

**THE NATIVE AMERICAN RIGHTS FUND**

**INDIAN EDUCATION LEGAL SUPPORT PROJECT**

*“Tribalizing Indian Education”*

**Major Federal Programs for American Indian, Alaska Native,  
and Native Hawaiian Education: What are They  
and How do they Involve Tribes?**

**Part II: Programs under the No Child Left Behind Act of 2001,  
Titles VII (Indian Education Act); VIII (Impact Aid);  
and, X (Bureau of Indian Affairs)**

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*June 2004*

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## INDIAN EDUCATION LEGAL SUPPORT PROJECT

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#### Part II: Programs under the No Child Left Behind Act of 2001, Titles VII (Indian Education Act); VIII (Impact Aid); and, X (Bureau of Indian Affairs)

### INTRODUCTION

These materials are a review of the major federal education programs for American Indians, Alaska Natives, and Native Hawaiians as they are contained in the No Child Left Behind (NCLB) Act of 2001, Public Law No. 107-110. The programs are reviewed in terms of their objectives, funding, intended beneficiaries, applicant eligibility, application procedure, and reporting requirements. *They are also reviewed in terms of whether, how, and “how well” they involve American Indian and Alaska Native tribes, American Indian and Alaska Native parents, and other Native Americans.*

Part II of these materials reviews the major federal programs under NCLB Title VII (the Indian Education Act), Title VIII (Impact Aid), and Title X (Bureau of Indian Affairs). Part I of these materials reviews the major federal programs under NCLB Title I (Improving the Academic Achievement of the Disadvantaged) and Title III (Language Instruction for Limited English Proficient and Immigrant Students).

These 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 eight sets of materials under this project dated October 1993, October 1994, October 1997, October 1998, October 1999, October 2000, September 2003, and November 2003. 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 (NARF) Indian Education Legal Support Project, *Tribalizing Indian Education*,” is supported by a grant from the W.K. Kellogg Foundation. Special thanks for their research assistance on this publication is extended to the National Indian Law Library and NARF Legal Assistant Lisa Yellow Eagle.

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### Part II: Programs under the No Child Left Behind Act of 2001, Titles VII (Indian Education Act); VIII (Impact Aid); and, X (Bureau of Indian Affairs)

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**Section 4:**

**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 consistently has been 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. Since 1987, 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 that has been funded primarily 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 govern 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 governance 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 governance 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 who are their most precious resource and their future. 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 governance of Indian education is needed, and more direct governance 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 governance of education is a fact of life in a small number of tribes and more tribal communities want to assume this role. But tribes have been denied this opportunity and responsibility and have been left "out of the loop" in terms of decision-making and accountability. For Indian education to succeed, federal and state governments must allow tribes the opportunity to regain governance of the education of tribal students, thereby shaping their children's future and their own future as tribes. NARF intends to ensure that tribes gain the legal governance over education that they deserve as sovereigns and that they must have for Indian education success.



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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 assume more governance of education, including governmental responsibility 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 governance, ensure access to resources, and enhance other improvements in Indian education.





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**A. Programs under Title VII (Indian Education Act) of the No Child Left Behind Act of 2001**

**1. Formula Grants to Local Education Agencies**  
**a. Authorizing legislation**

This program was originally authorized by the Act of June 23, 1972, Public Law No. 92-318, 86 Stat. 235 (1972). The original program recognized the special educational needs of Indian students, and provided federal financial assistance in the form of formula grants to public school districts and Bureau of Indian Affairs (BIA) funded schools to develop and carry out programs to meet these needs.

In 1978, Congress replaced the phrase “special educational needs of Indian students,” with the phrase “special educational and culturally related academic needs of Indian students.” Act of November 1, 1978, Public Law No. 95-561, 92 Stat. 2143 (1978).

In the Improving America’s Schools Act of 1994, Public Law No. 103-382, 108 Stat. 3518 (1994), Congress clarified that, in certain instances, tribes may apply for these program grants where public school districts do not apply for them.

In 2001, in the No Child Left Behind Act, Public Law No. 107-110, 115 Stat. 1907 (2001), the statutory policy provisions for this program were amended to state that it is the policy of the United States to fulfill the federal government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children, and the federal government will continue to work with the public school districts, Indian tribes and organizations, post-secondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.

**b. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. §§ 7401 - 7546.

There are no regulations specific to this program. The general administrative regulations of the U.S. Department of Education are currently codified at 34 C.F.R. Parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**c. Objective(s)**

The primary objective of this program is to provide federal financial assistance to support public school districts, BIA funded schools, and, in some instances, tribes, in their efforts to meet the unique educational and culturally related academic needs of American Indian and Alaska Native students. 20 U.S.C. § 7402(a).

Another objective of this program is to support the efforts of public school districts, BIA funded schools, and tribes to reform elementary and secondary school programs that serve Indian students so that Indian students receive the same challenging State academic content that all other students receive, and can meet the same challenging State student academic achievement standards as all other students are expected to meet. 20 U.S.C. §§ 7402(a) and 7421.

**d. Funding**

**i. type**

Funding under this program is by statutory formula grant. 20 U.S.C. § 7423.

**ii. uses and restrictions**

Funds under this program must be used for the establishment, maintenance, and operation of supplementary comprehensive programs that are specifically designed to meet the needs of Indian students, including language and culture needs, and to assist Indian students in meeting state content and student academic performance standards. 20 U.S.C. §§ 7424(b) and 7425.

Programs and projects must be designed in response to a locally conducted needs assessment and with the full cooperation and involvement of an elected Indian parent committee. 20 U.S.C. § 7424(c)

Programs, projects, and activities may include culturally related activities, early childhood and family programs for school readiness, enrichment programs that directly support the attainment of state academic content and achievement standards, career preparation activities, substance abuse prevention activities, culturally responsive teaching activities, and tribal curriculum. 20 U.S.C. § 7425(b).

Not more than five per cent (5%) of the funds provided by grants under this program may be used for administrative purposes. 20 U.S.C. § 7425(d).

**iii. eligibility for consolidation / reprogramming**

Entities receiving funds under this program may submit a plan to the applicable U.S. Secretary of Education or the U.S. Secretary of the Interior for the integration of education and related services provided to Indian students. 20 U.S.C. § 7426(a). The Secretaries may authorize entities with acceptable plans to consolidate or integrate their federal Indian education formula grant funds into single, coordinated, comprehensive programs to reduce administrative costs and functions. *Id.* at § 7426. No funds to entities shall be reduced as a result of consolidation or integration. *Id.* at § 7426(j).

**iv. current level**

In Fiscal Year 2004, Congress funded this program at about \$ 96 million. 69 Fed. Reg. 18,362 (Apr. 7, 2004).

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are the eligible Indian children who are enrolled in eligible public school districts and BIA funded schools. 20 U.S.C. §§ 7401, 7402, and 7421.

Other intended beneficiaries of this program are the eligible public school districts, BIA funded schools, and tribes that administer this program. 20 U.S.C. § 7401, 7402, and 7421.

**f. Applicant eligibility**

Funding under this program is available to eligible public school districts and BIA funded schools, and in certain instances, to tribes. 20 U.S.C. § 7422 and 7423(d).

**g. Application procedure**

To be considered for funding under this program, eligible applicants must timely submit their applications to the U.S. Department of Education. 20 U.S.C. § 7424.

Public school district applicants must submit their applications to their states for comments before submitting them to the U.S. Department of Education. 20 U.S.C. § 7429.

