. 140 Cong. Rec. H1921-01 (1994). After consideration, the House agreed to the conference report on H.R. 1804. 140 Cong. Rec. D316-01 (1994). The House sent a message to the Senate that it had passed H.R. 1804, and that it requested the concurrence of the Senate therein. 140 Cong. Rec. S3548-01 (1994).

On March 25, 1994, the Senate agreed to the conference report on H.R. 1804. 140 Cong. Rec. D336-02 (1994).

On March 28, 1994, the House of Representatives Committee on House Administration presented H.R. 1804 to the President for his approval. 140 Cong. Rec. H2215-03 (1994).

On March 31, 1994, President Clinton signed Pub. L. No. 103-227, 108 Stat. 125 (1994), entitled Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provision for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000 is currently codified at 20 U.S.C. § 5894(a)(4). To date no appropriations have been made under this provision.

Other Comments

On February 14, 1995, Thomas W. Payzant, Assistant Secretary for Elementary and Secondary Education testified before the Senate Committee on Indian Affairs regarding the FY 96 Budget Request for Indian Programs. Assistant Secretary Payzant stated that under Goals 2000: Educate America Act, the Department of Education would “shortly be holding a competition for grants to tribal divisions of education to help them coordinate efforts between school reform plans developed for Bureau-funded schools and plans developed for public schools.” Testimony of Thomas W. Payzant, Assistant Secretary for Elementary and Secondary Education, before the Senate Committee on Indian Affairs regarding FY 96 Budget Requests for Department of Education Programs that serve Indians, 1995 WL 59189 (F.D.C.H. Feb. 14, 1995).

20 U.S.C. § 6031(e) provides that:

(e) National Institute on the Education of At-Risk Students

(1) Findings

The Congress finds as follows:

(A) The rate of decline in our urban schools is escalating at a rapid pace. Student performance in most inner city schools grows worse each year. At least half of all students entering ninth grade fail to graduate 4 years later and many more students from high-poverty backgrounds leave school with skills that are inadequate for today's workplace. Student performance in many inner city neighborhoods grows worse each year. At least half of all students entering ninth grade fail to graduate in 4 years. In 1992, the average National Assessment of Educational Progress reading score of Caucasian 17 year-olds was approximately 25 points higher than that of African American 17 year-olds and 20 points higher than that of Hispanic 17 year-olds.

(B) Rural schools enroll a disproportionately large share of the poor and at-risk students of the United States and yet often lack the means to address effectively the needs of these children. Intensive efforts should be made to overcome the problems of geographic isolation, declining population, inadequate financial resources and other impediments to the educational success of children residing in rural areas.

(C) By the year 2000, an estimated 3,400,000 school age children with limited-English proficiency will be entering the school system. The Federal Government should develop effective policies and programs to address the educational needs of this growing population of children who are at increased risk of educational failure.

(D) An educational emergency exists in those urban and rural areas where there are large concentrations of children who live in poverty. The numbers of disadvantaged children will substantially increase by the year 2020, when the number of impoverished children alone will be 16,500,000, a 33 percent increase over the 12,400,000 children in poverty in 1987.

(E) American Indian and Alaska Native students have high dropout, illiteracy and poverty rates, and experience cultural, linguistic, social and geographic isolation. The estimated 400,000 Indian and Alaska Native student population from over 500 Indian and Alaska Native tribes, is small and scattered throughout remote reservations and villages in 32 States, and in off-reservation rural and urban communities where Indians constitute but a small percentage of public school student bodies. To meaningfully address the special educational needs of this historically under-served population, the existing research and development system should be opened to Indian and Alaska Native people to identify needs and design ways to address such needs.

(F) Minority scholars as well as institutions and groups that have been historically committed to the improvement of the education of at-risk students need to be more fully mobilized in the effort to develop a new generation of programs, models, practices, and schools capable of responding to the urgent needs of students who are educationally at-risk.

(2) Purpose

It shall be the purpose of the Institute on the Education of At-Risk Students to carry out a coordinated and comprehensive program of research and development to provide nonpartisan, research-based leadership to the United States as it seeks to improve educational opportunities for at-risk students. Such program shall—

(A) undertake research necessary to provide a sound basis from which to identify, develop, evaluate, and assist others to replicate and adapt interventions, programs, and models which promote greater achievement and educational success by at-risk students, such as—

- (i) methods of instruction and educational practices (including community services) which improve the achievement and retention of at-risk students;
- (ii) the quality of educational opportunities afforded at-risk students, particularly the quality of educational opportunities afforded such students in highly concentrated urban areas and sparsely populated rural areas;
- (iii) methods for overcoming the barriers to learning that may impede student achievement;
- (iv) innovative teacher training and professional development methods to help at-risk students meet challenging standards;
- (v) methods to improve the quality of the education of American Indian and Alaska Native students not only in schools funded by the Bureau, but also in public elementary and secondary schools located on or near Indian reservations, including—

- (I) research on mechanisms to facilitate the establishment of tribal departments of education that assume responsibility for all education programs of State educational agencies operating on an Indian reservation and all education programs funded by the Bureau on an Indian reservation;

- (II) research on the development of culturally appropriate curriculum for American Indian and Alaska Native students, including American Indian and Alaska Native culture, language, geography, history and social studies, and graduation requirements related to such curriculum;

- (III) research on methods for recruiting, training and retraining qualified teachers from American Indian and Alaska Native communities, including research to promote flexibility in the criteria for certification of such teachers;

- (IV) research on techniques for improving the educational achievement of American Indian and Alaska Native students, including methodologies to reduce dropout rates and increase graduation by such students; and

- (V) research concerning the performance by American Indian and Alaska Native students of limited-English proficiency on standardized achievement tests, and related factors;

(vi) means by which parents and community resources and institutions (including cultural institutions) can be utilized to support and improve the achievement of at-risk students;

- (vii) the training of teachers and other educational professionals and paraprofessionals to work more effectively with at-risk students;
- (viii) the most effective uses of technology in the education of at-risk students;
- (ix) programs designed to promote gender equity in schools that serve at-risk students;
- (x) improving the ability of classroom teachers and schools to assist new and diverse populations of students in successfully assimilating into the classroom environment;
- (xi) methods of assessing the achievement of students which are sensitive to cultural differences, provide multiple methods of assessing student learning, support student acquisition of higher order capabilities, and enable identification of the effects of inequalities in the resources available to support the learning of children throughout the United States; and
- (xii) other topics relevant to the purpose of the Institute; and

(B) maximize the participation of those schools and institutions of higher education that serve the greatest number of at-risk students in inner city and rural areas, and on Indian reservations, including model collaborative programs between schools and school systems, institutions of higher education, cultural institutions, and community organizations.

(3) Consultation with Indian and Alaska Native educators

All research and development activities supported by the Institute which relate to the education of Indian and Alaska Native students shall be developed in close consultation with Indian and Alaska Native researchers and educators, Tribally Controlled Community Colleges, tribal departments of education, and others with expertise in the needs of Indian and Native Alaska students.

Analysis

This provision encourages research by the National Institute on the Education of At-Risk Students to include information on facilitating tribal education department establishment, and requires the Institute to consult with tribal education departments in conducting its research.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as “Goals 2000,” is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 provide for the research needed to ensure equitable educational opportunities and high levels of educational achievement. These parts were developed separately as Education Research bills before being incorporated into Goals 2000.

On February 4, 1993, Rep. Owens (D-NY), introduced in the House of Representatives H.R. 856, 103rd Cong. (1993), a bill to improve education by promoting excellence in research, development, and the dissemination of information, entitled the Educational Research, Development, and Dissemination Excellence Act. 139 Cong. Rec. H586-05 (1993). H.R. 856 was referred to the House Committee on Education and Labor. *Id.*

On June 30, 1993, after hearings by the House of Representatives Subcommittee on Select Education and Civil Rights, the Subcommittee approved H.R. 856 for full Committee action. 139 Cong. Rec. D744-01 (1993).

On July 28, 1993, the House of Representatives Committee on Education and Labor ordered H.R. 856 reported as amended. 139 Cong. Rec. D864-01 (1993).

On August 2, 1993, the House of Representatives Committee on Education and Labor delivered its report, H.R. Rep. No. 103-209 (1993), on H.R. 856. 139 Cong. Rec. H5662-01 (1993); 139 Cong. Rec. D893-01 (1993).

Also on August 2, 1993, the House of Representatives passed H.R. 856, as amended. 139 Cong. Rec. H5599-01 (1993). Title III of H.R. 856 provided for the establishment of National Research Institutes within the Office of Education Research and Improvement of the Department of Education. *Id.*

Within the National Research Institute Part, H.R. 856 authorized the Assistant Secretary for Education Research and Improvement generally to conduct research, development, demonstration, and evaluation activities to carry out the establishment of the Institutes. *Id.* These activities were to be conducted directly, and through grants, contracts, and cooperative agreements with various entities, including with “public-private research partnerships established by a State or local education agency, Bureau of Indian Affairs-funded school, or tribal department of education, in concert with a private organization and a team of educational researchers” 139 Cong. Rec. H5599-01 (1993).

In addition, H.R. 856 provided that one of the National Research Institutes would be the National Institute for the Education of At-Risk Students. *Id.* In carrying out its research and development activities related to the education of American Indian and Alaska Native students and in improving educational opportunities for these students, the National

Institute for the Education of At-Risk Students was to consult with, among other entities, tribal education departments. 139 Cong. Rec. H5599-01 (1993).

On August 4, 1993, the House of Representatives sent a message to the Senate stating that it had passed H.R. 856. 139 Cong. Rec. S10360-03 (1993). The Senate referred H.R. 856 to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S10360-04 (1993).

