



**U.S. Department of Education Tribal Consultation on STEP**  
Washington, DC  
January 29, 2014 and February 5, 2014

**Comments of the Tribal Education Departments National Assembly**

**Introduction**

The Tribal Education Departments National Assembly ("TEDNA") is a non-profit membership organization for the Education Departments of American Indian and Alaska Native Tribes across the country. TEDNA was instrumental in developing the State Tribal Education Partnership ("STEP") Program in coordination with the Department of Education, the National Indian Education Association, and the National Congress of American Indians. Of course, the STEP Program could not have come to fruition without the perseverance of our Tribal Education Departments and Agencies ("TEAs") across the nation, and specifically those that were awarded the very first STEP grant.

These comments are submitted in response to the U.S. Department of Education Tribal Webinar and Consultation on the STEP program that was held on January 29 and February 5 of 2014. These comments provide specific responses to those consultation sessions, as well as general comments with regard to the STEP program and Indian education.

**Importance of TEAs**

American Indian and Alaska Native ("AI/AN") education, while improving, remains in dire straits. The national dropout rate of AI/AN students is double that of their non-Indian peers. In some states the high school dropout rate of AI/AN students is over 50%. AI/AN students drop out of high school at a higher rate and score lower on achievement tests than any other student group. AI/AN 8th grade students are 18% more likely to read or perform in mathematics at a "below basic" level than their non-Indian peers. AI/AN students also have the highest rates of absenteeism, suspension, and expulsion. TEAs are in a unique position to change these numbers.

If provided further resources, TEAs could implement and strengthen early education initiatives, support more work in the area of tribal-state education cooperative agreements, and increase their role



in schools serving AI/AN students. Further, additional assistance to TEAs could help them become more self-sufficient by providing them the means to develop or amend their education codes. For example, a tribal education code could be developed or amended that incorporates a tax on fuel, sales, or licensing that would be earmarked for education purposes. Developing and strengthening TEAs could therefore lessen the burden on federal appropriations in the future. This would further the policy of self-determination in AI/AN education and further the United States' trust responsibility to AI/AN students.

TEAs can also coordinate education programs; develop and enforce tribal education codes, policies, and standards; develop culturally relevant curriculum and assessments; and, provide support services and technical assistance to schools and education programs on Indian reservations. This would include maintaining and sharing electronic data regarding AI/AN students, coordinate federal education programs with schools and states, and institute programs to increase graduation rates and post-secondary school readiness for AI/AN students.

Additional funding to support TEAs is desperately needed. Currently, most TEAs operate on extremely small budgets provided annually by tribal funds generated from non-federal sources. They may receive limited federal funding for specific contract, grant, or program administration but it is often not enough. Tribal funding, if any, may be earmarked to meet critical immediate needs such as scholarships or student clothing and school supplies. This means that TEAs do not have funds for operational expenses and staff to conduct education research and planning, or to develop tribal education initiatives and materials like truancy and tutoring programs. Further, lack of funding limits TEAs abilities to create a culturally sensitive and sound curriculum or develop culturally based assessments. Funding is not available to support an increased role of AI/AN parents, teachers, and tribal leaders in schools serving AI/AN students. These are the core areas of education that tribes need to impact in order to "change the numbers" and close the reported achievement gaps.



Investment in TEAs is sound federal policy. TEAs have already proven that they are capable of improving AI student outcomes. For example, the Hoopa Valley Tribe TEA of California operates a learning center that works with at risk students. The Hoopa Valley TEA identifies K-12 students at risk, pairs the students with mentors, and develops student-learning plans. Students are tutored in target academic areas and coached in life skills. This program alone has improved student academic performance by two letter grades in core academic areas. The Rosebud Sioux Tribe TEA of South Dakota decreased student dropout rates by 30% by operating tutoring services and afterschool math and reading programs. The Pueblo of Jemez TEA located in New Mexico works closely with the Walatowa Charter High School, a Jemez Pueblo culture-based, early-college, state-chartered, school located on Pueblo land. Its graduation rate is 89.4%, dramatically higher than the state wide Native American average graduation rate of 49%. The Chickasaw Nation of Oklahoma has a science, technology, and math program that serves Chickasaw students. Ninety percent of senior students participating in the program enroll in college. The Chickasaw Nation also has a GED testing center and preparation classes, provides supplemental tutoring services, and has an honor club that recognizes high performing native students. Tribes alone, however, cannot sustain and expand these vital education programs. Federal support is needed to assist these and other tribes across the country to implement similar programs to improve AI/AN student outcomes and help TEAs become self-sufficient.