**h. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Since at least 1994, tribes may apply for funding under this program where they represent at least fifty per cent (50 %) of the eligible Indian children served by a public school district or BIA funded school that does not establish an elected parent committee under this program. 20 U.S.C. § 7422(c).

Indian parents must be openly consulted and have a full opportunity to understand and offer recommendations on this program. 20 U.S.C. § 7424(c)(3)(C).

Indian parent committees must participate in the development of the program, approve of the program in writing, have input into the hiring of personnel for the program, and be consulted in the operation and evaluation of the program. 20 U.S.C. § 7424(c)(4). Indian parent committees also must approve any consolidations or integrations of the program. 20 U.S.C. § 7426(d)(9)

**i. Reporting requirements**

The U.S. Secretary of Education has discretion to require reports for funds under this program. 20 U.S.C. § 7424(c)(2).

Where entities consolidate or integrate their funds under this program, there are special statutory reporting requirements for the entities, and for the U.S. Secretary of Education. 20 U.S.C. §§ 7426(i) and 7426(o).

**j. References for more information**

**i. agencies**

This program is administered by the Office of Indian Education, U.S. Department of Education, 400 Maryland Ave., SW, Room 3W11, Washington, DC , 20202-6335, (202) 260-3774.

**ii. organizations**

National Advisory Council on Indian Education, c/o Office of Indian Education, U.S. Department of Education, 400 Maryland Ave., SW, Room 3W11, Washington, DC , 20202-6335, (202) 260-3774.

National Indian Education Association, 700 N. Fairfax St., Ste. 210, Alexandria, VA 22314, (703) 838-2870, [niea@niea.org](mailto:niea@niea.org)

**2. Special Programs**

**a. Improvement of Educational Opportunities for Indian Children**

**i. Authorizing legislation**

This program was originally authorized by the Act of June 23, 1972, Public Law No. 92-318, 86 Stat. 235 (1972).

**ii. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. § 7441.

The regulations specific to this program are currently codified at 34 C.F.R. § 263.20 - 263.21. In addition, the general administrative regulations of the U.S. Department of Education are currently codified at 34 C.F.R. Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**iii. Objective(s)**

The primary objective of this program is to provide federal financial assistance to states, public school districts, BIA funded schools, tribes, Indian organizations, and Indian institutions, including Indian higher education institutions, to support projects to develop, test, and demonstrate effective services and programs to improve educational opportunities for and achievement of Indian children. 20 U.S.C. § 7441(a)(1).

Another objective of this program is to train teachers and paraprofessionals for such projects. 20 U.S.C. § 7441(c)(2).

**iv. Funding**

**(A) type**

Funding under this program is by discretionary grant. 20 U.S.C. § 7441(c).

**(B) uses and restrictions**

The original Indian Education Act provided that funds under this program may be used for projects and activities including language and culture; health and nutrition; remedial education; academics; instructional materials; guidance counseling; special education; and, preschool.

The current statutory provisions for this program include all of the original projects and activities, and also provide that funds under this program may be used for family based early childhood education; family literacy programs; high school retention and graduation; post-secondary preparation and transition; and, career preparation. 20 U.S.C. § 7441(c)(1).

*By regulation, the U.S. Department of Education has indicated that under the No Child Left Behind Act of 2001, it will focus funding under this program for projects and activities that emphasize school readiness skills of preschoolers, and high school graduation and transition to post-secondary education. 69 Fed. Reg. 9817 (Mar. 2, 2004).*

Funds under this program may be used for professional development for projects under this program. 20 U.S.C. § 7441(c)(2).

With approval of the U.S. Secretary of Education, funds under this program also may be used to disseminate exemplary materials or projects. 20 U.S.C. § 7441(d)(2).

Not more than five per cent (5%) of the funds provided by grants under this program may be used for administrative purposes. 20 U.S.C. § 7441(e).

Funds under this program must be for projects or activities that are based on relevant research findings. 20 U.S.C. § 7474(2).

**(C) eligibility for consolidation / reprogramming**

Funding under this program likely would qualify for consolidation under a plan as provided for under the Formula Grants program discussed above in Section 3(A)(1). *See* 20 U.S.C. § 7426.

In addition, activities assisted by funds under this program may be coordinated with other U.S. Department of Education funds and with other federal Indian programs and funds. 20 U.S.C. § 7441(a)(2).

**(D) current level**

In Fiscal Year 2004, Congress funded this program at about \$ 4.5 million.

**v. Intended beneficiaries**

The primary intended beneficiaries of this program are the eligible Indian children for whom educational opportunities and achievement will improve. 20 U.S.C. § 7441(a)(1).

Other intended beneficiaries of this program are the eligible entities that may administer this program. 20 U.S.C. § 7441(b).

**vi. Applicant eligibility**

Funding under this program is available to eligible states, public school districts, BIA funded schools, tribes, Indian organizations, and Indian institutions. 20 U.S.C. § 7441(b).

**vii. Application procedure**

To be considered for funding under this program, eligible applicants must timely submit their applications to the U.S. Secretary of Education. 20 U.S.C. § 7441(d)(3).

**viii. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Tribes, BIA funded schools, Indian organizations, and Indian institutions are eligible for funds under this program. 20 U.S.C. § 7441(b).

Tribes, Indian organizations, and Indian institutions of higher education have a statutory preference among eligible applicants. 20 U.S.C. § 7473.

Applicants for funding under this program must assure the U.S. Secretary of Education that Indian tribes and Indian parents have been and will be involved in developing and implementing the projects and activities assisted by funds under this program. 20 U.S.C. § 7441(d)(3)(B)(i).

**ix. Reporting requirements**

Entities receiving funds under this program must submit annual reports to the U.S. Secretary of Education. 69 Fed. Reg. 9817 (Mar. 2, 2004).

The U.S. Secretary of Education has discretion to conduct a national evaluation of projects and activities assisted by funds under this program. 20 U.S.C. § 7441(d)(3)(B)(ii).



**x. References for more information**

**(A) agencies**

This program is administered by the Office of Indian Education, U.S. Department of Education, 400 Maryland Ave., SW, Room 3W205, Washington, DC 20202-6335, (202) 260-3774, [oiagrant@ed.gov](mailto:oiagrant@ed.gov) .

**(B) organizations**

National Indian Education Association, 700 N. Fairfax St., Ste. 210, Alexandria, VA 22314, (703) 838-2870, [niea@niea.org](mailto:niea@niea.org)

**b. Professional Development for teachers and education professionals**

**i. Authorizing legislation**

This program was originally authorized by the Act of June 23, 1972, Public Law No. 92-318, 86 Stat. 235 (1972). The original statutory provisions for this program provided for grants to assist in the establishment of preservice and inservice training programs for persons serving Indian children as education personnel. The original statute also expressly provided that preference shall be given to the training of Indians.

**ii. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. § 7442.

The regulations specific to this program are currently codified at 34 C.F.R. §§ 263.1 - 263.10. In addition, the general administrative regulations of the U.S. Department of Education are currently codified at 34 C.F.R. Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**iii. Objective(s)**

The primary objective of this program is to increase the number of qualified Indian teachers that serve Indian people by providing training and skill improvements, and requiring the Indian teachers to serve Indian people or repay the assistance received. 20 U.S.C. §§ 7442(a) and 7442(h).

**iv. Funding**

**(A) type**

Funding under this program is by discretionary grant. 20 U.S.C. § 7442(c).

**(B) uses and restrictions**

Funds under this program must be used for activities to provide support and training for Indian teachers and education personnel. 20 U.S.C. § 7442(d).

