

## Summary for Tribal Consultation

**Subject of consultation:** Passage of the Every Student Succeeds Act (ESSA)

**Overview:** The Every Student Succeeds Act (ESSA), which the President signed into law on December 10, 2015, will build on the progress we have seen over the last seven years in critical ways by:

- Requiring, for the first time in law, that all students be taught to high learning standards aligned with college coursework entrance requirements and state career and technical education standards.
- Continuing to require schools, on a statewide basis, to assess annually students' progress toward these standards, providing vital information to educators, families, and communities.
- Maintaining accountability and interventions where schools are underperforming or have low graduation rates over time, and where particular groups of students are not making progress.
- Investing in expanding high-quality preschool for low-income students.
- Supporting local innovations, including evidence- and place-based innovations developed by local educators and leaders – consistent with our i3 and Promise Neighborhoods programs – and supporting the expansion of high-quality charter and magnet schools serving high-need students.

**Equity for Native Youth:** Over the last seven years, Indian students and tribal communities have made progress in reinvigorating efforts to preserve and restore Native languages and culture; building tribal capacity to influence and control educational decisions for Native students; and raising awareness about school climate issues that are unique to Indian students and communities. The ESSA will support Native students and communities, Indian tribes, and states and districts in continuing that progress through an expanded focus on:

- Tribal sovereignty.
- Consultation and communication between local school districts and tribes, and between states and tribes.
- Revitalization and preservation of Native languages and culture.
- Improving school climate and suicide prevention.

### 1) Scope of Consultation and Background

On December 22, 2015, the U.S. Department of Education (Department) published a [Request For Information](#) and notice of meetings (RFI) in the *Federal Register* (80 FR 79528), seeking advice and recommendations from interested parties involved with the implementation and operation of programs under Title I of the Elementary and Secondary Education Act (ESEA), as amended by the ESSA, concerning topics for which regulations or nonregulatory guidance may be necessary. Those meetings were held on January 11, 2016 in Washington, DC, and on January 19, 2016, in Los Angeles, California. Written comments were due on or before January 21, 2016.

After considering comments in response to the RFI, the Department decided to proceed with negotiated rulemaking on assessments under Title I and the requirement that Title I funds be used to supplement, and not supplant, non-Federal funds. On February 4, 2016, the Department published in the *Federal Register* (81 FR 5969) a notice of its intent to establish the negotiated rulemaking committee. The first negotiated rulemaking session was held on March 21-23, 2016 and the second session will take place from April 6-April 8, 2016. The committee may schedule a third session for April 18-19, 2016, if needed. These sessions, which are being held in Washington, DC, are open to the public.

In addition, pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and the Department's Tribal Consultation Policy, the Department has scheduled tribal consultations for April 24<sup>th</sup>, April 28<sup>th</sup>, May 12<sup>th</sup>, and June 26<sup>th</sup>. At these tribal consultation events, the Department welcomes comments generally on the ESSA, including on the ESEA, as amended by the ESSA, and is particularly interested in receiving comments on the following:

- (1) the new grant program for Native language Immersion schools and projects,
- (2) the report on Native American language medium education, and
- (3) the report on responses to Indian student suicides (see descriptions below).

Additional consultations will occur in the future to allow for the Department to seek input on emerging topics. Please check the following website for upcoming tribal consultation events: <http://www.edtribalconsultations.org/>.

## 2) Potential Tribal Impacts

The ESSA made several changes, including changes to the ESEA, that directly affect Indian students and tribal communities. The law:

- requires States to engage in timely and meaningful consultation with tribes in the development of State plans for Title I grants; and certain school districts with a high percentage of Indian students must engage in timely and meaningful consultation with tribes on certain education grant programs<sup>1</sup>.
- authorizes State-Tribal Education Partnership grants, to increase the capacity of tribal educational agencies;
- requires school districts to coordinate their Title I services with services for Indian students;

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<sup>1</sup> The programs are:

- Part A of Title I;
- Part C of Title I [Migrants];
- Part D of Title I [Neglected or Delinquent];
- Part A of Title II [Supporting Effective Instruction];
- Part A of Title III [ELL];
- Part A of Title IV [Student Support and Academic Enrichment Grants];
- Part B of Title IV [21<sup>st</sup> Century Community Learning Centers];
- Subpart 2 of part B of Title V [Rural and Low-Income School Program]; and
- Title VI [Indian, Native Hawaiian, and Alaska Education].