On November 3, 1993, the Senate Committee on Labor and Human Resources ordered H.R. 856 favorably reported. 139 Cong. Rec. D1239-01 (1993).

On November 16, 1993, the Senate Committee on Labor and Human Resources submitted its report on H.R. 856. 139 Cong. Rec. S15785-01 (1993); 139 Cong. Rec. D1307-02 (1993).

On February 4, 1994, Senator Kennedy (D-MA), proposed Pell Amendment No. 1409 to S. 1150, the Goals 2000: Educate America Act, and the Senate counterpart to H.R. 1804. 140 Cong. Rec. S961-02 (1994). Pell Amendment No. 1409 was entitled the Educational Research and Improvement Act of 1993. *Id.*

Section 12(e) of Pell Amendment No. 1409 provided for a national directorate on the educational achievement of historically underserved populations. 140 Cong. Rec. S961-02 (1994). This section required the Assistant Secretary for Educational Research and Improvement to conduct research on methods to improve the quality of education for American Indian and Alaska Native students in both public and BIA funded schools. *Id.* This research was to include “research on mechanisms to facilitate the establishment of tribal departments of education that assume responsibility for all education programs of State educational agencies operating on an Indian reservation and all education programs funded by the Bureau of Indian Affairs on an Indian reservation” *Id.*

On February 8, 1994, when the Senate passed H.R. 1804 as amended by S. 1150, Pell Amendment No. 1409 became Title IX of the Senate version of H.R. 1804. 140 Cong. Rec. S1422-02 (1994); 140 Cong. Rec. S1151-03 (1994). Section 912(e)(7)(A) provided for the research on mechanisms to facilitate the establishment of tribal education departments that would assume responsibility for all state and federally funded education programs on reservations. *Id.*; accord 140 Cong. Rec. S1753-02 (1994).

On February 23, 1994, the House of Representatives proposed eliminating the Senate Pell Amendment No. 1409 from H.R. 1804 and inserting, among other things, the National Research Institute Part of H.R. 856 into H.R. 1804. 140 Cong. Rec. H582-04 (1994). Within this Part, the National Institute for the Education of At-Risk Students would be required to consult with tribal education departments. *Id.*; accord 140 Cong. Rec. S2258-01 (1994).

On March 21, 1994, the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec. H1625-03 (1994). The report recommended keeping in H.R. 1804 both the House and Senate provisions regarding tribal education departments. *Id.*

Thus, the Assistant Secretary for Educational Research and Improvement was to research mechanisms to facilitate the establishment of tribal education departments, and the National Institute for the Education of At-Risk Students was to consult with tribal education departments in its research and development activities. 140 Cong. Rec. H1625-03 (1994). The conference report on H.R. 1804 was agreed to by the House of Representatives on March 23, 1994, 140 Cong. Rec. D316-01 (1994), and by the Senate on March 25, 1994. 140 Cong. Rec. D336-02 (1994).

On March 31, 1994, H.R. 1804 was signed into law by President Clinton as Pub. L. No. 103-227, 108 Stat. 125 (1994), Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provisions on tribal education departments and education research are currently codified at 20 U.S.C. §§ 6031(e)(2)(A)(v)(I) and 6031(e)(3).

Other comments

In its original version of H.R. 856, the House of Representatives had provided for, within the National Research Institutes Part, a Teacher Education Program. 139 Cong. Rec. H5599-01 (1993). One of the expressly enumerated purposes of the program was to have the Assistant Secretary for Education Research and Improvement assist “in the development of teacher certification standards by Indian tribal departments of education.” *Id.*; *accord* 140 Cong. Rec. H582-04 (1994). This program was not in the Senate version of H.R. 1804 and did not survive the conference report on H.R. 1804. H.R. Conf. Rep. No. 103-446 (1994).

20 U.S.C. § 6041(g) provides that:

(g) Dissemination through new technologies

(1) In general

The Assistant Secretary is authorized to award grants or contracts in accordance with this subsection to support the development of materials, programs, and resources which utilize new technologies and techniques to synthesize and disseminate research and development findings and other information which can be used to support educational improvement.

(2) Electronic networking

(A) Electronic network

The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, shall establish and maintain an electronic network which shall, at a minimum, link—

- (i) each office of the Department of Education;
- (ii) the Institutes established by section 6031 of this title;
- (iii) the National Center for Education Statistics;
- (iv) the National Library of Education; and
- (v) entities engaged in research, development, dissemination, and technical assistance under grant from, or contract, or cooperative agreement with, the Department of Education.

(B) Certain requirements for network

The network described in subparagraph (A) shall—

- (i) to the extent feasible, build upon existing national, regional, and State electronic networks and support video, telecomputing, and interactive communications;
- (ii) at a minimum, have the capability to support electronic mail and file transfer services;
- (iii) be linked to and accessible to other users, including State and local education agencies, institutions of higher education, museums, libraries, and others through the Internet and the National Research and Education Network; and
- (iv) be provided at no cost (excluding the costs of necessary hardware) to the contractors and grantees described in clause (v) of subparagraph (A) and to educational institutions accessing such network through the Internet and the National Research and Education Network.

(C) Information resources

The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, may make available through the network described in subparagraph (A)—

- (i) information about grant and contract assistance available through the Department of Education;

- (ii) an annotated directory of current research and development activities and projects being undertaken with the assistance of the Department of Education;
- (iii) information about publications published by the Department of Education and, to the extent feasible, the full text of such publications;
- (iv) statistics and data published by the National Center for Education Statistics;
- (v) syntheses of research and development findings;
- (vi) a directory of other education-related electronic networks and databases, including information about the means by which such networks and databases may be accessed;
- (vii) a descriptive listing of materials and courses of instruction provided by telecommunications partnerships assisted under the Star Schools program;
- (viii) resources developed by the Educational Resources Information Center Clearinghouses;
- (ix) education-related software (including video) which is in the public domain;
- (x) a listing of instructional materials available through telecommunications to local education agencies through the Public Broadcasting Service and State educational television networks; and
- (xi) such other information and resources the Assistant Secretary considers useful and appropriate.

(D) Evaluations regarding other functions of network

The Assistant Secretary shall also undertake projects to test and evaluate the feasibility of using the network described in subparagraph (A) for—

- (i) the submission of applications for assistance to the Department of Education; and
- (ii) the collection of data and other statistics through the National Center for Education Statistics.

(E) Training and technical assistance

The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, shall—

- (i) provide such training and technical assistance as may be necessary to enable the contractors and grantees described in clause (v) of subparagraph (A) to participate in the electronic network described in such subparagraph; and

(ii) work with the National Science Foundation to provide, upon request, assistance to State and local educational agencies, the Department of the Interior's Office of Indian Education Programs, tribal departments of education, State library agencies, libraries, museums, and other educational institutions in obtaining access to the Internet and the National Research and Education Network.

Analysis

This provision authorizes the Assistant Secretary for Educational Research and Improvement, through the Office of Education Reform Assistance and Dissemination, to establish and maintain an electronic network and to work with the National Science Foundation to help tribal education departments gain access to the network and the Internet.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as “Goals 2000,” is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 provide for the research needed to ensure equitable educational opportunities and high levels of educational achievement, and for a nationwide system for disseminating educational improvement information. These parts were developed separately as Education Research bills before being incorporated into Goals 2000.

On February 4, 1993, Rep. Owens (D-NY), introduced in the House of Representatives H.R. 856, 103rd Cong. (1993), a bill to improve education by promoting excellence in research, development, and the dissemination of information, entitled the Educational Research, Development, and Dissemination Excellence Act. 139 Cong. Rec. H586-05 (1993). H.R. 856 was referred to the House Committee on Education and Labor. *Id.*

On June 30, 1993, after hearings by the House of Representatives Subcommittee on Select Education and Civil Rights, the Subcommittee approved H.R. 856 for full Committee action. 139 Cong. Rec. D744-01 (1993).

On July 28, 1993, the House of Representatives Committee on Education and Labor ordered H.R. 856 reported as amended. 139 Cong. Rec. D864-01 (1993).

On August 2, 1993, the House of Representatives Committee on Education and Labor delivered its report, H.R. Rep. No. 103-209 (1993), on H.R. 856. 139 Cong. Rec. H5662-01 (1993); 139 Cong. Rec. D893-01 (1993).

Also on August 2, 1993, the House of Representatives passed H.R. 856 as amended. 139 Cong. Rec. H5599-01 (1993). Title III of H.R. 856 provided for the establishment of a National Education Dissemination System and an Office of Reform Assistance and Dissemination within the Office of Educational Research and Improvement of the Department of Education. *Id.* The education dissemination system was to use new technologies, including an electronic network. *Id.*

H.R. 856 also authorized the Assistant Secretary for Educational Research and Improvement, through the Office of Reform Assistance and Dissemination, to work with the National Science Foundation to help, among other entities and agencies, tribal education departments gain access to the electronic network and the Internet. 139 Cong. Rec. H5599-01 (1993).

In the Senate, there was no counterpart version of this provision. However, in February 1994 the House of Representatives insisted on inserting this tribal education department provision from H.R. 856 into H.R. 1804. 103rd Cong. (1993); 140 Cong. Rec. H582-04 (1994); 140 Cong. Rec. S2258-01 (1994).

On March 21, 1994 the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec. H1625-03 (1994). The report recommended keeping in the provision regarding education dissemination and tribal education departments. *Id.*

The conference report on H.R. 1804 was agreed to by the House of Representatives on March 23, 1994, 140 Cong. Rec. D316-01 (1994), and by the Senate on March 25, 1994. 140 Cong. Rec. D336-02 (1994).

On March 31, 1994, H.R. 1804 was signed into law by President Clinton as Pub. L. No. 103-227, 108 Stat. 125 (1994), Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provision on tribal education departments and education dissemination via the electronic network and the Internet is currently codified at 20 U.S.C. § 6041(g)(2)(E)(ii).

