

September 20, 2017

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education 400
Maryland Ave., SW Washington,
D.C. 20202

Re: Secretary's Review of Regulatory Requirements in the Department of Education

Dear Secretary DeVos,

Thank you for the opportunity to provide feedback on the Department of Education's (the Department's) review of regulatory requirements related to Native education. As President and CEO of Cook Inlet Tribal Council (CITC), an Alaska Native tribal organization which serves as the primary education and workforce development center for Native people in Anchorage, Alaska, I am privileged to offer the following comments with regard to the Department of Education's proposed revisions to 1) the Alaska Native Education Program and 2) the Tribal Vocational Rehabilitation Program, based on the community experience and needs outline below. CITC has been designated its tribal authority through Cook Inlet Region Inc., organized through the Alaska Native Claims Settlement Act and recognized under Section 4(b) of the Indian Self-Determination and Education Assistance Act (PL 93-638, 25 U.S.C. 450b). CITC builds human capacity by partnering with individual Alaska Native people to establish and achieve both educational and employment goals that result in lasting, positive change for our people, their families, and their communities.

Summary of recommendations:

- 1) We ask that any changes, additions or subtractions to the Department's regulations regarding Indian and Alaska Native education make Native students and tribal consultation top priorities. We agree with the comments previously submitted by the National Indian Education Association in June 2017. In addition, CITC emphasizes that the purpose of the changes to ANEP in the Every Student Succeeds Act was to ensure that Alaska Native tribes and tribal organizations were the primary recipients of ANEP program funds. While regulations may not be necessary to implement these provisions, **CITC urges the Department to issue priorities, whether absolute, permitted or invitational, only from the activities listed in the authorizing legislation, with particular attention to early childhood learning, family and parental involvement and supplemental school activities and services designed to close the achievement gap.**
- 2) We ask that the Department change the regulations so that Tribal Vocational Rehabilitation consumers can receive direct dollars through the program, as further outlined below. Several

- 3) factors contribute to the need for this change, including programs' limited access to vendors in remote and insular communities, cultural requirements for traditional healing purposes and others as further outlined below.

Background:

Both directly and indirectly, CITC's programs serve the Cook Inlet Region with an Alaska Native/American Indian population of more than 42,000, or roughly 40% of the total Native American population in Alaska. In Anchorage alone, the Native population is almost 30,000. Directly or indirectly, CITC's programs have statewide impact.

One of the greatest challenges facing Alaska Native people is the disparity in educational achievement. Alaska Native education is in a deepening crisis. Alaska Native students have historically been subject to significant risk factors including under-performance and under-engagement in school, low post-scholastic employment and income, over-representation in the justice system, and increased rates of alcohol and drug use, as well as suicide. Alaska Native educational achievement continues to fall far below national norms, as reflected in the fact that performance on standardized tests is low and Alaska Native students are twice as likely to drop out as their non-Native peers—this, in a state with a school dropout rate that is already one of the highest in the nation.

CITC has been integrally involved with working to improve Alaska Native student performance for over fifteen years, through in and out of school programs, summer and school break camps, and cultural activities. Our programs focus on increasing literacy and math skills as well as offering supplemental programs in high-level mathematics and science classes, health, and wellness and have demonstrated success. For instance, Alaska Native students completing six or more semesters of CITC classes at Bartlett or West high school experienced significantly higher graduation rates in 2016: 94% of CITC-enrolled students graduated, compared to only 42% of Alaska Native students at Bartlett and West who did not participate in CITC's classes.

CITC also reaches additional students through its physical education classes, after-school programs (techno-culture camps and employment/supplemental education programs) and other cultural activities such as the Native Youth Olympics and Native dancing. Alaska Native students from all parts of Anchorage who participated in our middle- and high-school afterschool program achieved an 84.8% on-track-for-graduation rate, far exceeding the overall Alaska Native student graduation rate of 53.7%.

Finally, we also support a data-driven community collaboration focused on systems change to improve outcomes for Alaska Native children and youth in Anchorage. Our bold vision is designed to improve overall academic achievement while decreasing the Native student dropout rates. Accountability by demonstrating outcomes and constantly retooling programs to achieve our goals are key components for CITC's strategy. More recently, CITC has focused on early learning and parental involvement as key components to driving change in the academic achievement across the spectrum.

CITC is one of eleven regional tribal organizations in Alaska providing Tribal Vocational Rehabilitation services to Alaska Native and American Indian people. Through our program, which is integrated into our Employment and Training program, we offer holistic services that connect the people we serve to meaningful and self-sustaining work.