Funds under this program may be used for direct financial support for inservice and preservice training, and for post-secondary education expenses and financial aid. 20 U.S.C. § 7442(d); 34 C.F.R. § 263.4(a).

Funds under this program may be used for continuing programs, symposia, workshops, and conferences. 20 U.S.C. § 7442(d).

Funds under this program may be used for activities designed to train tribal elders and seniors. *Id.* at § 7442(d)(1).

*By regulation, the U.S. Department of Education has indicated that under the No Child Left Behind Act of 2001, it will focus funding under this program for projects and activities that emphasize pre-service training for Indian teachers and administrators. 69 Fed. Reg. 9813 (Mar. 2, 2004).*

Funds under this program must be used for programs and activities that are based on relevant research findings. 20 U.S.C. § 7474(2).

**(C) eligibility for consolidation / reprogramming**

No specific information.

**(D) current level**

In Fiscal Year 2004, Congress funded this program at about \$ 6.7 million. 69 Fed. Reg. 9813 (Mar. 2, 2004).

**v. Intended beneficiaries**

The primary intended beneficiaries under this program are Indian teachers and other education personnel that serve Indian people. 20 U.S.C. § 7442(a).

**vi. Applicant eligibility**

Funding under this program is available to eligible institutions of higher education, including Indian institutions of higher education; states or public school districts in consortium with institutions of higher education; tribes and Indian organizations, in consortium with institutions of higher education; and, BIA funded schools.

**vii. Application procedure**

To be considered for funding under this program, eligible applicants must timely submit their applications to the U.S. Secretary of Education. 20 U.S.C. § 7442(e).

**viii. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Indian institutions of higher education and BIA funded schools are eligible for funds under this program. 20 U.S.C. §§ 7442(b)(1) and 7442(b)(4).

In consortium with institutions of higher education, tribes and Indian organizations also are eligible for funds under this program. 20 U.S.C. § 7442(b)(3).

Tribes, Indian organizations, and Indian institutions of higher education have a statutory preference among eligible applicants. 20 U.S.C. § 7473.

Indian individuals are the ones to be trained under this program. 20 U.S.C. § 7442(d)(1).

**ix. Reporting requirements**

Entities receiving funds under this program must submit annual reports to the U.S. Secretary of Education. 69 Fed. Reg. 9813 (Mar. 2, 2004).

The U.S. Secretary of Education has discretion to establish a reporting procedure for individuals who have received training under this program. 20 U.S.C. § 7442(h)(2); *see* 34 C.F.R. § 263.10.

**x. References for more information**

**(A) agencies**

This program is administered by the Office of Indian Education, U.S. Department of Education, 400 Maryland, SW, Room 3W205, Washington, DC 20202-6335, (202) 260-3774, [oiagrant@ed.gov](mailto:oiagrant@ed.gov).

**(B) organizations**

American Indian Higher Education Consortium, 121 Oronoco St., Alexandria, VA 22314, (703) 838-0400.

**3. National Activities**

**a. History of this Subpart**

The Indian Education Act of 1972, Public Law No. 92-318, 86 Stat. 235 (1972), authorized programs for graduate fellowships for Indians and adult Indian education.

In the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Act of 1988, Act of April 28, 1988, Public Law No. 100-297, 102 Stat. 130 (1988), Congress added programs for inservice training program and gifted and talented.

In the Improving America's Schools Act of 1994, Act of October 20, 1994, Public Law No. 103-382, 108 Stat. 3518 (1994), Congress added programs for grants to tribes for education administrative planning and development (*i.e.*, tribal education departments), and national research activities.

In the No Child Left Behind Act of 2001, Public Law No. 107-100, 115 Stat. 1923 (2001), Congress revamped many of these programs under a new "National Activities" subpart. The National Activities subpart currently provides for programs for national research activities; inservice teacher training; higher education fellowships; gifted and talented Indian students; grants to tribes for educational administrative planning and development; and, adult Indian education.

**b. Current citations**

The statutory provisions for this subpart are currently codified at 20 U.S.C. §§ 7451 - 7456.

There currently are no regulations specific to this subpart.

**c. Funding**

The leading treatise on federal Indian law has commented that, from the beginning, congressional funding for many of these programs has been "minimal." Felix S. Cohen, *Handbook of Federal Indian Law* 693-694 (1982 ed.).

Congress has never funded some of these programs, such as the program for grants to tribes for education administrative planning and development.

In Fiscal Year 1996, Congress simply eliminated funding for these programs.

In Fiscal Year 2004, Congress funded only one of these programs, the national research activities program, at about \$ 5.2 million.

Funds under the national research activities program may be used for Indian educational research; program evaluation; and data collection and analysis. 20 U.S.C. § 7451(a).

Funds under the national research activities program may be used directly be the U.S. Secretary of Education, or the Secretary may do grants or contracts with tribes, Indian organizations, states, public school districts, higher education institutions, and other public and private agencies and institutions. 20 U.S.C. § 7451(b).

#### **4. Native Hawaiian Education Act**

##### **a. Authorizing legislation**

This program was originally authorized by the Act of April 28, 1988, Public Law 100-297, 102 Stat. 130 (1988). The original program provided for Native Hawaiian model curricula projects, family-based education centers, higher education demonstration projects, a gifted and talented program, and special education programs.

In the Improving America's Schools Act of 1994, Act of October 20, 1994, Public Law 103-382, 108 Stat. 3518 (1994), Congress amended this program to provide for the establishment of a Native Hawaiian Education Council and Island Councils, and Native Hawaiian Community-Based Education Learning Centers.

In the No Child Left Behind Act of 2001, Public Law No. 107-110, 115 Stat. 1932 (2001), Congress revamped the program to emphasize the Native Hawaiian Education Council and Island Councils, and projects focusing on early childhood education, at risk youth, and curriculum in and teachers of Native Hawaiian language.

##### **b. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. §§ 7511- 7517.

The general administrative regulations of the U.S. Department of Education are currently codified at 34 C.F.R. Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

##### **c. Objective(s)**

The primary objective of this program is to provide federal financial assistance to develop innovative supplemental educational programs to assist Native Hawaiians. 20 U.S.C. § 7513(1).

Another objective of this program is to provide direction and guidance to federal, state, and local agencies to focus resources on Native Hawaiian education. *Id.* at § 7513(2).

Another objective of this program is to supplement and expand Native Hawaiian educational programs and authorities. *Id.* at § 7513(3).

Another objective of this program is to encourage the maximum participation of Native Hawaiians in planning and managing Native Hawaiian education programs. *Id.* at § 7513(4).

**d. Funding**

**i. type**

Funding under this program is by discretionary grant or contract. 20 U.S.C. § 7515(a)(1).

**ii. uses and restrictions**

Funds under this program may be used for programs and activities including developing and maintaining a statewide Native Hawaiian early education and care system; family based education centers that provide prenatal care, preschools, and research on family based early childhood and preschool programs; early reading and literacy programs in Hawaiian or English languages; special education for Native Hawaiians; gifted and talented Native Hawaiians; vocational curricula for Native Hawaiians; professional development for Native Hawaiian teachers; community based learning centers; post-secondary entrance and completion programs; and, educational research.

Not more than five per cent (5 %) of the funds for grants or contracts under this program may be used for administrative purposes. 20 U.S.C. § 7515(b).

**iii. eligibility for consolidation / reprogramming**

No information available.

**iv. current level**

In Fiscal Year 2004, Congress funded this program at about \$ 33.3 million.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are Native Hawaiians. 20 U.S.C. § 7513(1).