20 U.S.C. § 6041(i)

(i) Goals 2000 Community Partnerships Program

(1) Purpose

The purpose of the Goals 2000 Community Partnerships program is to improve the quality of learning and teaching in the most impoverished urban and rural communities of the United States by supporting sustained collaborations between universities, schools, businesses, and communities which apply and utilize the results of educational research and development.

(2) Grants for Goals 2000 Community Partnerships

The Assistant Secretary is authorized to make grants to eligible entities to support the establishment of Learning Grant Institutions and District Education Agents and the activities authorized under this subsection within eligible communities.

(3) Definition of eligible entity and eligible community

For the purposes of this subsection:

(A) The term "eligible entity" includes any institution of higher education, regional educational laboratory, National Diffusion Network project, national research and development center, public or private nonprofit corporation, or any consortium thereof, that—

- (i) has demonstrated experience, expertise and commitment in serving the educational needs of at-risk students; and
- (ii) is, by virtue of its previous activities, knowledgeable about the unique needs and characteristics of the community to be served.

(B) The term "eligible community" means a unit of general purpose local government (such as a city, township, or village), a nonmetropolitan county, tribal village, or a geographically distinct area (such as a school district, school attendance area, ward, precinct or neighborhood), or any group of such entities that—

- (i) has a population of not less than 200,000 and not more than 300,000; and
- (ii) in which not less than one-half of the school-age children have family incomes which are below the poverty line, as determined by the 1990 United States Census, participation in the National School Lunch program, or other current, reliable data concerning family income.

(4) Goals 2000 Community Partnerships

Each learning grant institution receiving assistance under this subsection shall establish a Goals 2000 community partnership to carry out the activities authorized under this subsection. Such partnership—

(A) shall include the participation of one or more local educational agencies, institutions of higher education, community-based organizations, parents, teachers, and the business community;

(B) may include the participation of human, social service and health care agencies, Head Start and child care agencies, libraries, museums, employment

and training agencies, and the State educational agency or tribal department of education; and

(C) shall be broadly representative of all segments of the community in which the activities will be carried out.

(5) Comprehensive Goals 2000 plan

Each Goals 2000 Community Partnership shall develop a comprehensive plan for assuring educational success and high achievement for all students in the community.

Each such plan shall—

(A) adopt the National Education Goals;

(B) identify additional needs and goals for educational improvement within the community;

(C) focus on helping all students reach challenging content and student performance standards;

(D) be consistent with the State and local improvement plans for system-wide education improvement developed pursuant to subchapter III of this chapter;

(E) establish a comprehensive community-wide plan for achieving such goals; and

(F) develop a means for measuring the progress of the community in meeting such goals for improvement.

(6) Implementation of community-wide plan

Each Goals 2000 Community Partnership shall, utilizing the District Education Agent, provide assistance in implementing the community-wide plan for educational improvement by—

(A) supporting innovation, restructuring, and continuous improvement in educational practice by—

(i) disseminating information throughout the community about exemplary and promising educational programs, practices, products, and policies;

(ii) evaluating the effectiveness of federally funded educational programs within the community and identifying changes in such programs which are likely to improve student achievement;

(iii) identifying, selecting and replicating exemplary and promising educational programs, practices, products, and policies in both in- and out-of-school settings;

(iv) applying educational research to solve specific problems in the classroom, home and community which impede learning and student achievement; and

(v) supporting research and development by teachers, school administrators, and other practitioners which promise to improve teaching and learning and the organization of schools;

(B) improving the capacity of educators, school administrators, child care providers and other practitioners to prepare all students to reach challenging standards and to attain the goals set out in the comprehensive community-wide plan through such means as—

(i) the training of prospective and novice teachers (including preschool and early childhood educators) in a school setting under the guidance of master teachers and teacher educators;

(ii) training and other activities to promote the continued learning and professional development of experienced teachers, related services personnel, school administrators to assure that such teachers develop the subject matter and pedagogical expertise needed to prepare all students to reach challenging standards;

(iii) training and other activities to increase the ability of prospective, novice, and experienced teachers to teach effectively at-risk students, students with disabilities, students with limited-English proficiency, and students from diverse cultural backgrounds; and

(iv) programs to enhance teaching and classroom management skills, including school-based management skills, of novice, prospective, and experienced teachers;

(C) promoting the development of an integrated system of service delivery to children from birth through age 18 and their families by facilitating linkages and cooperation among—

(i) local educational agencies;

(ii) health and social services agencies and providers;

(iii) juvenile justice and criminal justice agencies;

(iv) providers of employment training; and

(v) child care, Head Start, and other early childhood agencies; and

(D) mobilizing the resources of the community in support of student learning and high achievement by facilitating effective partnerships and collaboration among—

(i) local educational agencies;

(ii) postsecondary educational institutions;

(iii) public libraries;

(iv) parents;

(v) community-based organizations, neighborhood associations, and other civic and community organizations;

(vi) child care, Head Start, and other early childhood agencies;

- (vii) churches, synagogues and other religious institutions;
- (viii) labor organizations; and
- (ix) business and industry.

(7) Additional requirements

In carrying out its responsibilities under this subsection, each partnership receiving assistance under this subsection shall—

(A) appoint a District Education Agent who shall be responsible, on a full-time basis, for directing the implementation of the community-wide plan, who shall have significant experience and expertise in the field of education in—

- (i) addressing the needs of at-risk students; and
- (ii) conducting educational research and promoting the application of the results of such research to educational practice;

(B) provide for such other professional and support personnel as may be necessary to implement the community-wide plan under the direction of the District Education Agent; and

(C) coordinate the partnership's activities and work cooperatively with the National Diffusion Network State facilitators, regional educational laboratories, and other components of the Office to utilize most effectively Federal research, development, and dissemination resources in implementing the community-wide plan.

(8) Application for grants

Any eligible entity desiring a grant under this subsection shall submit an application to the Assistant Secretary at such time, in such manner, and accompanied by such information as the Assistant Secretary may reasonably require. Each such application shall—

(A) include a comprehensive plan for meeting the objectives and requirements of this subsection; and

(B) provide evidence of support for the application from local elected officials, the State educational agency, the local educational agency, parents, local community leaders, businesses, and other appropriate organizations.

(9) Priority in making grants; duration and amount of grant

Each grant made under this subsection shall be—

- (A) awarded on a competitive basis, with first priority given to those applications from communities with the greatest percentage of school-age children in families with poverty-level incomes;
- (B) made for a 5-year period, with funding for the second and each succeeding year in such period conditioned upon a determination by the Assistant Secretary that the grant recipient has complied with the conditions of the grants during the previous year; and
- (C) an amount equal to not less than \$1,000,000 per year.

(10) Limitation of one grant per congressional district

Not more than one grant under this subsection shall be awarded within a single congressional district.

(11) Technical assistance; evaluations

In administering the program authorized under this subsection, the Assistant Secretary shall, either directly or through grant or contract with an eligible nonprofit agency—

- (A) upon request, provide technical assistance to eligible entities to assist in the development of a comprehensive community-wide plan to meet the requirements of this subsection and in the preparation of applications for assistance;
- (B) regularly provide technical assistance to learning grant institutions receiving assistance under this subsection to assist with the development and implementation of the comprehensive community-wide plan for educational improvement;
- (C) provide for an independent evaluation of the activities assisted under this subsection, including—

- (i) the impact of the Goals 2000 Community Partnerships program on children and families within each community, including effects on the extent of educational achievement, rates of school retention and completion, and enrollment in postsecondary educational programs; and
- (ii) whether an intensified effort to apply and utilize educational research within a limited geographic area significantly improves student learning and achievement; and

(D) plan for the expansion of the Goals 2000 Community Partnerships program throughout the remainder of the United States beginning in fiscal year 1999.

Analysis

This provision requires and/or encourages collaboration and partnerships among universities, schools, businesses, communities, and other entities and agencies, including tribal education departments, to use and apply the results of educational research and development activities to improve education.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as “Goals 2000,” is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 provide for the research and collaboration at the national and local levels needed to ensure equitable educational opportunities and high levels of educational achievement. These parts were developed separately as Education Research bills before being incorporated into Goals 2000.

On February 4, 1993, Rep. Owens (D-NY), introduced in the House of Representatives H.R. 856, 103rd Cong. (1993), a bill to improve education by promoting excellence in research, development, and the dissemination of information, entitled the Educational Research, Development, and Dissemination Excellence Act. 139 Cong. Rec. H586-05 (1993). H.R. 856 was referred to the House Committee on Education and Labor. *Id.*

On June 30, 1993, after hearings by the House of Representatives Subcommittee on Select Education and Civil Rights, the Subcommittee approved H.R. 856 for full Committee action. 139 Cong. Rec. D744-01 (1993).

On July 28, 1993, the House of Representatives Committee on Education and Labor ordered H.R. 856 reported as amended. 139 Cong. Rec. D864-01 (1993).

On August 2, 1993, the House of Representatives Committee on Education and Labor delivered its report, H.R. Rep. No. 103-209 (1993), on H.R. 856. 139 Cong. Rec. H5662-01 (1993); 139 Cong. Rec. D893-01 (1993).

Also on August 2, 1993, the House of Representatives passed H.R. 856 as amended. 139 Cong. Rec. H5599-01 (1993). Title III of H.R. 856 provided for the establishment of a National Education Dissemination System and an Office of Reform Assistance and Dissemination within the Office of Educational Research and Improvement of the Department of Education. *Id.*

In identifying successful educational programs and information for dissemination, H.R. 856 required the Assistant Secretary for Educational Research and Improvement to work closely with partnerships required or encouraged under Goals 2000. 139 Cong. Rec. H5599-01 (1993). Regarding learning grant institutions receiving Goals 2000

Community Partnership grants, H.R. 856 permitted these institutions to include tribal education departments among their partnerships. *Id.*

In the Senate there was no counterpart provision. However, in February, 1994 the House of Representatives insisted on inserting this provision from H.R. 856 into H.R. 1804, 103rd Cong. (1993). 140 Cong. Rec. H582-04 (1994); 140 Cong. Rec. S2258-01 (1994).