### STEP Program

#### **Generally**

The Department's fiscal year 2012 appropriation included new funding for the STEP pilot program under the Indian Education Act National Activities Section authority, 20 U.S.C 7451(a)(4). Under the STEP program, the Department awarded competitive grants to five TEAs to increase their role in the education of tribal students, including meeting the unique educational and culturally related academic needs of tribal students and improving their academic achievement. The initial purpose of the STEP program grants were to (a) promote increased collaboration between TEAs and SEAs in the



administration of certain State-administered formula grant programs; and (b) build the capacity of TEAs to conduct certain State-level administrative functions under those programs for schools located on the tribe's reservation. The Department should continue to promote and fund the STEP program. The Department should also encourage the Department of the Interior to adopt a similar program as it is authorized to do, but has never done.

In the future and with the rulemaking process, the Department should expand the purpose of the STEP program to include opportunities for TEAs and Tribes to plan, develop, and build capacity for TEAs to (1) coordinate all education programs operated by the tribe or within the territorial jurisdiction of the tribe; (2) develop or update 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. See 20 U.S.C. § 7455. As discussed above, this would provide additional flexibility to TEAs to work in education and fulfill the unique role that they can fulfill.

### **Functions of TEAs**

At the consultation sessions, the Department had several questions regarding what functions TEAs should take on under the STEP Grants. The Department identified several categories and listed specific functions that TEAs could undertake within each category. The categories were: 1) Native Language and Culture; 2) Student Performance; 3) Teaching and Leading; 4) Supplemental Education Programs; 5) School Climate; 6) Cultural competence; and 7) Federal Program Administration. Initially, the Department should allow TEAs flexibility to pick and choose what functions within each category a particular grantee TEA could perform.

There is such a variety of TEAs across the nation that it is hard to identify and limit the categories of functions any given TEA could perform. For instance, some TEAs are much more



advanced with greater resources to work with, while others have a very small staff with very limited resources. The functions identified are excellent, but the Rules should provide flexibility and not limit the options to these functions that have been identified. A TEA could come to the Department with another idea or function that is not identified here that could work wonderfully. For this reason, flexibility is key.

#### **Coordination and other comments**

We would generally be in favor of changing the STEP program to include the goal of coordination between the TEA, SEA, LEA, public schools, and tribally-controlled schools to facilitate the sharing of information regarding the tribe's students. Sharing of information and data are key to improving student performance and attendance. The type of information that could be shared is enrollment figures, performance figures, attendance figures, etc. that can help the schools and TEAs identify students in need of assistance. This will also allow parents to see comparisons of the schools and provide parents with a more informed choice about what school they wish their student to attend. Schools probably already have this reporting requirement and thus it would not be much more cumbersome, but identifying the Native students is helpful. This goal could be accomplished by consortium applications or single grants to TEAs-SEA-LEA partnerships and should not be limited.

Again, however, the Department should expand the purpose of the STEP program to also include opportunities for TEAs and Tribes to plan, develop, and build capacity for TEAs 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. See 20 U.S.C. § 7455. There are additional functions that TEAs may be able to perform and develop that are not covered here or by the



Department. Also, the STEP program should provide the opportunity for TEAs to be involved with schools that are nearby, but off the reservation and serve Native students. Thus, flexibility for the future is also key in evolving the program as a whole as well.

Finally, a STEP application should not be required to describe the funds a grantee will use in the future to sustain the activities funded by the grant, after the grant's completion. First, as mentioned above, many TEAs function on a shoestring budget already and thus could not guarantee that the SEA, LEA, or Tribe would be able to provide funding in the future. If the purpose of the grant were expanded to allow for the development of an education tax code, perhaps this would be a prudent requirement. SEAs and LEAs, however, may already see this as an encroachment on their budgets and would be hesitant to work with TEAs on this important work if they thought they would be required to fund it in the future (regardless of whether or not they should based on the number of native students they serve).