**f. Applicant eligibility**

Funding under this program is available to eligible Native Hawaiian educational organizations; Native Hawaiian community based organizations, and public and private nonprofit organizations, agencies, and institutions that are experienced in Native Hawaiian language instruction programs. 20 U.S.C. § 7515(a)(1).

**g. Application procedure**

To be considered for funding under this program, eligible applicants must timely submit their applications to the U.S. Secretary of Education. 20 U.S.C. § 7516(a).

Applicants must submit their applications to affected public school districts for comment before submitting them to the Secretary. 20 U.S.C. § 7516(b).

**h. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

This program establishes a Native Hawaiian Education Council whose members will be appointed by the U.S. Secretary of Education. 20 U.S.C. §§ 7514(a) and 7514(c)(2).

This program also allows the establishment of Native Hawaiian Education Island Councils. 20 U.S.C. § 7514(f).

Native Hawaiian educational organizations and Native Hawaiian community based organizations are eligible to receive funds under this program. 20 U.S.C. § 7515(a)(1).

**i. Reporting requirements**

The Native Hawaiian Education Council established under this program must report annually to the U.S. Secretary of Education. 20 U.S.C. § 7514(e)(2).

Not later than four years after January 2002, The Secretary must report to the House of Representatives Committee on Education and the Workforce and the Senate Committee on Indian Affairs a report that summarizes the annual reports of the Education Council, describes the allocation and use of funds by the Education Council and Island Councils, and makes recommendations for changes in federal, state, and local policies to advance the Education Council and Island Councils section. 20 U.S.C. § 7514(i).



Entities receiving funds under this program must report annually to the U.S. Secretary of Education.

**j. References for more information**

**i. agencies**

This program is administered by the U.S. Department of Education, 400 Maryland Ave., SW, Room 3C126, Washington, DC, 20202-6410, (202) 260-1541, [lynn.thomas@ed.gov](mailto:lynn.thomas@ed.gov) .

**ii. organizations**

Native Hawaiian Education Council, 1850 Makuakane St., Bldg F, Honolulu, HI 96817, (808) 842-8044, [nhec@hawaii.rr.com](mailto:nhec@hawaii.rr.com)

Native Hawaiian Education Association, P.O. Box 4984, Hilo, HI 96720-0984

**5. Alaska Native Educational Equity, Support, and Assistance Act**

**a. Authorizing legislation**

This program was originally authorized by the Act of October 20, 1994, Public Law No. 103-382, 108 Stat. 3518 (1994). The original program authorized grants for educational plans; curricula; teacher training; home based preschool; and, student enrichment programs.

In the No Child Left Behind Act of 2001, Public Law No. 107-110, 115 Stat. 1943 (2001), Congress retained all of the original grant purposes and added family literacy services; educational research; standardized testing remedial programs; parenting education; cultural education; early childhood; drop out prevention; community engagement; career preparation; and, vocational education.

**b. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. §§ 7541 - 7546.

The general administrative regulations of the U.S. Department of Education are currently codified at 34 C.F.R. Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**c. Objective(s)**

The primary objective of this program is to recognize the unique educational needs of Alaska Natives. 20 U.S.C. § 7543(1).

Other objectives of this program are to develop supplemental educational programs and supplement existing education programs to benefit Alaska Natives. 20 U.S.C. §§ 7543(2) and 7543(3).

Another objective of this program is to give direction and guidance to federal, state, and local agencies to focus resources on meeting the educational needs of Alaska Natives. 20 U.S.C. § 7543(4).

**d. Funding**

**i. type**

Funding under this program is by discretionary grant or contract. 20 U.S.C. § 7544(a).

**ii. uses and restrictions**

Funds under this program may be used for programs and activities including education improvement; cultural curriculum; Native language programs; teacher training; home based preschool; other preschool; family literacy; student enrichment; research; standardized test preparation; parenting; drop out prevention; community engagement; career preparation; and, equipment and construction. 20 U.S.C. § 7544(a)(2).

Not more than five per cent (5 %) of funds for this program may be used for administrative purposes. 20 U.S.C. § 7544(b).

**iii. eligibility for consolidation / reprogramming**

No information available.

**iv. current level**

In Fiscal Year 2004, Congress funded this program at about \$ 33.3 million.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are Alaska Natives. 20 U.S.C. § 7543.

**f. Applicant eligibility**

Funding under this program is available to eligible Alaska Native organizations; educational entities experienced in Alaska Native languages; and, cultural and community based organizations experienced with Alaska Natives. 20 U.S.C. § 7544(a).

States and public school districts are eligible for funding under this program only if they are part of a consortium involving an Alaska Native organization. 20 U.S.C. § 7545(b).

**g. Application procedure**

To be considered for funding under this program eligible applicants must timely submit their applications to the U.S. Secretary of Education. 20 U.S.C. § 7545(a).

Applicants must consult with representatives of applicable Alaska Native communities. 20 U.S.C. § 7545(c).

Applicants must inform affected public school districts of their applications. 20 U.S.C. § 7545(d).

**h. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Alaska Native organizations are eligible to receive funds under this program. 20 U.S.C. § 7544(a)(1).

Alaska Native regional nonprofit organizations have a statutory priority among applicants for funds under this program. 20 U.S.C. § 7544(c).

Entities that receive funds under this program must consult with affected Alaska Native communities on an ongoing basis. 20 U.S.C. § 7545(c).

**i. Reporting requirements**

There are no statutory reporting requirements for this program.

Entities receiving funds under this program must submit annual reports to the U.S. Secretary of Education.

**j. References for more information**

**i. agencies**

This program is administered by the U.S. Department of Education, 400 Maryland Ave., SW, Room 3C126, MS 6140, Washington, DC, (202) 260-1541, [lynn.thomas@ed.gov](mailto:lynn.thomas@ed.gov) .

**ii. organizations**

First Alaskans Institute, 606 E St., Ste 200, Anchorage, AK 99501, (907) 677-1700, [info@firstalaskans.org](mailto:info@firstalaskans.org)

**B. Programs Under Title VIII (Impact Aid) Of The No Child Left Behind Act of 2001**

**1. Basic Support Impact Aid Payments for Eligible Federally Connected Children**

**a. Authorizing legislation**

This program was originally authorized by the Act of September 30, 1950, Public Law No. 81-874, 64 Stat. 1100 (1950).

Since 1978, major amendments have required public schools districts claiming children residing on Indian lands to ensure that such children participate equally in the school district's programs and activities; that Indian parents and Indian tribes are consulted and involved in the planning and development of the programs and activities. Act of November 1, 1978, Public Law No. 95-561, 92 Stat. 2143 (1978). The 1978 amendments also added a statutory administrative complaint procedure for Indian tribes to enforce the provisions for Indian involvement. *Id.*

**b. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. §§ 7701 - 7713a.

The regulations for this program are currently codified at 34 C.F.R. §§ 222.1 - 222.41 and 222.90 - 222.122.

**c. Objective(s)**

The primary objective of this program is to provide federal financial assistance to public school districts that have within their boundaries large areas of federal land such as military reservations and Indian lands that generally are exempt from state and local taxation. 20 U.S.C. § 7701.

Another objective of this program is to help the eligible children on such federal lands to meet challenging State academic standards. *Id.*

**d. Funding**

**i. type**

Funding under this program is by statutory formula grant. 20 U.S.C. § 7703.

**ii. uses and restrictions**

Funds under this program must be used for basic support / general operating expenses of the school districts. Basic Support Impact Aid payments may not be used for school construction (there is a separate authorization for Impact Aid construction funds discussed below at Section 3(B)(3)).