- authorizes the use of Indian Education formula grants to fund suicide prevention activities;
- authorizes grants focused on developing Native language Immersion schools and projects (see Appendix 1);
- directs the Department to conduct a study to evaluate all levels of education being provided primarily through the medium of Native American languages (see Appendix 2); and
- directs the Department to undertake a study on suicides in Indian country (see Appendix 3).

Information on the changes that the ESSA makes to all of the Department's major education grant programs, including Dear Colleague Letters that the Department has issued on the ESSA, and Frequently Asked Questions on the transition to the ESSA, is available at:

<http://www.ed.gov/essa?src=rn>. The full text of the ESEA, as amended by the ESSA, is available at:

<http://legcounsel.house.gov/Comps/Elementary%20And%20Secondary%20Education%20Act%20Of%201965.pdf>.

### **3) Expected Timeline for Department Action**

As noted above, the next [negotiated rulemaking](#) session on assessments under Title I of the ESEA, as amended by the ESSA, and supplement-not-supplant requirement will be held in Washington, DC on April 6-April 8, 2016. The Department is also considering notice and comment rulemaking for the implementation of other changes to the ESEA made by the ESSA.

### **4) Comments**

Comments on the matters identified above for tribal consultation – i.e., comments generally on the ESEA, as amended by the ESSA, and as well as comments on the new grant program for Native language Immersion schools and projects, the report on Native American language medium education, and the report on responses to Indian student suicides –should be in writing and submitted by either e-mail or regular mail. Comments are due no later than July 26th, 2016.

Please send e-mail comments to:

Please mail comments to:

U.S. Education Department  
Attention: William Mendoza 4W122  
400 Maryland Avenue, SW, 20202

For questions or concerns please contact:

William Mendoza  
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## Appendix 1

### Native Language Immersion Grant

The text of the ESEA, as amended by the ESSA, that authorizes grants for Native Language Immersion schools and projects is:

**‘SEC. 6133. NATIVE AMERICAN AND ALASKA NATIVE LANGUAGE IMMERSION SCHOOLS AND PROGRAMS.**

(a) **PURPOSES.**—The purposes of this section are—

(1) to establish a grant program to support schools that use Native American and Alaska Native languages as the primary language of instruction;

(2) to maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages, as envisioned in the Native American Languages Act (25 U.S.C. 2901 et seq.); and

(3) to support the Nation’s First Peoples’ efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

(b) **PROGRAM AUTHORIZED.**—

(1) **IN GENERAL.**—From funds reserved under section 6152(c), the Secretary shall reserve 20 percent to make grants to eligible entities to develop and maintain, or to improve and expand, programs that support schools, including elementary school and secondary school education sites and streams, using Native American and Alaska Native languages as the primary languages of instruction.

(2) **ELIGIBLE ENTITIES.**—In this subsection, the term ‘eligible entity’ means any of the following entities that has a plan to develop and maintain, or to improve and expand, programs that support the entity’s use of a Native American or Alaska Native language as the primary language of instruction in elementary schools or secondary schools, or both:

(A) An Indian tribe.

(B) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)).

(C) A tribal education agency.

(D) A local educational agency, including a public charter school that is a local educational agency under State law.

(E) A school operated by the Bureau of Indian Education.

(F) An Alaska Native Regional Corporation (as described in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g))).

(G) A private, tribal, or Alaska Native nonprofit organization.

(H) A nontribal for-profit organization.

(c) **APPLICATION.**—

(1) **IN GENERAL.**—An eligible entity that desires to receive a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require, including the following:

(A) The name of the Native American or Alaska Native language to be used for instruction at the school supported by the eligible entity.

(B) The number of students attending such school.

(C) The number of hours of instruction in or through 1 or more Native American or Alaska Native languages being provided to targeted students at such school, if any.