1. **The Department's Regulations Regarding Indian And Alaska Native Education**

Regulations Regarding the Department and Native Education

Overall, we support the Title 34 regulations. Based on our experience working with the Department and with the regulatory frameworks we have advocated on since our founding and on a thorough review of Title 34 of the Code of Federal Regulations, CITC does not believe that Native programs that are related to the Department of Education regulations are overregulated, with one exception. The sections below identify this exception as well as three regulations we particularly support and our suggested revisions and additions for two.

Regulations That We Recommend Eliminating

CITC recommends eliminating one regulation as duplicative and unnecessary:

1. Eliminate 34 CFR Section 263.4: What Costs May a Professional Development Program Include?

CITC recommends eliminating the limits on the eligible costs for Professional Development Programs in the Indian Education Discretionary Grants Program. Section 6122 of ESSA provides flexibility for tribes and other eligible entities to promote the education and professional development of Indian educators. The regulations limit such activities to scholarship and career placement programs for Indian students. Eliminating Section 263.4 will allow for more flexibility in awarding funding as long as proposals meet the purposes identified in the statute: Indian teacher development, training, professional development, and retention.

Regulations CITC Supports as Critical for Native Student Success

Title 34 has three regulations that we see as particularly important:

1. CITC strongly supports regulations related to the collection of data on Native students in 34 CFR Section 100.6, 34 CFR Section 106.61, and 35 CFR Section 100.71.

Collection of data with respect to Native students is absolutely essential to serving American Indian, Alaska Native, and Native Hawaiian students and the regulations that enable the Department to collect data on Native students must continue. The regulations are consistent with the most widely agreed upon conclusion from educational efforts over the last twenty years: accessible data on students is essential to improving education for groups of students who have historically not been served well. CITC strongly supports maintaining the Civil Rights Data Collection (CRDC) as a whole and the collection of data on Native students under the regulations. We stand with the Leadership Conference on Civil and Human Rights with respect to CRDC data.

2. 34 CFR Section 263.5: Preserve Priority for Indian Tribes, Indian Organizations, and Indian Institutions of Higher Education.

CITC supports the competitive priority provided to Indian tribes, Indian organizations, and Indian Institutions of Higher Education that apply for Professional Development Grants within Indian Education Discretionary Grants Programs in Section 263.5 of Title 34 of the Code of Federal Regulations. The priority recognizes the trust relationship that the United States shares with tribal governments and the critical role of tribal communities in educating the next generation of Native leaders. As the Department reviews and streamlines regulations, CITC believes it is important to preserve Native leadership with respect to the Discretionary Grant Program for Native Professional Development. This Regulation allows for that priority, consistent with CITC's experience.

3. 34 CFR 222: Impact Aid.

CITC supports the equalization regulations with respect to Impact Aid that protect Impact Aid as a replacement for schools that are unable to collect property taxes for the schools on their land. Specifically, CITC is concerned that states not include Impact Aid funding in calculations of eligibility or when determining the amount of funding schools can receive. With respect to equalization of state funding, CITC stands with the National Association of Federally Impacted Schools and the National Indian Impacted Schools Association and their comments.

Regulations that we Recommend Revising

CITC recommends revising two sets of regulation to better serve Native students:

1. 34 CFR Section 200.29: Consolidation of Funds in a Schoolwide Program.

CITC recommends that the Department revise the Title I regulations in 200.29 (c) (2) to clarify that Title VI parent advisory committees have full discretion not to allow consolidation of Title VI funding with Title I funding. Title VI is intended to benefit Native students. It is not duplicative with Title I and should remain distinct. We recommend that the regulations be revised to include the underlined words:

(2) *Indian education.* The school may consolidate funds received under subpart 1 of part A of Title VII (Title VI) of the ESEA if and only if the parent committee established by the LEA under section 7114(c)(4) of the ESEA approves the inclusion of these funds.

Adding the underlined language will clarify to parent committees that they do not have to approve the use of Title VI funding for schoolwide programs if they are not confident that Native students will benefit. This signal is important as school officials have been known to pressure parent committees into signing against their judgment.

2. 34 CFR Sections 222.17: Include Tribes in Each Step of Process to Withhold Funds.

CITC recommends that the Department notify tribes in each step of the process to withhold Impact Aid funds from LEAs that fail to fulfill their duties as prescribed in Section 7004 of

ESSA. Specifically, under Section 222.17(d)(2), tribes are not notified when an LEA's request for a hearing on withholding funds is denied due to problems with the LEA's Indian Policies and Procedures (IPP). As a critical source of funding for Native students on Indian lands, the decision to withhold Impact Aid funding has a significant impact on Native students and their communities. Tribes should be notified even when an LEA's request for hearing is denied.