**iii. eligibility for consolidation / reprogramming**

Public school districts usually deposit Basic Support Impact Aid payments in their general operating fund accounts in accordance with state laws, together with all state and local funds available for current operating expenses, and use this combined account to finance school programs. Office of Management and Budget, Executive Office of the President and U.S. General Services Administration, *The Catalog of Federal Domestic Assistance* § 84.041 (Jan. 2004).

**iv. current level**

In Fiscal Year 2004, Congress funded this program at approximately \$1.06 billion. U.S. Department of Education Fiscal Year 2004 Budget.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are the public school districts that contain large amounts of federal land. 20 U.S.C. § 7701(1).

Other intended beneficiaries of this program are the children who reside on federal property. 20 U.S.C. § 7701(2)

**f. Applicant eligibility**

Funding under this program is available to eligible public school districts. 20 U.S.C. §§ 7701, 7703, 7705, and 7713(9).

**g. Application procedure**

To be considered for funding under this program, public school districts must timely submit their Impact Aid applications to the U.S. Secretary of Education and provide copies of their applications to their states. 20 U.S.C. §§ 7705(a), 7705(c), and 7705(d).

Public school districts claiming children residing on Indian lands under this program must include in their applications assurances that they are in compliance with the Impact Aid statutory provisions regarding “Policies and procedures relating to children residing on Indian lands.” 20 U.S.C. § 7705(b)(2).

**h. Rights and roles of Indian tribes, Indian parents, or other Native Americans**

Public school districts claiming children residing on Indian lands under this program must establish “Indian policies and procedures” (IPPs). 20 U.S.C. § 7704(a). The IPPs must ensure that the children on Indian lands participate in the school district’s programs and activities that are supported by Impact Aid funds on an equal basis with all other children; that the parents of children on Indian lands and Indian tribes have an opportunity to present their views on the programs and activities; that the parents and Indian tribes are consulted and involved in planning and developing the programs and activities; that the applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and, that the parents and Indian tribes have an opportunity to present their views to the school district on the district’s general educational program. 20 U.S.C. § 7704(a).

Tribes with students in a public school district may file written complaints with the U.S. Secretary of Education regarding any action that the school district takes relevant to the IPP requirements. 20 U.S.C. § 7704(e)(1)(A). A hearing examiner must hold a public hearing of record and allow the Tribe to present evidence on and recommendations regarding its complaint. *Id.* at §§ 7704(e)(1)(B), 7704(e)(2), and 7704(e)(3). The hearing examiner must make written findings of fact and recommendations on the record. *Id.* at § 7704(e)(4). The Secretary must make a written determination on the record, and provide copies of the final determination to the Tribe and the school district. *Id.* at §§ 7704(e)(5) and 7704(e)(6).

Unless the Tribe requests otherwise or the Secretary determines that it would substantially disrupt the school district’s educational programs, the Secretary must withhold Impact Aid payments to school districts that reject or do not timely undertake the Secretary’s recommendations. 20 U.S.C. § 7704(e)(8).

Where school districts reject the Secretary’s determination, tribes may choose to have education services provided directly by or contracted from the Bureau of Indian Affairs under the Indian Self Determination and Education Assistance Act of 1975, Public law No. 93-638, 88 Stat. 2203 (1975).

**i. Reporting requirements**

There are no statutory reporting requirements for this program.

The regulations provide for the U.S. Secretary of Education to establish certain discretionary reporting requirements. 34 C.F.R. § 222.9(a).

**j. References for more information**

**i. agencies**

This program is administered by the Impact Aid Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., SW, Room 3E103, Washington, DC 20202-6244, (202) 260-3858, [Impact.Aid@ed.gov](mailto:Impact.Aid@ed.gov) .

**ii. organizations**

The National Association of Federally Impacted Schools, 444 N. Capitol St., NW, Ste. 419, Washington, DC 20001, (202) 624-5455, [www.sso.org/nafis](http://www.sso.org/nafis)

The National Indian Impacted Schools Association, P.O. Box 87, Mission, SD 57555, (605) 856-4457

**2. Impact Aid Payments for Children with Severe Disabilities**

**a. Authorizing legislation**

This program was originally authorized by the Act of November 5, 1991, Public Law No. 101-511, 104 Stat. 1860 (1991).

**b. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. § 7703a.

The regulations for this program are currently codified at 32 C.F.R. §§ 240.1 - 240.6; 34 C.F.R. §§ 222.50 - 222.55; and, 34 C.F.R. §§ 222.80 - 222.85.

**c. Objectives**

The primary objective of this program is to provide additional federal financial assistance, due to the high cost of special education, to public school districts that have eligible federally connected children, at least two of whom are severely disabled. 20 U.S.C. § 7703a; 68 Fed. Reg. 44053-01 (July 25, 2003).

Another objective of this program is to help the eligible children to meet challenging State academic standards. 20 U.S.C. § 7701.



**d. Funding**

**i. type**

Funding under this program is by formula grant. 20 U.S.C. § 7703a(b).

**ii. uses and restrictions**

Funding under this program must be used for “costs incurred in providing a free appropriate public education” to the severely disabled children. 20 U.S.C. § 7703a(a). This includes costs for programs, projects, and equipment for the children but not for school construction. 34 C.F.R. § 222.53.

**iii. eligibility for consolidation / reprogramming**

Public school districts may consolidate funds received under this program with certain other federal special education funding for the purpose of school wide programs and activities. 34 C.F.R. § 200.29(c)(3).

**iv. current level**

In Fiscal Year 2004, Congress funded this program approximately \$50 million. U.S. Department of Education Fiscal Year 2004 Budget.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are the public school districts that educate military dependent students with severe disabilities. 20 U.S.C. §§ 7701 and 7703a(a); 68 Fed. Reg. 44053-01 (July 25, 2003).

Other intended beneficiaries of this program are the children with severe disabilities. 20 U.S.C. §§ 7701 and 7703(a).

**f. Applicant eligibility**

Funding under this program is available to eligible public school districts. 20 U.S.C. §§ 7703a(a) and 7703a(g). Eligibility is determined by the school districts’ applications for Basic Support Impact Aid Payments to the U.S. Department of Education. 68 Fed. Reg. 44053-01 (July 25, 2003).

**g. Application procedure**

To be considered for funding under this program, public school districts must timely submit their applications for Basic Support Impact Aid Payments to the U.S. Department of Education, and timely submit their applications and required reports for Impact Aid Payments for Children with Severe Disabilities to the U.S. Secretary of Defense, and provide a copy of the application to their states. 68 Fed. Reg. 44053-01 (July 25, 2003); 20 U.S.C. § 7703a(e); 32 C.F.R. § 240.6(b).

**h. Rights and roles of Indian tribes, Indian parents, or other Native Americans**

There are no statutory or regulatory rights or roles specific to Indian tribes, Indian parents, or other Native Americans regarding this program.

**i. Reporting requirements**

The statutory reporting requirements for this program are that the public school districts claiming children under the program must report to the U.S. Secretary of Defense: 1) the number of severely disabled children claimed; and, 2) a breakdown of the average cost of providing education and related services to the children. 20 U.S.C. § 7703a(e).

**j. References for more information**

**i. agencies**

This program is administered by the Assistant Secretary of Defense (Force Management and Personnel), U.S. Department of Defense, Washington, DC 20301-4000.