### **FERPA**

The Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C. § 1232g; 34 CFR Part 99) generally protects the privacy of student education records. FERPA, however, has been read to preclude tribes and TEAs from obtaining student records without parental consent, unlike SEAs or LEAs. Because of FERPA's lack of clarity, many public school districts and states will not allow TEAs access to the protected records and information of their tribal students unless the requisite parental or student consent is obtained in advance. The difficulty of accessing -- or the inability to access -- these records and information on tribal students, most of whom attend public schools nationwide, has hampered the efforts of TEAs to plan and coordinate education programs; to develop education codes; to provide support services and technical assistance to schools; and to work with LEAs and SEAs. Most importantly, FERPA's unclarities and disparities have made it hard for TEAs to make data-based decisions in planning for and addressing the educational progress and needs of tribal students that would help close tribal student achievement gaps.

We have heard from almost every STEP Grantee that they have faced FERPA challenges, or anticipate them. For instance, the Navajo Nation had a data sharing agreement in place with the State of New Mexico, but



that agreement lapsed and they have been having a difficult time obtaining data on their students. Likewise, the Chickasaw Nation indicated that FERPA is one of their big issues as well. The State of Oklahoma indicated they could not provide authority for the Chickasaw Nation to obtain data from LEAs. The Chickasaw Nation is forced to work with LEAs, and the LEAs have been reluctant to provide any data. Thus, the Chickasaw Nation is forced to try and obtain parental consent forms for thousands of students in order to obtain the students data. This has been a real setback in their progress because it delays the services they could be providing to at risk students. If Chickasaw and Navajo had streamlined access to statistics from native students that are at risk, they could provide immediate remedial and other services to those students.

It has become clear that the use of data is central to how many educators evaluate their practices and monitor students' academic progress. *See generally* Hamilton et al., Using Student Achievement Data to Support Instructional Decision Making (2009). Student achievement data, discipline data, and attendance records, etc. are vitally important to evaluating educational practices, success, and student improvement. *Id.* As one scholar has noted, "better access to data offers an unprecedented opportunity for educators to become problem solvers; using hard evidence to analyze student performance and craft data-driven school improvement plans. But information is just a tool, and like any tool, it is only as powerful as the use to which it is put. . ." Faircloth, Susan C., & Tippeconnic, III, John W, The Dropout/Graduation Rate Crisis Among American Indian and Alaska Native Students: Failure to Respond to Places the Future of Native Peoples at Risk 8 (2010). Despite this understanding, Tribes and TEAs, and particularly the STEP grantees, face uphill challenges in accessing this data in the first place.

In the long term, the Department should push for FERPA to be clarified by an amendment that includes TEAs as being among the education agencies, authorities, and officials to who protected student records and information can be released without the advance consent of parents or students. Such an amendment to FERPA would be consistent with the TEA provisions authorized and reauthorized by Congress in the ESEA since 1988 and thus would bring FERPA up to date and in accord with the ESEA. Such an amendment would



also help all education agencies, authorities, and officials -- federal, state, local, and tribal – implement the ESEA. We have amendment language that the Department could propose.

In the short term, the Department should issue a determination, perhaps through the rule-making process, that the STEP grantee TEAs are either: 1) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required; or 2) authorized representatives of the Secretary of Education, or State educational authorities pursuant to 20 U.S.C. § 1232g(b). This request, which some STEP grantees have already made, will allow the STEP TEAs to have streamlined access to important data that will assist the program succeed into the future. Additionally, the Department should make available technical assistance, similar to that provided by Privacy Technical Assistance Center within the Department of Education. This can alleviate concerns that LEAs may have and provide assistance to TEAs in the protection of student records.

### Communication

Some of the information regarding consultations and other matters with relation to the STEP Program has been hard to find. Some of the STEP grantees were not even aware that there was a consultation or webinar that was taking place earlier this year. Thus, ensuring that information like this is widely distributed and accessible is important to get the key stakeholders involved. Notices should go out well in advance, more than thirty days, of any consultations or discussions so that appropriate plans can be made. Distributing the notices to TEDNA, NIEA, NCAI and others can facilitate the process of notification so that all key stakeholders are aware and ready to participate.

### Conclusion

Thank you for the Consultation and the opportunity to provide these comments. TEDNA is happy to answer any questions the Department might have or submit further information the Department might need to further the educational progress of the students of our sovereign tribal nations.