On March 21, 1994 the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec. H1625-03 (1994). The report recommended keeping in H.R. 1804 the provision regarding Goals 2000 Community Partnerships and tribal education departments. *Id.*

The conference report on H.R. 1804 was agreed to by the House of Representatives on March 23, 1994, 140 Cong. Rec. D316-01 (1994), and by the Senate on March 25, 1994. 140 Cong. Rec. D336-02 (1994).

On March 31, 1994, H.R. 1804 was signed into law by President Clinton as Pub. L. No. 103-227, Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provision on Goals 2000 Community Partnerships and tribal education departments is currently codified at 20 U.S.C. § 6041(i)(4)(B).

D. The Improving America's Schools Act of 1994, Pub. L. No. 103-382

. 20 U.S.C. § 7835 - Grants to tribes for education administrative planning and development

(a) In general

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

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

(b) Period of grant

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

(c) Application for grant

(1) In general

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

(2) Contents

Each application described in paragraph (1) shall contain—

- (A) a statement describing the activities to be conducted, and the objectives to be achieved, under the grant; and
- (B) a description of the method to be used for evaluating the effectiveness of the activities for which assistance is sought and determining whether such objectives are achieved.

(3) Approval

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

- (A) demonstrates that the applicant has consulted with other education entities, if any, within the territorial jurisdiction of the applicant who will be affected by the activities to be conducted under the grant;
- (B) provides for consultation with such other education entities in the operation and evaluation of the activities conducted under the grant; and
- (C) demonstrates that there will be adequate resources provided under this section or from other sources to complete the activities for which assistance is sought, except that the availability of such other resources shall not be a basis for disapproval of such application.

(d) Restriction

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

(e) Authorization of appropriations

There are authorized to be appropriated to the Department of Education \$3,000,000 for each of the fiscal years 1995 through 1999 to carry out this section.

Analysis

This section authorizes appropriations of \$3 million to the Department of Education to fund tribal education departments and codes.

History

The Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (IASA), is a six-year reauthorization of appropriations for many of the programs under the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965) (ESEA). The ESEA is the principal law by which states and public schools get federal aid for elementary and secondary education. Major ESEA programs include Title I, Even Start, Magnet Schools, Gifted and Talented Students, Bilingual Education, and Impact Aid.

The IASA also reformed the ESEA by promoting greater educational achievement in exchange for eliminating many of the funding use restrictions at the national level and allowing schools more power and flexibility in deciding how the funding will be used at the local level.

On January 5, 1993, Representative Kildee (D-MI) introduced in the House of Representatives H.R. 6, 103rd Cong. (1993), a bill to extend for 6 years the authorization of appropriations for the programs under the Elementary and Secondary Education Act of 1965. 139 Cong. Rec. H82-01 (1993); 139 Cong. Rec. E5-01 (1993). H.R. 6 was referred to the House Committee on Education and Labor. 139 Cong. Rec. H82-01 (1993).

On October 4, 1993, Senator Kennedy (D-MA) introduced in the Senate S. 1513, 103rd Cong. (1993), a bill to reauthorize the Elementary and Secondary Education Act of 1965 entitled "Improving America's Schools Act of 1993." 139 Cong. Rec. S12928-07 (1993); 139 Cong. Rec. D1078-02 (1993). As introduced, S. 1513 did not contain any new provisions regarding tribal education departments. S. 1513 was referred to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S12928-06.

On February 1, 1994, the House of Representatives Subcommittee on Elementary, Secondary, and Vocational Education approved for full Committee action H.R. 6 as amended, the Elementary and Secondary Education Amendments of 1993. 140 Cong. Rec. D62-01 (1994). On February 8, 1994, the House of Representatives Committee on Education and Labor ordered reported H.R. 6 as amended. 140 Cong. Rec. D95-01 (1994).

On February 16, 1994, the House of Representatives Committee on Education and Labor filed its report, H.R. Rep. No. 103-425 (1994), on H.R. 6 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. H559-01 (1994); 140 Cong. Rec. D132-01 (1994). As reported, H.R. 6 did not contain any new provisions regarding tribal education departments.

On February 23, 1994, the House of Representatives Committee on Rules submitted a resolution, H.R. Res. 366, 103rd Cong. (1994), providing for the consideration of H.R. 6. 140 Cong. Rec. H678-04 (1994); 140 Cong. Rec. D141-01; 140 Cong. Rec. H798-03 (1994). The Committee on Rules also submitted a privileged report, H.R. Rep. No. 103-426 (1994), to accompany H.R. Res. 366. 140 Cong. Rec. H651-02 (1994).

On March 24, 1995, the House of Representatives passed H.R. 6 as amended. 140 Cong. Rec. D329-01 (1994).

On April 19, 1994, the Senate received a message from the House of Representatives that the House had passed H.R. 6 and requested the concurrence of the Senate therein. 140 Cong. Rec. S4462-02 (1994). The Senate referred H.R. 6 to the Senate Committee on Labor and Human Resources. 140 Cong. Rec. S4463-01 (1994).

On May 4, 1994, the Senate Committee on Indian Affairs held hearings on the Indian education provisions of S. 1513 and H.R. 6. 140 Cong. Rec. D482-02 (1994). Among those testifying at the hearings was Phil Baird, the President of the National Indian Education Association (NIEA). Mr. Baird stated that:

Tribes need federal funding to help develop tribal departments of education which can engage in developmental work and place them in better positions to negotiate or enter into agreements with state and local governments as equal partners in our nation's school reform efforts.

Testimony of the National Indian Education Association before the Senate Committee on Indian Affairs on the Reauthorization of Elementary and Secondary Education Programs, 1994 WL 232500 (F.D.C.H. May 4, 1994).

Mr. Baird went on to state that NIEA proposed a new program within the Indian Education Act of 1972. *Id.* Under the new program, grants through the Department of Education would be authorized for tribes to develop education codes, to coordinate

education programs, [and] to provide technical and support services to schools serving Indian children....This grant program is not included in H.R. 6, and we ask that it be adopted as part of the Senate bill.

Id.

On June 15, 1994, the Senate Committee on Labor and Human Resources ordered S. 1513 as amended favorably reported. 140 Cong. Rec. D672-01 (1994).

On June 24, 1994, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-292 (1994), on S. 1513. 140 Cong. Rec. S7638-01 (1994); 140 Cong. Rec. D731-01 (1994).

On July 15, 1994, the Senate Committee on Indian Affairs submitted its report, S. Rep. No. 103-314 (1994), on S. 1513. 140 Cong. Rec. S9121-08 (1994); 140 Cong. Rec. D819-02 (1994). The Committee on Indian Affairs recommended a new program under the authority of the Indian Education Act of 1972, Pub. L. No. 92-318, 86 Stat. 334 (1972). S. Rep. No. 103-314 (1994). Under the new program, the Secretary of Education would be authorized \$3 million to fund tribal education departments to develop tribal education codes, engage in education planning, and coordinate education programs on Indian reservations. *Id.*

On July 27, 1994, the Senate began consideration of S. 1513 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. D885-02 (1994). Section 6206 of the version under consideration contained the Senate Committee on Indian Affairs' recommended new tribal education department funding authorization through the Department of Education. 140 Cong. Rec. S9763-02 (1994).

On August 2, 1994, the Senate passed H.R. 6 as amended by S. 1513 as amended, and requested a conference with the House of Representatives on the two versions of H.R. 6. 140 Cong. Rec. S10281-01 (1994); 140 Cong. Rec. D919-02 (1994). H.R. 6 as amended as passed by the Senate contained Section 6206, the new Department of Education tribal education department funding authorization. 140 Cong. Rec. S10719-01 (1994).

On August 9, 1994, the House of Representatives received a message from the Senate that the Senate had passed H.R. 6 as amended and requesting the concurrence of the House in the same. 140 Cong. Rec. H7204-05 (1994). The message also announced that the Senate insisted upon its amendment to H.R. 6 and requested a conference with the House on the disagreeing versions of H.R. 6. *Id.*

On September 20, 1994, the House of Representatives disagreed to the Senate amendments to H.R. 6, but agreed to go to conference on the matter. 140 Cong. Rec. D1085-01 (1994). The Senate received this message from the House on September 21, 1994. 140 Cong. Rec. S13093-08 (1994).

On September 27, 1994, the conferees agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 6. 140 Cong. Rec. D1140-01 (1994).

On September 28, 1994, the Committee of Conference submitted its report, H.R. Conf. Rep. No. 103-761 (1994), on H.R. 6. 140 Cong. Rec. H10006-05 (1994); 140 Cong. Rec. D1153-01 (1994). The committee of conference recommended generally that the House of Representatives recede from its disagreement to the amendment of the Senate to H.R. 6, and agree to the same with an amendment. 140 Cong. Rec. H10009-01 (1994).

Regarding tribal education department funding, the committee on conference recommended keeping in the Senate version of H.R. 6, which authorized \$3 million for tribal education departments through the Department of Education in addition to the authorization through the Department of the Interior enacted in 1988 under Pub. L. No. 100-297, 102 Stat. 130 (1988). 140 Cong. Rec. H10009-01 (1994). The House of Representatives receded with an amendment prohibiting the same tribe from receiving tribal education department funding under both the Department of Education and the Department of the Interior authorizations. *Id.*

On September 30, 1994, the House of Representatives, by H.R. Res. No. 556, 103rd Cong. (1994), considered and agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. H10382-03 (1994); 140 Cong. Rec. D1174-01 (1994). That same date, the Senate received a message from the House of Representatives that the House had agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. S13851-02 (1994).