**ii. organizations**

The National Association of Federally Impacted Schools, 444 N. Capitol St., NW, Ste. 419, Washington, DC 20001, (202) 624-5455, [www.sso.org/nafis](http://www.sso.org/nafis)

The National Indian Impacted Schools Association, P.O. Box 87, Mission, SD 57555, (605) 856-4457

### **3. Impact Aid Payments for School Construction**

#### **a. Authorizing legislation**

This program was originally authorized by the Act of September 23, 1950, Public Law No. 81-815, 64 Stat. 967 (1950). It was amended in 1953 to include Indian lands among the eligible federal lands. Act of August 8, 1953, Public law No. 83-246, 67 Stat. 522 (1953).

#### **b. Current citations**

The statutory provisions for this program are currently codified at 20 U.S.C. § 7707.

The regulations for this program are currently codified at 34 C.F.R. §§ 222.170 - 222.196.

#### **c. Objective(s)**

The primary objective of this program is to provide federal financial assistance for school construction costs to public school districts that have within their boundaries large areas of federal land that generally are exempt from state and local taxation. 20 U.S.C. § 7701(5).

Another objective of this program is to help the eligible children on such federal land to meet challenging State academic standards. 20 U.S.C. § 7701.

#### **d. Funding**

##### **i. type**

Funding under this program is in part (40 %) by formula grant, and in part (60 %) by competitive discretionary grant. 20 U.S.C. §§ 7707(a) and 7707(b).

**ii. uses and restrictions**

Funds under this program's formula grant part must be used for school construction, including debt service and other capital fund activities. 20 U.S.C. §§ 7707(a)(4) and 7713(3). Funds under this program's discretionary grant part must be used for emergency repairs of school facilities or modernization of school facilities, and they may not be used to supplant or replace other available non-federal construction money. 20 U.S.C. § 7707(b)(1); 34 C.F.R. § 174.

**iii. eligibility for consolidation / reprogramming**

No specific information available.

**iv. current level**

In Fiscal Year 2004, Congress funded this program at approximately \$ 46 million. U.S. Department of Education Fiscal Year 2004 Budget.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are the public school districts that contain large amounts of federal land. 20 U.S.C. §§ 7701(5) and 7707.

Other intended beneficiaries of this program are the children who reside on federal property. 20 U.S.C. § 7701(2)

**f. Applicant eligibility**

Funding under this program is available to eligible public school districts. 20 U.S.C. §§ 7707(a) and 7707(b).

**g. Application procedure**

To be considered for funding under this program, public school districts must timely submit their applications to the U.S. Secretary of Education. 20 U.S.C. § 7707(b)(6).

**h. Rights and roles of Indian tribes, Indian parents, or other Native Americans**

There are no statutory or regulatory rights or roles specific to Indian tribes, Indian parents, or other Native Americans regarding this program.

**i. Reporting requirements**

There are no statutory reporting requirements for the formula grant part of this program.

The U.S. Secretary of Education must report annually to Congress on the discretionary grant part of this program. 20 U.S.C. § 7707(b)(7).

**j. References for more information**

**i. agencies**

This program is administered by the Impact Aid Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., SW, Room 3E103, Washington, DC 20202-6244, (202) 260-3858, [Impact.Aid@ed.gov](mailto:Impact.Aid@ed.gov).

**ii. organizations**

The National Association of Federally Impacted Schools, 444 N. Capitol St., NW, Ste. 419, Washington, DC 20001, (202) 624-5455, [www.sso.org/nafis](http://www.sso.org/nafis)

The National Indian Impacted Schools Association, P.O. Box 87, Mission, SD 57555, (605) 856-4457.

**C. Programs Under Title X (Bureau of Indian Affairs) Of The No Child Left Behind Act of 2001**

**1. Johnson O'Malley (JOM) Assistance**

**a. Authorizing legislation**

This program was originally authorized by the Act of April 16, 1934, Public Law No. 73-107, 48 Stat. 596 (1934). The original program provided federal financial assistance primarily to states and public school districts for basic support / general operating expenses to reimburse the school districts for the cost of educating Indian children pursuant to contracts with the U.S. Secretary of the Interior.

In 1975, the Indian Self-Determination and Education Assistance Act, Public Law No. 93-638, 88 Stat. 2203 (1975), amended the JOM program such that the contracts under the program are intended to be first and foremost with Indian tribes or tribal organizations.

And, since at least 1985, Congress has clarified that JOM program funds are to be used only for supplemental educational services to meet the unique educational needs of Indian children in public school districts. Act of December 19, 1985, Public Law No. 99-190, 99 Stat. 1235 (1985).

**b. Current citations**

The statutory provisions for this program are currently codified at 25 U.S.C. §§ 452 - 457.

The regulations for this program are currently codified at 25 C.F.R. §§ 273.1 - 273.73.

**c. Objective(s)**

The primary objective of this program is to provide federal financial assistance under contracts to tribes or other eligible applicants to develop supplemental programs to meet the unique educational needs of eligible Indian students in public school districts. 25 U.S.C. § 455.

**d. Funding**

**i. type**

Since at least 1978, funding under this program has been by formula grant. Act of November 1, 1978, Public Law No. 95-561, 92 Stat. 2143 (1978).

**ii. uses and restrictions**

Funds under this program must be used for supplemental education programs for the unique educational needs of Indian children. These supplemental programs and activities may include academic support, teacher support, tutoring, home school coordinators, preschool programs, gifted programs, summer school classes, cultural enrichment, field trips, transportation, and school supplies.

Funds under this program must be used only for the benefit of eligible Indian students. 25 C.F.R. § 273.32.

Funds under this program used for school operational support must be used to meet established state educational standards or requirements. 25 C.F.R. § 273.33.

Funds under this program must supplement, not supplant, other federal, state, and local educational funds. 25 C.F.R. § 273.34.

Funds under this program generally may not be used for payment of capital outlay or debt retirement expenses. 25 C.F.R. § 273.35.

Funds under this program may be subcontracted. 25 C.F.R. § 273.36.

Funds under this program may be used for programs and activities occurring outside of the schools. 25 C.F.R. § 273.37.

**iii. eligibility for consolidation / reprogramming**

Since at least Fiscal Year 1994, appropriations for JOM program funds have been included in the Tribal Priority Allocations (TPA) activity of the BIA budget; but JOM funds are still formula based, they are not part of the TPA base funding which tribes may “reprogram.”

**iv. current level**

In Fiscal Year 2003, Congress funded this program at about \$ 17 million.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are the eligible Indian students in public school districts. 25 U.S.C. § 455.

Other intended beneficiaries of this program are the tribes and tribal entities that contract with the BIA to operate JOM programs.

**f. Applicant eligibility**

Funding under this program is available to eligible tribes, tribal entities, states, and public school districts. 25 U.S.C. § 452. States and public schools districts can apply for JOM funding only if the relevant tribes are not interested in applying. 25 C.F.R. § 273.21.

**g. Application procedure**

To be considered for funding under this program, tribes must timely submit their applications to the appropriate Area Office or Central Office of the BIA. 25 C.F.R. §§ 273.23 and 273.26.

**h. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Tribes and tribal entities have priority over states and public school districts for JOM program contracts.

Where public school districts that are affected by JOM program contracts have school boards that are composed of a majority of non-Indians, tribal contractors of JOM programs may specify an Indian Education Committee (IEC) pursuant to federal regulations. 25 C.F.R. § 273.15. The IEC has the right to participate fully in the planning, development, approval, and evaluation of all JOM programs. 25 U.S.C. § 456.