(D) A description of how the eligible entity will—

- (i) use the funds provided to meet the purposes of this section;
- (ii) implement the activities described in subsection (e);
- (iii) ensure the implementation of rigorous academic content; and
- (iv) ensure that students progress toward high-level fluency goals.

(E) Information regarding the school's organizational governance or affiliations, including information about—

- (i) the school governing entity (such as a local educational agency, tribal education agency or department, charter organization, private organization, or other governing entity);
- (ii) the school's accreditation status;
- (iii) any partnerships with institutions of higher education; and
- (iv) any indigenous language schooling and research cooperatives.

(F) An assurance that—

- (i) the school is engaged in meeting State or tribally designated long-term goals for students, as may be required by applicable Federal, State, or tribal law;
- (ii) the school provides assessments of students using the Native American or Alaska Native language of instruction, where possible;
- (iii) the qualifications of all instructional and leadership personnel at such school is sufficient to deliver high-quality education through the Native American or Alaska Native language used in the school; and
- (iv) the school will collect and report to the public data relative to student achievement and, if appropriate, rates of high school graduation, career readiness, and enrollment in postsecondary education or workforce development programs, of students who are enrolled in the school's programs.

(2) LIMITATION.—The Secretary shall not give a priority in awarding grants under this section based on the information described in paragraph (1)(E).

(3) SUBMISSION OF CERTIFICATION.—

(A) IN GENERAL.—An eligible entity that is a public elementary school or secondary school (including a public charter school or a school operated by the Bureau of Indian Education) or a nontribal for-profit or nonprofit organization shall submit, along with the application requirements described in paragraph (1), a certification described in subparagraph (B) indicating that—

- (i) the school or organization has the capacity to provide education primarily through a Native American or an Alaska Native language; and
- (ii) there are sufficient speakers of the target language at the school or available to be hired by the school or organization.

(B) CERTIFICATION.—The certification described in subparagraph (A) shall be from one of the following entities, on whose land the school or program is located, that is an entity served by such school, or that is an entity whose members (as defined by that entity) are served by the school:

- (i) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)).
- (ii) A Federally recognized Indian tribe or tribal organization.
- (iii) An Alaska Native Regional Corporation or an Alaska Native nonprofit organization.

(iv) A Native Hawaiian organization.

(d) AWARDING OF GRANTS.—In awarding grants under this section, the Secretary shall—

- (1) determine the amount of each grant and the duration of each grant, which shall not exceed 3 years; and
- (2) ensure, to the maximum extent feasible, that diversity in languages is represented.

(e) ACTIVITIES AUTHORIZED.—

(1) REQUIRED ACTIVITIES.—An eligible entity that receives a grant under this section shall use such funds to carry out the following activities:

(A) Supporting Native American or Alaska Native language education and development.

(B) Providing professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language and academic goals of the school that will be served by the grant program.

(2) ALLOWABLE ACTIVITIES.—An eligible entity that receives a grant under this section may use such funds to carry out the following activities:

(A) Developing or refining curriculum, including teaching materials and activities, as appropriate.

(B) Creating or refining assessments written in the Native American or Alaska Native language of instruction that measure student proficiency and that are aligned with State or tribal academic standards.

(C) Carrying out other activities that promote the maintenance and revitalization of the Native American or Alaska Native language relevant to the grant program.

(f) REPORT TO SECRETARY.—Each eligible entity that receives a grant under this section shall prepare and submit an annual report to the Secretary, which shall include—

(1) the activities the entity carried out to meet the purposes of this section; and

(2) the number of children served by the program and the number of instructional hours in the Native American or Alaska Native language.

(g) ADMINISTRATIVE COSTS.—Not more than 5 percent of the funds provided to a grantee under this section for any fiscal year may be used for administrative purposes.

## Appendix 2

### Native American Language Medium Report

The text of the ESSA that directs the Department to conduct a study on Native American Language Medium Education is:

#### **SEC. 6005. REPORT ON NATIVE AMERICAN LANGUAGE MEDIUM EDUCATION.**

(a) DEFINITIONS.—In this section:

(1) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965.

(2) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965.