On October 5, 1994, the Senate agreed to the conference report on H.R. 6. 140 Cong. Rec. D1210-02 (1994). On October 6, 1994, the House of Representatives received a message from the Senate that the Senate had agreed to the report of the committee of conference on H.R. 6. 140 Cong. Rec. H11009-04 (1994).

On October 18, 1994, the House of Representatives Committee on House Administration presented H.R. 6 to the President for his approval. 140 Cong. Rec. H11562-03 (1994).

On October 20, 1994, H.R. 6 was signed into law by President Clinton as Pub. L. No. 103-382, 108 Stat. 3518 (1994). 140 Cong. Rec. D1257-01 (1994). The provision on tribal education department funding authorizations through the Department of Education is currently codified at 20 U.S.C. § 7835. To date no appropriations have been approved under this authorization.

2. 20 U.S.C. § 8622 provides that

(a) In general

Each comprehensive regional assistance center established under section 8621(a) of this title shall—

(1) maintain appropriate staff expertise and provide support, training, and assistance to State educational agencies, tribal divisions of education, local educational agencies, schools, and other grant recipients under this chapter, in—

(A) improving the quality of instruction, curricula, assessments, and other aspects of school reform, supported with funds under subchapter I of this chapter;

(B) implementing effective schoolwide programs under section 6314 of this title;

(C) meeting the needs of children served under this chapter, including children in high-poverty areas, migratory children, immigrant children, children with limited-English proficiency, neglected or delinquent children, homeless children and youth, Indian children, children with disabilities, and, where applicable, Alaska Native children and Native Hawaiian children;

(D) implementing high-quality professional development activities for teachers, and where appropriate, administrators, pupil services personnel and other staff;

(E) improving the quality of bilingual education, including programs that emphasize English and native language proficiency and promote multicultural understanding;

(F) creating safe and drug-free environments, especially in areas experiencing high levels of drug use and violence in the community and school;

(G) implementing educational applications of technology;

(H) coordinating services and programs to meet the needs of students so that students can fully participate in the educational program of the school;

(I) expanding the involvement and participation of parents in the education of their children;

(J) reforming schools, school systems, and the governance and management of schools;

(K) evaluating programs; and

(L) meeting the special needs of students living in urban and rural areas and the special needs of local educational agencies serving urban and rural areas;

- (2) ensure that technical assistance staff have sufficient training, knowledge, and expertise in how to integrate and coordinate programs under this chapter with each other, as well as with other Federal, State, and local programs and reforms;
- (3) provide technical assistance using the highest quality and most cost-effective strategies possible;
- (4) coordinate services, work cooperatively, and regularly share information with, the regional educational laboratories, the Eisenhower regional consortia under part C, research and development centers, State literacy centers authorized under the National Literacy Act of 1991, and other entities engaged in research, development, dissemination, and technical assistance activities which are supported by the Department as part of a Federal technical assistance system, to provide a broad range of support services to schools in the region while minimizing the duplication of such services;
- (5) work collaboratively with the Department's regional offices;
- (6) consult with representatives of State educational agencies, local educational agencies, and populations served under this chapter;
- (7) provide services to States, local educational agencies, tribes, and schools, in coordination with the National Diffusion Network State Facilitators activities under section 8651 of this title, in order to better implement the purposes of this part and provide the support and assistance diffusion agents need to carry out such agents' mission effectively; and
- (8) provide professional development services to State educational agencies, local educational agencies, and the National Diffusion Network State Facilitators to increase the capacity of such entities to provide high-quality technical assistance in support of programs under this chapter.

(b) Priority

Each comprehensive regional assistance center assisted under this part shall give priority to servicing—

- (1) schoolwide programs under section 6314 of this title; and
- (2) local educational agencies and Bureau-funded schools with the highest percentages or numbers of children in poverty.

Analysis

This section requires the Comprehensive Regional Assistance Centers established under the Improving America's Schools Act of 1994 to provide support, training, and assistance to tribal education departments.

History

The Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (IASA), is a six-year reauthorization of appropriations for many of the programs under the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965) (ESEA). The ESEA is the principal law by which states and public schools get federal aid for elementary and secondary education. Major ESEA programs include Title I, Even Start, Magnet Schools, Gifted and Talented Students, Bilingual Education, and Impact Aid.

The IASA also reformed the ESEA by promoting greater educational achievement in exchange for eliminating many of the funding use restrictions at the national level and allowing schools more power in deciding how the funding will be used at the local level. Part of this overall strategy includes the establishment of a national technical assistance and dissemination system to help states, tribes, and higher education institutions help local schools improve teaching and learning.

On January 5, 1993, Representative Kildee (D-MI) introduced in the House of Representatives H.R. 6, 103rd Cong. (1993), a bill to extend for 6 years the authorization of appropriations for the programs under the Elementary and Secondary Education Act of 1965. 139 Cong. Rec. H82-01 (1993); 139 Cong. Rec. E5-01 (1993). H.R. 6 was referred to the House Committee on Education and Labor. 139 Cong. Rec. H82-01 (1993).

On October 4, 1993, Senator Kennedy (D-MA) introduced in the Senate S. 1513, 103rd Cong. (1993) a bill to reauthorize the Elementary and Secondary Education Act of 1965 entitled "Improving America's Schools Act of 1993." 139 Cong. Rec. S12928-07 (1993); 139 Cong. Rec. D1078-02 (1993). As introduced, S. 1513 did not contain any new provisions regarding tribal education departments. S. 1513 was referred to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S12928-06.

On February 1, 1994, the House of Representatives Subcommittee on Elementary, Secondary, and Vocational Education approved for full Committee action H.R. 6 as amended, the Elementary and Secondary Education Amendments of 1993. 140 Cong. Rec. D62-01 (1994). On February 8, 1994, the House of Representatives Committee on Education and Labor ordered reported H.R. 6 as amended. 140 Cong. Rec. D95-01 (1994).

On February 16, 1994, the House of Representatives Committee on Education and Labor filed its report, H.R. Rep. No. 103-425 (1994), on H.R. 6 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. H559-01 (1994); 140 Cong. Rec. D132-01 (1994).

Title II, Part D of H.R. 6 provided generally for support and assistance for ESEA programs. H.R. Rep. No. 103-425 (1994). Section 2343 of H.R. 6 authorized fifteen Comprehensive Assistance Centers which would provide comprehensive, integrated, and research-based training and technical assistance to states, tribes, and community-based organizations in their administration and implementation of ESEA programs. *Id.* Section 2345(b) of H.R. 6 expressly included tribal education departments as among the agencies that the Comprehensive Assistance Centers must serve. *Id.*

On February 23, 1994, the House of Representatives Committee on Rules submitted a resolution, H.R. Res. 366, 103rd Cong. (1994), providing for the consideration of H.R. 6. 140 Cong. Rec. H678-04 (1994); 140 Cong. Rec. D141-01; 140 Cong. Rec. H798-03 (1994). The Committee on Rules also submitted a privileged report, H.R. Rep. No. 103-426 (1994), to accompany H.R. Res. 366. 140 Cong. Rec. H651-02 (1994).

On March 24, 1995, the House of Representatives passed H.R. 6 as amended. 140 Cong. Rec. D329-01 (1994).

On April 19, 1994, the Senate received a message from the House of Representatives that the House had passed H.R. 6 and requested the concurrence of the Senate therein. 140 Cong. Rec. S4462-02 (1994). The Senate referred H.R. 6 to the Senate Committee on Labor and Human Resources. 140 Cong. Rec. S4463-01 (1994).

On June 15, 1994, the Senate Committee on Labor and Human Resources ordered S. 1513 as amended favorably reported. 140 Cong. Rec. D672-01 (1994).

On June 24, 1994, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-292 (1994), on S. 1513. 140 Cong. Rec. S7638-01 (1994); 140 Cong. Rec. D731-01 (1994).

On July 27, 1994, the Senate began consideration of S. 1513 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. D885-02 (1994).

On August 2, 1994, the Senate passed H.R. 6 as amended by S. 1513 as amended, and requested a conference with the House of Representatives on the two versions of H.R. 6. 140 Cong. Rec. S10281-01 (1994); 140 Cong. Rec. D919-02 (1994). Regarding the support and assistance for ESEA programs, the Senate version of H.R. 6 as amended by S. 1513 as amended, did not include tribes as a recipient of these services. 140 Cong. Rec. S10719-01 (1994).

On August 9, 1994, the House of Representatives received a message from the Senate that the Senate had passed H.R. 6 as amended and requesting the concurrence of the House in the same. 140 Cong. Rec. H7204-05 (1994). The message also announced that the Senate insisted upon its amendment to H.R. 6 and requested a conference with the House on the disagreeing versions of H.R. 6. *Id.*

On September 20, 1994, the House of Representatives disagreed to the Senate amendments to H.R. 6, but agreed to go to conference on the matter. 140 Cong. Rec. D1085-01 (1994). The Senate received this message from the House on September 21, 1994. 140 Cong. Rec. S13093-08 (1994).

On September 27, 1994, the conferees agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 6. 140 Cong. Rec. D1140-01 (1994).

On September 28, 1994, the Committee of Conference submitted its report, H.R. Conf. Rep. No. 103-761 (1994), on H.R. 6. 140 Cong. Rec. H10006-05 (1994); 140 Cong. Rec. D1153-01 (1994). The committee of conference recommended generally that the House of Representatives recede from its disagreement to the amendment of the Senate to H.R. 6, and agree to the same with an amendment. 140 Cong. Rec. H10009-01 (1994).