**i. Reporting requirements**

The Indian Self-Determination and Education Assistance Act of 1975, Public Law No. 93-638, 88 Stat. 2203 (1975), called for a one-time report on this program by the U.S. Secretary of the Interior to Congress.



Contractors under this program must submit educational plans with their applications, and they must report at least annually in detail on their contracts to the appropriate Area or Central Office of the BIA, and they must provide copies of their reports to the local IEC. 25 C.F.R. § 273.50.

**j. References for more information**

**i. agencies**

This program is administered by the Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C St., NW, MS 3512-MIB, Washington, DC 20240-0001, (202) 208-3478.

**ii. organizations**

The National Johnson O'Malley Association (address and contact information unknown at the time of this publication).

**2. Adult Education**

**a. Authorizing legislation**

This program was originally authorized by the Act of November 1, 1921, Public Law No. 67-85, 42 Stat. 208 (1921).

In 1975, the Indian Self-Determination and Educational Assistance Act, Public Law No. 93-638, 88 Stat. 2203 (1975), allowed this program to be contracted from the U.S. Secretary of the Interior to tribes.

**b. Current citations**

The statutory provisions for this program are currently codified at 25 U.S.C. § 13.

The regulations for this program are currently codified at 25 C.F.R. §§ 46.1 - 46.30 and 25 C.F.R. §§ 900.1 - 900.256.

**c. Objective(s)**

The primary objective of this program is to provide federal financial assistance to eligible Indian adults. 25 C.F.R. § 46.1(a).

Another objective of this program is to improve the educational opportunities and learning experiences for eligible Indian adults so that they may acquire basic literacy and other skills necessary for continuing education, productive employment, and effective citizenship. *Id.*

**d. Funding**

**i. type**

Funding under this program is made by way of direct payments for specified uses.

**ii. uses and restrictions**

Funding under this program may be used for direct support of local projects, programs, or courses designed to enable eligible Indian adults to acquire basic educational skills, including literacy; prepare for the General Educational Development test; to continue their education through the secondary school level; establish career education projects to improve employment opportunities; prepare individuals to benefit from occupational training; and, teach employment-related and life-coping skills such as budgeting, driver training, and income tax filing. 25 C.F.R. § 46.10(a).

Funds may be used for special programs for the elderly and for community education.

Funds should not be used for basic education, including literacy, and not to support long term programs designed solely to prepare Indian adults to enter a specific occupation or a cluster of closely related occupations. 25 C.F.R. § 46.10(b).

**iii. eligibility for consolidation / reprogramming**

Since at least Fiscal Year 1993, appropriations for Adult Education program funds have been included in the base funding portion of the Tribal Priority Allocations (TPA) activity of the BIA budget. This means that this program is one of the programs for which tribes determine their own amount through the TPA budget development process.

**iv. current level**

In Fiscal Year 1994, Congress funded this program at about \$ 2.3 million.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are eligible educationally disadvantaged Indian adults. 25 C.F.R. § 46.1(b).

Other intended beneficiaries of this program are the tribes and tribal organizations that contract with the BIA to operate the program.

**f. Applicant eligibility**

Funding for this program is available to eligible tribes and tribal organizations. 25 C.F.R. § 46.2.

**g. Application procedure**

To be considered for funding under this program, tribes must timely submit their applications to the Agency or Area Office of the BIA.

**h. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Tribes who contract to administer this program must establish and maintain a program implementation and evaluation plan. 25 C.F.R. §§ 46.10(c) and 46.20(c).

Tribes who contract this program may set standards for the program in addition to those established by federal law or regulation. *Id.*

**i. Reporting requirements**

Tribes who contract to administer this program must submit annual reports to the BIA Office of Indian Education Programs. 25 C.F.R. § 46.30.

**j. References for more information**

**i. agencies**

This program is administered by the Branch of Post-Secondary Education, Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C St., NW, MS-3512-MIB, Washington, DC 20240, (202) 208-3478.

**ii. organizations**

None identified.

**3. Higher Education (Undergraduate) Grants and Special Higher Education (Graduate) Scholarships**

**a. Authorizing legislation**

This program was originally authorized by the Act of November 1, 1921, Public Law No. 67-85, 42 Stat. 208 (1921).

In 1975, the Indian Self-Determination and Education Assistance Act, Public Law No. 93-638, 88 Stat. 2203 (1975), allowed the higher education grants part of this program to be contracted from the U.S. Secretary of the Interior to tribes.

**b. Current citations**

The statutory provisions for this program are currently codified at 25 U.S.C. § 13.

The regulations for this program are currently codified at 25 U.S.C. §§ 40.1 - 40.5; 25 C.F.R. §§ 900.1 - 900.256; and, 34 C.F.R. §§ 674.15 and 675.15.

**c. Objective(s)**

The primary objective of this program is to provide federal financial assistance to eligible American Indian and Alaska Native students who are admitted to accredited post-secondary institutions.

**d. Funding**

**i. type**

Funding under this program is by grant or scholarship.

**ii. uses and restrictions**

Funding for higher education grants must be used to supplement financial aid packages prepared by the education institution.

Funding for special higher education scholarships may be used to defray costs of obtaining graduate degrees.

**iii. eligibility for consolidation / reprogramming**

Since at least Fiscal Year 1993, funds for the higher education (undergraduate) grants have been included in the Tribal Priority Allocations (TPA) activity in the BIA budget. Tribes that wish to contract the operation of the higher education grant program must prioritize the program sufficiently in the TPA budget development process.

**iv. current level**

In Fiscal Year 2003, Congress funded this program at about \$25.3 million for higher education grants, and \$1.5 million for special higher education scholarships.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are eligible American Indian or Alaska Native students who are attending accredited institutions of higher education or accredited vocational / technical schools and have demonstrated financial need. 25 C.F.R. § 40.1.

Other intended beneficiaries of the higher education grants program are the tribes and tribal organizations that contract with the BIA to operate the program.

**f. Applicant eligibility**

Funding for the higher education grants program is available to eligible tribes and tribal organizations. Where tribes or tribal organizations have not contracted to operate this program, applicants may apply directly to the BIA.

Funding for the special higher education scholarship program is available to eligible individual American Indian and Alaska Native graduate students.

**g. Application procedure**

To be considered for funding under the higher education grants program, tribes and tribal organizations must submit their applications timely to their Agency or Area Office of the BIA.

Individual students applying for higher education grants must timely submit their applications to their tribe or BIA Office.

Individual students applying for special higher education scholarships must timely submit their applications to the American Indian Graduate Center which administers this program on behalf of the BIA.

**h. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Tribes may apply to contract the operation of the higher education grants program from the BIA.

**i. Reporting requirements**

Tribes with contracts for this program must submit annual reports on expenditures and accountability.

Students applying for continuation of grants or scholarships must submit grade reports at the end of each academic year.

**j. References for more information**

**i. agencies**

The higher education grants program is administered by the Branch of Post-Secondary Education, Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C St., NW, MS 3512-MIB, Washington, DC 20240, (202) 208-3478.

**ii. organizations**

The special higher education scholarships program is administered by the American Indian Graduate Center, 4520 Montgomery Blvd, Ste. 1-b, Albuquerque, NM, 87109, (505) 881-4584.

**4. Tribal Departments or Divisions of Education**

**a. Authorizing legislation**

This program was originally authorized by the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Act of April 28, 1988, Public Law No. 100-297, 102 Stat. 130 (1988).

In 2001, the No Child Left Behind Act, Public Law No. 107-110, 115 Stat. 1425 (2001), added the statutory provisions regarding priorities for funding under this program, including the priority that preference will be given to tribal departments or divisions of education that serve three or more separate BIA funded schools.