(3) NATIVE AMERICAN; NATIVE AMERICAN LANGUAGE.—The terms “Native American” and “Native American language” have the meanings given such terms in section 103 of the Native American Languages Act of 1990 (25 U.S.C. 2902).

(4) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965.

(b) STUDY.—By not later than 18 months after the date of enactment of this Act, the Secretary of Education, in collaboration with the Secretary of the Interior, shall—

(1) conduct a study to evaluate all levels of education being provided primarily through the medium of Native American languages; and

(2) report on the findings of such study.

(c) CONSULTATION.—In carrying out the study conducted under subsection (b), the Secretary shall consult with—

(1) institutions of higher education that conduct Native American language immersion programs, including teachers of such programs;

(2) State educational agencies and local educational agencies;

(3) Indian tribes and tribal organizations, as such terms are defined by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) that sponsor Native American language immersion schools; and

(4) experts in the fields of Native American or Alaska Native language and Native American language medium education, including scholars who are fluent in Native American languages.

(d) SCOPE OF STUDY.—The study conducted under subsection (b) shall evaluate the components, policies, and practices of successful Native American language immersion schools and programs, including—

(1) the level of expertise in educational pedagogy, Native American language fluency, and experience of the principal, teachers, paraprofessionals, and other educational staff;

(2) how such schools and programs are using Native American languages to provide instruction in reading, language arts, mathematics, science, and, as applicable, other academic subjects;

(3) how such schools and programs assess the academic proficiency of the students, including—

(A) whether the school administers assessments of language arts, mathematics, science, and other academic subjects in the Native American language of instruction;

(B) whether the school administers assessments of language arts, mathematics, science, and other academic subjects in English; and

(C) how the standards measured by the assessments in the Native American language of instruction and in English compare; and

(4) the academic outcomes, graduation rate, and other outcomes of students who have completed the highest grade taught primarily through such schools or programs, including, when available, college attendance rates compared with demographically similar students who did not attend a school in which the language of instruction was a Native American language.

(e) RECOMMENDATIONS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Education, in collaboration with the Secretary of the Interior, shall—

(1) develop a report that includes findings and conclusions regarding the study conducted under subsection (b), including recommendations for such legislative and administrative actions as the Secretary of Education considers to be appropriate;

(2) consult with the entities described in subsection (c) in reviewing such findings and conclusions; and

(3) submit the report described in paragraph (1) to each of the following:

(A) The Committee on Health, Education, Labor, and Pensions of the Senate.

(B) The Committee on Education and the Workforce of the House of Representatives.

(C) The Committee on Indian Affairs of the Senate.

(D) The Subcommittee on Indian, Insular and Alaska Native Affairs of the House of Representatives.

## Appendix 3

### Indian Student Suicides Report

The text of the ESSA that directs the Department to conduct a study on Indian Student Suicides is:

**SEC. 6006. REPORT ON RESPONSES TO INDIAN STUDENT SUICIDES.**

(a) PREPARATION.—

(1) IN GENERAL.—The Secretary of Education, in coordination with the Secretary of the Interior and the Secretary of Health and Human Services, shall prepare a report on efforts to address outbreaks of suicides among elementary school and secondary school students (referred to in this section as “student suicides”) that occurred within 1 year prior to the date of enactment of this Act in Indian country (as defined in section 1151 of title 18, United States Code).

(2) CONTENTS.—The report described in paragraph (1) shall include information on—

(A) the Federal response to the occurrence of high numbers of student suicides in Indian country (as so defined);

(B) a list of Federal resources available to prevent and respond to outbreaks of student suicides, including the availability and use of tele-behavioral health care;

(C) any barriers to timely implementation of programs or interagency collaboration regarding student suicides;

(D) interagency collaboration efforts to streamline access to programs regarding student suicides, including information on how the Department of Education, the Department of the Interior, and the Department of Health and Human Services work together on administration of such programs;

(E) recommendations to improve or consolidate resources or programs described in subparagraph (B) or (D); and

(F) feedback from Indian tribes to the Federal response described in subparagraph (A).

(b) SUBMISSION.—Not later than 270 days after the date of enactment of this Act, the Secretary of Education shall submit the report described in subsection (a) to the appropriate committees of Congress.