Regarding the support and assistance for ESEA programs, the committee on conference recommended keeping the Comprehensive Assistance Centers in H.R. 6 under Title XIII, Part A, as Comprehensive Regional Assistance Centers. H.R. Conf. Rep. No. 103-761 (1994); 140 Cong. Rec. H10009-01 (1994). As H.R. 6 had originally proposed, Section 13102 of the conference version of H.R. 6 required the Centers to serve, among other agencies, tribal education departments. *Id.*

On September 30, 1994, the House of Representatives, by H.R. Res. No. 556, 103rd Cong. (1994), considered and agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. H10382-03 (1994); 140 Cong. Rec. D1174-01 (1994). That same date, the Senate received a message from the House of Representatives that the House had agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. S13851-02 (1994).

On October 5, 1994, the Senate agreed to the conference report on H.R. 6. 140 Cong. Rec. D1210-02 (1994). On October 6, 1994, the House of Representatives received a message from the Senate that the Senate had agreed to the report of the committee of conference on H.R. 6. 140 Cong. Rec. H11009-04 (1994).

On October 18, 1994, the House of Representatives Committee on House Administration presented H.R. 6 to the President for his approval. 140 Cong. Rec. H11562-03 (1994).

On October 20, 1994, H.R. 6 was signed into law by President Clinton as Pub. L. No. 103-382, 108 Stat. 3518 (1994). 140 Cong. Rec. D1257-01 (1994). The provision on tribal education departments and the Comprehensive Regional Assistance Centers is currently codified at 20 U.S.C. § 8622(a)(1).

3. 20 U.S.C. § 8651 provides that:

(a) Authority

(1) In general

In order to implement the purposes of this subchapter, the Secretary is authorized to establish the National Diffusion Network (hereafter referred to in this chapter as "NDN") to carry out a State-based outreach, consultation, training, and dissemination program.

(2) Program requirements

In carrying out the program under this part, the Secretary shall award grants and contracts to National Diffusion Network State Facilitators in each State and outlying area, and to the Bureau of Indian Affairs, in order to assist State and local educational agencies, schools, and other appropriate educational entities—

(A) to identify and secure appropriate, high-quality technical assistance from the comprehensive regional assistance centers under part A of this subchapter and other sources; and

(B) to identify and implement exemplary or promising educational programs and practices.

(b) Eligible entities

The Secretary shall award grants and contracts under this section to public or private nonprofit organizations or institutions with demonstrated expertise in the areas of applied education research and program dissemination.

(c) Administration

The program under this part shall be administered through the Office of Reform Assistance and Dissemination established under section 6041(b) of this title .

(d) Coordination

The National Diffusion Network State Facilitators shall work in close cooperation, and coordinate their activities, with the comprehensive regional assistance centers established under part A of this subchapter.

(e) State facilitator activities

The National Diffusion Network State Facilitators shall provide professional development and technical assistance services to assist State educational agencies, local educational agencies, tribal divisions of education, schools, family and adult literacy programs, and other entities assisted under this chapter, in—

- (1) defining such entities' technical assistance needs and aligning such needs with school reform under subchapter I of this chapter, professional development, and technology plans;
- (2) securing the technical assistance and professional development services that can best fulfill such needs by utilizing the services of the comprehensive regional assistance centers, the regional education laboratories, the Eisenhower regional consortia, State Literacy Resource Centers authorized under the National Literacy Act of 1991 and other technical assistance providers, including local providers of professional development services;
- (3) identifying educational technology needs and securing the necessary technical assistance to address such needs in coordination with the Eisenhower regional consortia under part C and the regional technical assistance and professional development consortia under subpart 3 of subchapter III of this chapter; and
- (4) utilizing technology, including regional and national electronic networks, to increase such entities' access to technical assistance, professional development services, and dissemination of effective programs and promising practices.

(f) Additional duties

In addition, National Diffusion Network State Facilitators shall—

- (1) disseminate information about school reform and effective and promising practices, and help local educational agencies and schools adapt such reform and practices to such agencies' needs;
- (2) identify educational programs and practices for possible dissemination throughout the State and Nation;
- (3) promote and facilitate teacher networks throughout the State;
- (4) develop and implement an aggressive outreach plan for reaching the local educational agencies and schools receiving priority under section 8701 of this title; and
- (5) provide such other outreach, coordination, and dissemination services as may be necessary to achieve the purposes of this subchapter.

(g) National Diffusion Network effective programs and promising practices system

(1) In general

The Secretary shall develop a system of validating effective programs and promising practices for dissemination through the National Diffusion Network. Such system may include exemplary programs funded through any office of the Department, the National Science Foundation, or other Federal agencies and shall be coordinated, aligned with, and administered by, the Office of Reform Assistance and Dissemination established under section 6041(b) of this title.

(2) Priority

The Secretary shall give priority to identifying, validating, and disseminating effective schoolwide projects, programs addressing the needs of high poverty schools, and programs with the capacity to offer high-quality, sustained technical assistance. The Office of Educational Research and Improvement Office of Reform Assistance and Dissemination shall also administer a grant program for the purpose of dissemination and the provision of technical assistance regarding such system.

(3) Priority of services

The National Diffusion Network State Facilitators shall give priority in providing the services described in this section to—

- (A) schoolwide program under section 6314 of this title; and
- (B) local educational agencies and Bureau-funded schools with the highest percentages or numbers of children in poverty.

Analysis

This section requires the National Diffusion Network State Facilitators established under the Improving America's Schools Act of 1994 to serve tribal education departments.

History

The Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (IASA), is a six-year reauthorization of appropriations for many of the programs under the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965) (ESEA). The ESEA is the principal law by which states and public schools get federal aid for elementary and secondary education. Major ESEA programs include Title I, Even Start, Magnet Schools, Gifted and Talented Students, Bilingual Education, and Impact Aid.

The IASA also reformed the ESEA by promoting greater educational achievement in exchange for eliminating many of the funding use restrictions at the national level and allowing schools more power in deciding how the funding will be used at the local level. Part of this overall strategy includes the establishment of a national comprehensive technical assistance and effective program dissemination system to help states, tribes, and higher education institutions help local schools improve teaching and learning.

On January 5, 1993, Representative Kildee (D-MI) introduced in the House of Representatives H.R. 6, 103rd Cong. (1993), a bill to extend for 6 years the authorization of appropriations for the programs under the Elementary and Secondary Education Act of 1965. 139 Cong. Rec. H82-01 (1993); 139 Cong. Rec. E5-01 (1993). H.R. 6 was referred to the House Committee on Education and Labor. 139 Cong. Rec. H82-01 (1993).

On October 4, 1993, Senator Kennedy (D-MA) introduced in the Senate S. 1513, 103rd Cong. (1993), a bill to reauthorize the Elementary and Secondary Education Act of 1965 entitled "Improving America's Schools Act of 1993." 139 Cong. Rec. S12928-07 (1993); 139 Cong. Rec. D1078-02 (1993). As introduced, S. 1513 did not contain any new provisions regarding tribal education departments. S. 1513 was referred to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S12928-06.

On February 1, 1994, the House of Representatives Subcommittee on Elementary, Secondary, and Vocational Education approved for full Committee action H.R. 6 as amended, the Elementary and Secondary Education Amendments of 1993. 140 Cong. Rec. D62-01 (1994). On February 8, 1994, the House of Representatives Committee on Education and Labor ordered reported H.R. 6 as amended. 140 Cong. Rec. D95-01 (1994).

On February 16, 1994, the House of Representatives Committee on Education and Labor filed its report, H.R. Rep. No. 103-425 (1994), on H.R. 6 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. H559-01 (1994); 140 Cong. Rec. D132-01 (1994).

Title II, Part D of H.R. 6 provided generally for support and assistance for ESEA programs. H.R. Rep. No. 103-425 (1994). Section 2347 of H.R. 6 provided for the establishment of a National Diffusion Network to help disseminate teaching and learning improvements and to provide outreach, training, and consultation on the same. *Id.* Section 2347(c) required the National Diffusion Network Facilitators to work with the Comprehensive Assistance Centers to serve, among other agencies, tribal education departments. *Id.*

On February 23, 1994, the House of Representatives Committee on Rules submitted a resolution, H.R. Res. 366, 103rd Cong. (1994), providing for the consideration of H.R. 6. 140 Cong. Rec. H678-04 (1994); 140 Cong. Rec. D141-01; 140 Cong. Rec. H798-03

(1994). The Committee on Rules also submitted a privileged report, H.R. Rep. No. 103-426 (1994), to accompany H.R. Res. 366. 140 Cong. Rec. H651-02 (1994).

On March 24, 1995, the House of Representatives passed H.R. 6 as amended. 140 Cong. Rec. D329-01 (1994).

On April 19, 1994, the Senate received a message from the House of Representatives that the House had passed H.R. 6 and requested the concurrence of the Senate therein. 140 Cong. Rec. S4462-02 (1994). The Senate referred H.R. 6 to the Senate Committee on Labor and Human Resources. 140 Cong. Rec. S4463-01 (1994).

On June 15, 1994, the Senate Committee on Labor and Human Resources ordered S. 1513 as amended favorably reported. 140 Cong. Rec. D672-01 (1994).

On June 24, 1994, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-292 (1994), on S. 1513. 140 Cong. Rec. S7638-01 (1994); 140 Cong. Rec. D731-01 (1994).

On July 27, 1994, the Senate began consideration of S. 1513 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. D885-02 (1994).

On August 2, 1994, the Senate passed H.R. 6 as amended by S. 1513 as amended, and requested a conference with the House of Representatives on the two versions of H.R. 6. 140 Cong. Rec. S10281-01 (1994); 140 Cong. Rec. D919-02 (1994). H.R. 6 as amended by S. 1513 did not include tribes as being recipients of the support and assistance for ESEA programs provisions. 140 Cong. Rec. S10719-01 (1994).