**b. Current citations**

The statutory provisions for this program are currently codified at 25 U.S.C. § 2020.

There are currently no regulations specific to this program; however, the statute provides that the regulations of the Indian Self-Determination and Education Assistance Act of 1975, Public Law No. 93-638, 88 Stat. 2026 (1975), apply to this program. *See* 25 U.S.C. § 2020(g).

**c. Objective(s)**

The primary objective of this program is to provide federal financial assistance to eligible tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe. 25 U.S.C. § 2020(a).

**d. Funding**

**i. type**

Funding under this program is by discretionary grant. 25 U.S.C. § 2020(a).

**ii. uses and restrictions**

Funds under this program must be used to facilitate tribal control in Indian education; to develop coordinated education programs; and to develop and enforce tribal education codes. 25 U.S.C. § 2020(d).

**iii. eligibility for consolidation / reprogramming**

No specific information available.

**iv. current level**

Congress has not funded this program.

**e. Intended beneficiaries**

The primary intended beneficiaries of this program are eligible American Indian and Alaska Native tribes. 25 U.S.C. § 2020.

**f. Applicant eligibility**

Funding for this program is available to eligible tribes. 25 U.S.C. § 2020(b)

**g. Application procedure**

To be considered for funding under this program, tribes must timely submit their applications to the U.S. Secretary of the Interior. 25 U.S.C. § 2020(b).

**h. Rights and roles of Indian tribes, Indian parents, and other Native Americans**

Tribes are eligible to receive funds under this program. 25 U.S.C. § 2020(a).

**i. Reporting requirements**

There are no statutory reporting requirements specific to this program, but it is likely that tribes would have to comply with any applicable reporting requirements under the Indian Self-Determination and Education Assistance Act. *See* 25 U.S.C. §§ 2020(e)(2) and 2020(g).

**j. References for more information**

**i. agencies**

This program is administered by the Office of Indian Education Programs, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C St., NW, MS 3512-MIB, Washington, DC 20240, (202) 208-3478.

**ii. organizations**

Tribal Education Departments National Assembly, P.O. Box 18000, Boulder, CO 80308, [info@tedna.org](mailto:info@tedna.org) .



**Section 4:**

Comparison Tables of Programs

**A. Programs under Title VII (Indian Education Act) of the No Child Left Behind Act of 2001**

<b>TITLE VII INDIAN EDUCATION ACT PROGRAMS</b>	<b>Formula Grants</b>	<b>Educational Opportunities Improvement</b>	<b>Professional Development</b>
<b>Year originally authorized</b>	1972	1972	1972
<b>Current level of funding (FY2004)</b>	\$96 Million	\$4.5 Million	\$6.7 Million
<b>Rights and Roles of tribes, Indian parents, other Native Americans</b>	<p>Tribes are eligible grantees if they have &gt;50 % student population of a public school that does not have an Indian Parent Committee</p> <p>Indian parent consultation</p> <p>Indian Parent Committee approval</p>	<p>Tribes, BIA funded schools, Indian institutions &amp; organizations are eligible grantees</p> <p>They have a statutory applicant priority</p> <p>Indian tribes &amp; parents consultation</p>	<p>Indian higher education institutions &amp; BIA funded schools are eligible grantees</p> <p>In consortium with higher education institutions, tribes &amp; Indian organizations are eligible grantees</p> <p>They have a statutory applicant priority</p> <p>Indian individuals are to be the trainees</p>
<b>Recommendations</b>	<p><i>Increase tribal eligibility for grants</i></p> <p><i>Increase tribal priority among eligible grantees</i></p> <p><i>Require non-tribal grantees to report to affected Tribes</i></p>	<p><i>Increase funding</i></p> <p><i>Require non-tribal grantees to report to affected tribes</i></p>	<p><i>Increase funding</i></p> <p><i>Require non-tribal grantees to report to tribes</i></p> <p><i>Require trainees to report to their tribes</i></p>

**A. Programs under Title VII (Indian Education Act) of the No Child Left Behind Act of 2001**

<b>TITLE VII INDIAN EDUCATION ACT PROGRAMS (continued)</b>	<b>National Activities</b>	<b>Native Hawaiian</b>	<b>Alaska Native</b>
<b>Year originally authorized</b>	1972 - 1994	1988	1994
<b>Current level of funding (FY2004)</b>	\$5.2 Million for national research activity only	\$33.3 Million	\$33.3 Million
<b>Rights and Roles of tribes, Indian parents, other Native Americans</b>	In general, tribes and Indian organizations are eligible grantees for these programs	Establishment of Native Hawaiian Education Council and Island Councils  Native Hawaiian educational organizations and community based organizations are eligible grantees	Alaska Native organizations are eligible grantees  Alaska Native regional nonprofit organizations have a statutory applicant priority  Alaska native communities consultation
<b>Recommendations</b>	<i>Request and appropriate sufficient funds for ALL of these programs</i>  <i>Where appropriate, require grantees or funding recipients to report to affected tribes</i>		<i>Require grantees to report to affected tribes</i>

**B. Programs under Title VIII (Impact Aid) of the No Child Left Behind Act of 2001**

<b>TITLE VIII IMPACT AID PROGRAMS</b>	<b>Basic Support</b>	<b>Severe Disabilities</b>	<b>Construction</b>
<b>Year originally authorized</b>	1950	1991	1953
<b>Current level of funding (FY2004)</b>	\$1.06 Billion	\$50 Million	\$46 Million
<b>Rights and Roles of tribes, Indian parents, other Native Americans</b>	Establishment of Indian Policies & Procedures  Indian children equal participation  Indian tribes & parents consultation  Tribal statutory administrative complaint and remedies process	No specific rights or roles	No specific rights or roles
<b>Recommendations</b>	<i>Allow tribes to be eligible grantees</i>  <i>Require non-tribal grantees to report to affected tribes</i>	<i>Allow tribes to be eligible grantees</i>  <i>Require non-tribal grantees to report to affected tribes</i>	<i>Increase funding</i>  <i>Allow tribes to be eligible grantees</i>  <i>Require non-tribal grantees to report to affected tribes</i>

**C. Programs Under Title X (Bureau of Indian Affairs) Of The No Child Left Behind Act of 2001**

<b>TITLE X BUREAU OF INDIAN AFFAIRS PROGRAMS</b>	<b>Johnson O'Malley (JOM) Assistance</b>	<b>Adult Education</b>	<b>Higher Education (Undergraduate) Grants And Special Higher Education (Graduate) Scholarships</b>	<b>Tribal Departments or Divisions of Education</b>
<b>Year originally authorized</b>	1934	1921	1921	1988
<b>Current level of funding (FY2003)</b>	\$17 Million	\$2.3 Million	\$25.3 Million & \$1.5 Million	None
<b>Rights and Roles of tribes, Indian parents, other Native Americans</b>	Tribal priority among eligible grantees  Indian Parent Education Committee if public school board is majority non-Indian	Tribes can contract this program  Tribes must establish & maintain program plan  Tribes may set higher program standards	Tribes are eligible contractors of the Higher Education Grants program	Tribes are the grantees of this program
<b>Recommendations</b>	<i>Increase funding</i>  <i>Require non-tribal grantees to report to affected tribes</i>	<i>Increase funding</i>	<i>Increase funding</i>  <i>Require Special Higher Education Scholarship recipients to report to their tribes</i>	<i>Request and Appropriate Funds</i>