



U.S. Department of Education Proposed Priorities, Requirements, Definitions, and Selection Criteria – STEP Program

December 1, 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’s Proposed Priorities, Requirements, Definitions, and Selection Criteria – State Tribal Education Partnership Program, which was published in 79 Fed. Reg. 64,716 on Friday, October 31, 2014. These comments provide specific responses to those Priorities, Requirements, and Definitions, 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.

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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 educating American Indian/Alaska Native students. This would include maintaining and sharing electronic data regarding AI/AN students, coordinating federal education programs with schools and states, and instituting 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. The STEP Program is a move in the right direction and we thank the Department of Education for making it a priority.

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).

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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.

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 their unique role.

Proposed Priorities, Requirements, Definitions, and Selection Criteria—State Tribal Education Partnership Program, 79 Fed. Reg. 64,716 (proposed Oct. 31, 2014)

Established v. Limited Prior Experience TEAs

At the outset of the proposed priorities, the Department states that it would like to minimize competitive disadvantages that newly created TEAs and TEDs with little experience operating education programs may have compared to established TEAs that have an existing relationship with LEAs or SEAs. Thus, the Department has two proposed priorities: Established TEAs and TEAs with limited prior experience. As stated, this allows newly established TEAs or limited prior experience



TEAs to have a greater opportunity to obtain a grant. One of the overall purposes, of course, being to build TEA capacity.

The Department then goes on to define “established TEA” to mean “a TEA that previously received a STEP grant, or that meets one or more of the following criteria[:]”

- a. Has an existing relationship with an SEA or LEA as evidenced by a written agreement between the TEA and SEA or LEA;
- b. Has an existing tribal education code;
- c. Has administered at least one education program within the past five years; or
- d. Has administered at least one Federal, State, local, or private grant within the past five years.

A TEA with limited prior experience is a TEA that has not received a STEP grant and does not meet the definition of established TEA. TEDNA is concerned that the overall objective of building TEA capacity may be limited by defining “established TEA” as broadly as proposed. As defined, many very small TEAs will fit into the “established TEA” definition even though they may only have one or two staff members and really do need assistance to build their capacity. Thus, the Department should consider narrowing the definition of “established TEA” to include those larger TEAs that have a large staff and resources. Keeping the definition as is will limit the ability of many of the smaller TEAs to receive a grant because they are not newly created and have some experience operating an education program. Yet these small TEAs are desperately in need of capacity building and thus should be considered along with their limited experience peers.

One approach could be to define established TEAs as those TEAs with a certain level of staff members, that have an agreement with the SEA or LEA, and have an existing tribal education code. Merely administering an education program or grant does not necessarily mean that a TEA is “established” or that it does not deserve priority when it has a very small staff and needs to build its capacity. Along those lines, more technical assistance in preparing the grant and implementing the grant would be appreciated by many of the more limited experience TEAs.

Functions to be performed – are SEA-type Functions Required?

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In the proposed requirements section, there appears to be an inconsistency on the functions to be performed by the TEA that needs clarification. Under the *Formula Grant Programs to be included in the STEP Projects* section, it states that Title VII will be included as a program that can be performed by a TEA. Then it states that the grant must “also include at least one State-administered ESEA formula grant program, in keeping with the purpose of the STEP program.” Then, however, under *Functions to be Performed by TEAs* section, it states that TEAs will be given “flexibility to perform either SEA-type functions or LEA-type functions, under the chosen ESEA program, as agreed upon by the parties.” Thus, in one section there is a requirement that SEA administered programs and functions must be included, and then there is another that states TEAs are given flexibility to perform SEA or LEA functions. It needs to be clear whether SEA-type functions are going to be required so that TEAs know what to aim for.

FERPA and Student Data

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, provide support services and technical assistance to schools, and to work with LEAs and SEAs. Most importantly, FERPA's unclarity 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 had lapsed and they had a difficult time obtaining data on their students. Fortunately, the agreement was renewed and Navajo has been able to obtain data. The Chickasaw Nation indicated that FERPA was one of their big issues as well. The State of Oklahoma initially indicated they could not provide authority for the Chickasaw Nation to obtain data from LEAs. The Chickasaw Nation was forced to work with LEAs, and the LEAs had been reluctant to provide any data. This was a real setback in their progress because it delayed services they could have been providing to at risk students. Chickasaw was able to work out the data issue, but it should have been addressed at the front end. If STEP grantees have streamlined access to statistics from native students that are at risk, they can 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 an uphill challenge 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 whom 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 has stated in its requirements section about *Student Data* that there is an exception to FERPA's general consent requirement, which permits LEAs or SEAs to designate a TEA as its authorized representative to audit or evaluate federal or state programs. The Department ignores, however, another exception to FERPA's requirements that is relevant here. Under 20 U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a)(3)(iii), the Department can also designate TEAs as authorized representatives of the Secretary of Education. Thus, the Department should issue a determination that the STEP grantee TEAs are authorized representatives of the Secretary of Education pursuant to 20 U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a)(3)(iii). This request 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.

Timing

We heard stories from SEAs and TEAs that they want and intended to apply for the first round of STEP grants. The timeframe within which to apply, however, did not allow for them to get all of the necessary agreements in place prior to its deadline. A TEA must have an agreement with an SEA, LEA, and potentially the BIE before filing its application. There should be sufficient lead time to allow tribes, states, school districts, and the BIE to go through the necessary processes to agree to be involved in the STEP grant. It is not easy to get all of these entities to agree on such short notice. Notices that the application will be forthcoming should go out well in advance, more than thirty days, so that appropriate plans can be made. Then the actual application notice should provide a longer deadline. 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.

Title VII and Off Reservation Schools

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TEDNA is very supportive of expanding the types of formula grant programs that can be included in the STEP project, including Title VII programs. As part of the federal trust responsibility, Title VII addresses the "unique educational and culturally-related academic needs," including language-related needs, of American Indian students through formula grants to eligible LEAs and tribes from U.S. Department of Education. With that in mind, both LEAs and TEAs are eligible for Title VII grants. See 20 U.S.C. § 7422 (stating that the Secretary can make Title VII grants to LEAs and Tribes). Thus, as these Title VII grants are intended to address Native education needs, it only makes sense that Tribes be permitted to utilize this program in the STEP grant. The STEP grant does nothing to change the Title VII program, but allows a local decision to be made between LEAs and TEAs.

Likewise, TEDNA is supportive of expanding the "eligible school" term to include schools that are located off the reservation. This provides flexibility and maximizes the number of applicants that can participate in this important program. Not all TEAs have a public school located on the reservation, but one may be located just one mile off. Thus, just because a TEA does not have a school on the reservation does not mean they do not qualify for or need this grant just as much as any other TEA.

Conclusion

Thank you for 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.

Should you have further questions, please contact Matthew Campbell at mcampbell@narf.org or at 303-447-8760.