On August 9, 1994, the House of Representatives received a message from the Senate that the Senate had passed H.R. 6 as amended and requesting the concurrence of the House in the same. 140 Cong. Rec. H7204-05 (1994). The message also announced that the Senate insisted upon its amendment to H.R. 6 and requested a conference with the House on the disagreeing versions of H.R. 6. *Id.*

On September 20, 1994, the House of Representatives disagreed to the Senate amendments to H.R. 6, but agreed to go to conference on the matter. 140 Cong. Rec. D1085-01 (1994). The Senate received this message from the House on September 21, 1994. 140 Cong. Rec. S13093-08 (1994).

On September 27, 1994, the conferees agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 6. 140 Cong. Rec. D1140-01 (1994).

On September 28, 1994, the Committee of Conference submitted its report, H.R. Conf. Rep. No. 103-761 (1994), on H.R. 6. 140 Cong. Rec. H10006-05 (1994); 140 Cong. Rec. D1153-01 (1994). The committee of conference recommended generally that the House

of Representatives recede from its disagreement to the amendment of the Senate to H.R. 6, and agree to the same with an amendment. 140 Cong. Rec. H10009-01 (1994).

Regarding the support and assistance for ESEA program provisions, the committee on conference recommended keeping in the National Diffusion Network provisions, which were similar in both the House and Senate bills. 140 Cong. Rec. H10009-01 (1994). The Senate agreed to list the recipients of this system as including, among other agencies, tribal education departments. *Id.*

On September 30, 1994, the House of Representatives, by H.R. Res. No. 556, 103rd Cong. (1994), considered and agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. H10382-03 (1994); 140 Cong. Rec. D1174-01 (1994). That same date, the Senate received a message from the House of Representatives that the House had agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. S13851-02 (1994).

On October 5, 1994, the Senate agreed to the conference report on H.R. 6. 140 Cong. Rec. D1210-02 (1994). On October 6, 1994, the House of Representatives received a message from the Senate that the Senate agrees to the report of the committee of conference on H.R. 6. 140 Cong. Rec. H11009-04 (1994).

On October 18, 1994, the House of Representatives Committee on House Administration presented H.R. 6 to the President for his approval. 140 Cong. Rec. H11562-03 (1994).

On October 20, 1994, H.R. 6 was signed into law by President Clinton as Pub. L. No. 103-382, 108 Stat. 3518 (1994). 140 Cong. Rec. D 1257-01 (1994). The provision on tribal education departments and the National Diffusion Network is currently codified at 20 U.S.C. § 8651(e).

E. Tribal Education Departments in Congress, 1995 - 1999

No new substantive provisions regarding tribal education departments have been enacted by Congress since 1994. Indeed, some proposed legislation would eliminate existing substantive provisions for tribal education departments.

Nor have any appropriations for tribal education departments been authorized during this period. Organizations such as NARF and NIEA have testified regularly before various congressional committees in support of appropriations to fund tribal education departments.

1. H.R. 1960 and S. 1180, the Educational Excellence for All Children Act of 1999

On May 26, 1999, Representative Clay (D-MO) introduced in the House of Representatives H.R. 1960, 106th Cong. (1999), a bill to amend the Elementary and

Secondary Education Act of 1965, to reauthorize and make improvements to that Act, and for other purposes, entitled the Educational Excellence for All Children Act of 1999. 145 Cong. Rec. H3693-02 (1999). H.R. 1960 has been referred to the House Committee on Education and the Workforce. *Id.*

On May 27, 1999, Senator Kennedy (D-MA) introduced in the Senate S. 1180, 106th Cong. (1999), a bill to amend the Elementary and Secondary Education Act of 1965, to reauthorize and make improvements to that Act, and for other purposes, entitled the Educational Excellence for All Children Act of 1999. 145 Cong. Rec. S6284-02 (1999); 145 Cong. Rec. S6286-02 (1999). S. 1180 has been referred to the Senate Committee on Health, Education, Labor, and Pensions. *Id.*

The virtually identical H.R. 1960 and S. 1180 were developed by the Administration. Title IX of S. 1180 deals with Indian education. Section 911 of Title IX would eliminate the appropriation authorization for tribal education department funding through the Department of Education, enacted by the Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994), and currently codified at 20 U.S.C. § 7835. The section-by-section analysis of S. 1180 prepared by the Administration states that the elimination of the tribal education department authorization provision, along with other sections, is due to these provisions not having been funded, and that "[t]he goals of these provisions ... are more effectively addressed through other programs." 145 Cong. Rec. S6286-02 (1999).

2. H.R. 2 and H.R. Res. 303, the Dollars to the Classroom Act of 1999

On February 11, 1999, Representative Goodling (R-PA), introduced in the House of Representatives H.R. 2, 106th Cong. (1999), a bill to send more dollars to the classroom, entitled the Dollars to the Classroom Act. 145 Cong. Rec. H589-04 (1999); 145 Cong. Rec. H641-02 (1999); 145 Cong. Rec. D133-01 (1999). H.R. 2 would consolidate some of the funding for Elementary and Secondary Education Act programs and much of the funding for Goals 2000 and Improving America's Schools Act programs into a single formula grant (*i.e.*, "block grant") program for states.

By eliminating many programs established by Goals 2000 and the Improving America's Schools Act, H.R. 2 would eliminate the specific provisions for tribal education departments under those laws. This would include the provisions for grants from the Secretary of Education to tribal education departments to coordinate BIA and public school reform plans, currently codified at 20 U.S.C. § 5894, and the provisions for tribal education department assistance from the Comprehensive Regional Assistance Centers, currently codified at 20 U.S.C. § 8622. *Id.* H.R. 2 contains no specific new provisions regarding tribal education departments.

H.R. 2 has been referred to the House Committee on Education and the Workforce, 145 Cong. Rec. H641-02 (1999). On September 23, 1999, Representative Pitts (R-PA), introduced H.R. Res. 303, 106th Cong. (1999), a resolution expressing the sense of the House of Representatives on H.R. 2 to the Committee on Education and the Workforce. 145 Cong. Rec. H8627-03 (1999).

3. Public Law No. 105-277 and H.R. 2614, the Reading Excellence Act of 1997

On October 21, 1998, President Clinton signed into law Pub. L. No. 105-277, 112 Stat. 2681 (1998), which includes the Reading Excellence Act. 144 Cong. Rec. D 1202-04 (1998). The Reading Excellence Act is intended to improve reading skills through a variety of activities, especially by improved teaching methods based on research and phonics. H.R. Rep. No. 105-836 (1998).

The Reading Excellence Act was introduced into the House of Representatives on October 6, 1997, by Representative Goodling (R-PA), as H.R. 2614, 105th Cong. (1997). 143 Cong. Rec. H8437-03 (1997). The original version of the Reading Excellence Act would have eliminated many of the Indian Education Act programs, including the authorization for tribal education department funding through the Department of Education currently codified at 20 U.S.C. § 7835. H.R. Rep. No. 105-348 (1997).

The original version of H.R. 2614 passed the House on November 8, 1997 and the Senate on April 23, 1998 as an amendment to H.R. 2646, 105th Cong. (1997), the A+ Education Savings Account Act; 143 Cong. Rec. H10386-05 (1997); 143 Cong. Rec. S12290-01 (1997); 144 Cong. Rec. D394-02 (1998). This version of H.R. 2614 / H.R. 2646 was vetoed by President Clinton on July 21, 1998. 144 Cong. Rec. H6052-01 (1998); 144 Cong. Rec. D803-01 (1998).

Meanwhile, on October 6, 1998, the Senate passed H.R. 2614 as amended. 144 Cong. Rec. D1104-02 (1998); 144 Cong. Rec. H9725-06 (1998); 144 Cong. Rec. S11533-03 (1998). This version of H.R. 2614 did not propose to eliminate the Indian Education Act programs, including the authorization for tribal education department funding through the Department of Education currently codified at 20 U.S.C. § 7835. S. Rep. No. 105-208 (1998). This version of H.R. 2614 passed the House of Representatives as part of H.R. 4328, 105th Cong. (1998), a bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1999 and for other purposes. H.R. Rep. No. 105-836 (1998).

4. The Department of the Interior and Related Agencies Appropriations Bill, 1996

One reason that Congress has not appropriated funding for tribal education departments is that the President does not ask for such funding in his annual budget request to Congress. And, the President does not include such requests in large part because the Department of

the Interior and the Department of Education do not ask the President to include the requests.

Indeed, only once has any federal agency ever specifically requested tribal education department funding. In 1995, the BIA asked the President to request \$500,000 for tribal education department funding through the Department of the Interior authorization currently codified at 25 U.S.C. § 2024. Testimony of the NIEA before the Senate Committee on Indian Affairs on President Clinton's FY 1996 Budget Request, 1995 WL 64803 (F.D.C.H. Feb. 16, 1995).

When Congress reviewed H.R. 1977, 104th Cong. (1995), the President's proposed Department of the Interior fiscal year 1996 appropriations budget bill, the House of Representatives, but not the Senate, was in favor of tribal education department funding. S. Rep. No. 104-125 (1995); H.R. Rep. No. 104-173 (1995).

The House Committee on Appropriations recommended "\$500,000 for tribal departments of education." H.R. Rep. No. 104-173 (1995). The Senate Committee on Appropriations, however, "provided no funding for tribal departments of education" due to "funding constraints [which] prohibit initiating funding for an activity that is expected to have significant out-year costs." S. Rep. No. 104-125 (1995).