Add Regulations on Consultation Consistent with Local Control of Education

CITC's history and commitment to Native education compels us to identify the one other subject where additional regulations are appropriate: tribal consultation. Tribal consultation at both the state and local levels are critical components of the ESSA. At CITC, we see consultation as its own subject, fully distinct from the Accountability Regulations that your letter asked us not to consider in 34 C.F.R. 200.12-200.79. Tribal consultation is a distinct process from stakeholder consultation, and it is consistent with tribal sovereignty and the Federal Trust responsibility for Native students. Based on this history, the Department should provide simple regulations that clarify simple, fair steps for consultation under ESSA.¹

2. The Department's interpretation about direct pay to consumers of TVRs

ED officials have interpreted OMB/EDGAR cost principles and the ability to provide direct pay to consumers as follows:

Section 200.403, Factors affecting allowability of costs, states that "Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards..." Section 200.420, Considerations for selected items of cost, also states that "Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable, rather determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in section 200.402, Composition of costs through section 200.411, Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in section 200.403, Factors affecting allowability of costs must be applied in determining allowability."

Direct payment to consumers is not a form of allowance or stipend for vocational rehabilitation services; rather, the services are for transportation, maintenance, Native Healing, and self-employment, which are allowable services as outlined in regulations under approved Individualized Plans for Employment ("IPE"). Direct payments to consumers are a last resort option for programs and are not just arbitrarily made to consumers and definitely not to individuals who are not eligible for vocational rehabilitation services.

The current regulations are silent with regard to a CITC's authority to provide "Direct Pay to Consumers;" however, it has long been the best practice of the majority of TVR programs to provide these types of payments to American Indian/Alaska Native consumers when other such procurement methods were not readily available. The Department staff has verbally communicated with TVR

programs within the last year that they cannot under any circumstance provide direct payment to consumers; however, that interpretation has not been provided to TVR programs in any formal written communication from the Department. This verbal communication is not consistent with the Department's practice of communicating information with other funded programs—Technical Assistance Memorandum or a Memorandum of Information is typically how the Department communicates with TVR programs.

Direct payments are subject to same threshold of all spending of federal funds and are required to be administered within the governing laws, regulations, programmatic policies, and internal tribal fiscal controls to ensure compliance with federal grant requirements. Additionally, best practice among TVR programs is to ensure compliance via regular case reviews as well as internal and external evaluations. CITC is no exception.

- 1) Direct payment allows the American Indian/Alaska Native programs to work closely with the consumer participating in their IPE Plan of Services and may be the only procurement option to ensure a consumer is able to implement the plan for employment
- 2) Direct payment to consumers for Native Healing Services is important and necessary. The denial impedes on the way of life and tradition of tribal practices for Native Healing Services. For instance, when accessing traditional healing services, it is often culturally inappropriate to pay the Medicine Man or Healer directly as a vendor or the cultural practice requires the payment to come from the consumer accessing that service.
- 3) Direct payment provides comparable services to American Indian/Alaska Native consumers as compared to State vocational rehabilitation clients (indeed Tribes are required to provide completely comparable services as mandated by the Act).
- 4) Direct payment expedites services to American Indian/Alaska Native consumers when other vendor options are not readily available and ensures consumers receiving services under an IPE are able to timely and effectively make progress towards employment goals—the cornerstone of vocational rehabilitation.
- 5) Direct payment permits CITC counselors to address the isolation, lack of transportation services and resources, and remote services issues for remote communities. Although, CITC services Alaska Natives within Anchorage, many of these consumers are from remote villages off the road system and have a desire to return to their villages.

While the 'statute does not authorize direct client payments' as stated by the Department it also does not prohibit direct client payments either, particularly in relation to providing culturally appropriate and culturally sensitive services to American Indian/Alaska Native consumers.


Conclusion

The needs of our Native community grow every day due to the current economy and the persistent disparity in educational achievement. On behalf of Cook Inlet Tribal Council and the community we serve, I urge the Department to ensure programming in the hands of the tribes, tribal organizations and

tribal institutions of higher learning. For example, continuing the ability to leverage funding on innovative demonstration projects, such as the CITC Partners for Success, is essential to sustaining success at the local, state and national level. We know what needs to be done, and we have proven strategies that require your support. CITC asks for the partnership and resolve of the Department of Education, to work with us to close the persistent achievement gap for Alaska Native students, and allow our young people – our future generation of adults – to fulfill their unlimited potential and for our vulnerable adults to achieve self-sufficiency.

Thank you for your consideration of our issues. I look forward to working with you in the future.

Sincerely,



Gloria O'Neill
President and CEO

¹ Your letter asking for comment on regulations applicable to Native students mentions that 34 C.F.R. Section 200.12-200.79 has no force and effect. We acknowledge that the Accountability Regulations include references to consultation, but think Section 8538 of ESSA and state tribal consultation are distinct subjects that are not “substantially similar” under the Congressional Review Act.