5. Testimonies by Indian Organizations before Congressional Committees

Since at least 1989, organizations such as NARF and NIEA have testified regularly before congressional substantive and appropriations committees in support of funding for tribal education departments. The following are excerpts from the testimonies of Indian organizations in 1999.

- a. Statement of Faye BlueEyes, Director of Facilities, Shiprock Alternative Schools, before the House of Representatives Subcommittee on Early Childhood, Youth and Families on Education Programs for Native Americans, 1999 WL 519009 (F.D.C.H. July 20, 1999):

It is vital that this Committee support the development of tribal departments of education, both through the authorizing legislation and through direct efforts to provide sufficient funding to these entities. This is particularly important on the Navajo Reservation, where 65 of the BIA-funded schools are located. As you know, several schools at Navajo and on other reservations convert from BIA operation to tribal operation each year. A vibrant, well-funded tribal department of education can play a critical role in training new tribal school board members to take over direct operations, help them recruit highly qualified administrative staff, develop good financial management systems, and provide trouble-shooting assistance and on-going monitoring, particularly over the first few

years of local operation. This role must be performed by the tribe involved, as the tribe is most heavily invested in the success of the exercise of its self-determination rights.

In addition, as a “veteran” of a tribally operated school, I know that a school board and its administrative staff must work continuously to assure that we comply with all federal standards, including audit standards, to be accountable to the federal and tribal governments and to the parents of our students, and to generally do things right. Achieving this goal requires diligent and knowledgeable board members and administrators; but it is not fully achieved overnight. Hands-on attention from a tribal department of education can go a long way in making local school operations successful.

- b. Statement of the NIEA before the Senate Committee on Health, Education, Labor and Pensions on the Reauthorization of the Elementary and Secondary Education Act, 1999 WL 382018 (F.D.C.H. June 10, 1999):

The Tribal Departments of Education authority has been in existence for four years and has never been recommended for funding within the Department of Education budget hierarchy. Since its authorization NIEA has advocated for at least \$3 million to assist tribes in developing their education department infrastructures. As tribes move toward more local control over education programs, they will need the ability to manage and design programs that align with tribal codes and state / national assessment criteria. The Bureau of Indian Affairs has a similar authority, but it has never been funded, except for one \$ 100,000 grant to the Mississippi Choctaw Indian Nation several years ago. Although no funding is provided in the President’s FY2000 BIA education budget, NIEA has recommended \$3 million for tribal departments of education. We believe that sufficient funding should be provided to assist tribes in planning and developing their own centralized tribal administrative entities to accomplish their goals in accordance with school reform and accreditation needs. Whether this is accomplished through the Department of Education or Interior is irrelevant given the fact that both agencies would need to be involved to ensure accountability. This would be appropriate given the recent trend to convert more schools from BIA to Tribal control. Funding for tribal education departments has been endorsed by NIEA’s membership as well as by the National Congress of American Indians (NCAI) which represents over 250 tribes.

NIEA's testimony continued, with respect to the Executive Order No. 13,096, 63 Fed. Reg. 42681 (1998), that funding for tribal education departments is critical to implementation of the Executive Order.

By creating a more stable tribal structure, the tribes could more readily collaborate with the SEAs [State Educational Agencies] and the LEAs [Local Educational Agencies] as directed in the E[xecutive] O[rder]. By all accounts, the Department of Education has historically opposed this provision arguing that this should be the responsibility of the Bureau of Indian Affairs. NIEA believes both agencies need a hand in ensuring Tribal Departments of Education succeed. One for the role of tribal governance and one for the needs of the Indian learner. What better example could there be of federal agency coordination than that envisioned by Tribal Departments of Education?

Statement of the NIEA before the Senate Health, Education, Labor and Pensions Committee on the Reauthorization of the Elementary and Secondary Education Act, 1999 WL 382018 (F.D.C.H. June 10, 1999); *see also* Statement of the NIEA before the House of Representatives Subcommittee on Early Childhood, Youth and Families on Education Programs for Native Americans, 1999 WL 519009 (F.D.C.H. July 20, 1999).

- c. Statement of NARF on behalf of the Rosebud Sioux Tribe, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, the Northern Cheyenne Tribe, the Three Affiliated Tribes of the Fort Berthold Indian Reservation, and the Jicarilla Apache Tribe before the Senate Committee on Health, Education, Labor and Pensions on the Reauthorization of the Elementary and Secondary Education Act, 1999 WL 382022 (F.D. C.H. June 10, 1999).

The Native American Rights Fund (NARF), the national legal defense organization for American Indian and Alaska Native Tribes, is pleased to submit this statement on the Reauthorization of the Elementary and Secondary Education Act. The statement is limited to our views on a single but very important issue — tribal education departments. We are particularly concerned that tribal education departments have never received federal appropriations. And, Title IX, Section 911 of S. 1180, the proposed Educational Excellence for All Children Act of 1999, seeks to eliminate an appropriation authorization. For over a decade NARF has represented tribes who have worked very hard to improve Indian education by establishing and maintaining tribal education departments. Our experience teaches that the authorization should be retained and that funding for the departments should be provided.

The federal responsibility in Indian education is grounded in the government-to-government relationship between the United States and Indian tribes. This relationship is recognized in the Constitution and in many treaties, federal statutes, administrative orders, and court decisions. A recent manifestation of the relationship is the recognition of the role of tribal governments in improving Indian education. This role is increasingly being carried out by tribal education departments in partnership with schools, educators, and parents.

Since 1988 Congress has recognized tribal education departments. Almost a dozen federal statutes now have provisions on tribal education departments. They acknowledge the contributions of tribal education departments along with those of state education departments in establishing education and accreditation standards, developing and disseminating education research and technology, coordinating and improving education programs, and interacting with non-tribal agencies and schools.

Two separate provisions authorize tribal education department funding. The Improving America's Schools Act of 1994, Pub. L. No. 103-382 (codified at 20 U.S.C. § 7835), establishes authority for the Department of Education to fund tribal education departments. No appropriations ever have been made under this provision, which the Administration now proposes to eliminate. The School Improvement Amendments of 1988, Pub. L. No. 100-297 (codified at 25 U.S.C. § 2024), establish authority for the Bureau of Indian Affairs to fund tribal education departments. No appropriations ever have been made under this provision, either. This is a serious failure on the part of the federal government. At present, about one in six tribes (almost one hundred of the over 550 tribes) has an education department. These departments serve hundreds of thousands of tribal students every day. They administer scholarships, supervise programs, and develop curricula and teacher training. They provide leadership and advocacy for schools, educators, and parents. They foster working cooperative agreements among tribal, federal, and state agencies, schools, and programs.

Most importantly, tribal education departments are successfully addressing core problems in Indian education such as disproportionately high absenteeism and low educational attainment levels. The Carnegie Corporation of New York recently funded the first external evaluation of a tribal education department. The evaluation found that in the last ten years the

drop out rates for tribal secondary students on the Rosebud Sioux Indian Reservation in South Dakota have decreased by thirty per cent, and graduation rates have increased by fifty percent. The evaluation credits the Truancy Intervention Program administered by the Rosebud Sioux Tribal Education Department with this substantial progress. This progress is unprecedented; we know of no federal or state program that shows comparable results.

The Rosebud Sioux Tribe is one of five NARF tribal education department clients. Our other clients — in states from Montana to New Mexico — are similarly focusing on keeping Indian students in school and improving their performance there. Indian education occurs in a complex environment of services provided by tribal, federal, and state governments. The tribal education departments are rapidly rising to the challenge of being in the best overall position to track and report on tribal students, to identify and coordinate resources, and to provide technical assistance and accountability. In short, tribal education departments are effectuating the many good recommendations about how to improve Indian education that have been made over the years but never have been implemented.

Tribal education departments operate primarily with non-federal dollars such as economic development and tax revenues. But not all tribes have such resources, and even those that do could benefit from supplemental federal funding. For years the Rosebud Sioux Tribe has testified that Congress should at least match its average annual appropriation for its education department, which is about \$76,000. The National Indian Education Association and the National Congress of American Indians also consistently have testified in favor of tribal education department appropriations. They know that with federal dollars, tribes could do so much more to meet the educational needs of their students.

In the wake of demonstrated effectiveness, this is a crucial time for tribal education departments. Their fledgling but fruitful efforts should not be hindered. We are aware that the President's Fiscal Year 2000 Budget Request does not ask for tribal education department funding. We nevertheless ask Congress to take the important first step in retaining the ESEA tribal education department funding authorization. We also ask that critical appropriations in the amount of \$3 million be made. Such federal funding would help more tribes improve the educational opportunities and the quality of education for many more tribal students nationwide.

THE NATIVE AMERICAN RIGHTS FUND
INDIAN EDUCATION LEGAL SUPPORT PROJECT
Federal and State Laws regarding Tribal Education Departments
1984-1999

State Law Provisions regarding Tribal Education Departments

To date only one state has legislation specifically mentioning tribal education departments. In 1995, Wisconsin enacted a statutory American Indian Language and Culture Education Program, which is codified at Wis. Stat. Ann. §§ 115-71 to 115-75.

This program encourages school districts with Native American students to establish American Indian language and culture programs as part of the regular education curriculum. Wis. Stat. Ann. § 115.72. Where such programs are established, a parent advisory committee must also be established to advise the school board of the committee's views of the program. *Id.* § 115-735.

Wisconsin law provides that, "If there is a local tribal education authority, the school board shall appoint committee members from recommendations submitted by the authority," and "[t]he committee shall be composed of parents or guardians of American Indian pupils enrolled in the program, teachers, aides and counselors involved in the program and representatives of local tribal educational authorities" Wis. Stat. Ann. §§ 115.735(1) - (2).

Wisconsin law also defines "Tribal educational authority" to include "a tribal department or division of education...." Wis. Stat. Ann. § 115.71(5).