

February 14, 2025

Denise Carter
Acting Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202
via email: denise.carter@ed.gov

RE: Department of Education Treatment of Tribal Nations in Implementation of Administration Priorities

Dear Acting Secretary Carter:

On behalf of the undersigned organizations that collectively serve the majority of sovereign Tribal Nations and their citizens and communities, we write to discuss this Administration's plans for the U.S. Department of Education (ED). We look forward to working with ED and recognize the opportunity for the current Administration to address critical issues facing Indian education. We request a meeting with you as soon as possible to discuss implementing President Trump's priorities in a manner that recognizes the sovereign governmental status of Tribal Nations and the United States' longstanding trust and treaty obligations.

We appreciate the Administration's focus on ensuring that all students across the United States have access to high-quality education, as it is a continued priority of Tribal Nations to ensure high-quality education for our people as well. President Trump's first-term commitment to providing American Indian and Alaska Native (AI/AN) children with access to high-quality education through scholarships, the creation of new Tribally operated charter schools, and improvements to the Bureau of Indian Education (BIE) were crucial steps forward. With President Trump's return to the White House, now is the time to renew focus on Native education, ensuring that Tribal Nations and Tribal communities have a seat at the table when it comes to advancing educational policies and initiatives tailored to our needs. As we move forward, we urge the Administration to ensure that the trust and treaty obligations for Indian education are fulfilled and that Tribal sovereignty is protected.

Tribal Nations are and always have been inherently sovereign governments that have strong political relationships with our Tribal citizens and community members. We govern and police our lands, and we provide services aimed at keeping our communities safe. Tribal Nations also have political, government-to-government relationships with the United States, and we prepaid with our lands and resources for trust and treaty obligations that the United States owes us. The U.S. Constitution singles out Tribal Nations and Native people as unique, and the U.S. Supreme Court has time and again affirmed the principle that United States actions that deliver on trust and treaty obligations to Tribal Nations, Tribal citizens, and Tribal communities do not run afoul of the U.S. Constitution's equal protection requirements.

The United States fulfills its trust and treaty obligations through both the direct delivery of Tribal programs and services and provision of federal funding to Tribal Nations and Tribal organizations serving Tribal Nations. Over time, the United States has created a web of different mechanisms it uses to deploy federal funding to serve Tribal Nations and Tribal communities. Essential services provided by Federal employees include healthcare services through the Indian Health Service, law

enforcement and public safety through the Bureau of Indian Affairs, and educational services through BIE—not to mention countless other essential and legally mandated services. Any Tribal program or funding delivered to Tribal Nations—including through Urban Indian Organizations and Tribal organizations serving Tribal Nations—is provided in furtherance of the United States’ trust and treaty obligations. The federal employees necessary for the functioning of those Tribal programs and the disbursement of those Tribal funds are also part of the trust and treaty obligations. The United States further has a duty to consult government-to-government with Tribal Nations on federal actions that may have Tribal implications, including implications on delivery of trust and treaty obligations. These actions are not discretionary; they are legal obligations rooted in treaties, trust obligations, the U.S. Constitution, and long-standing federal statutes.

Education is a central component of the federal trust and treaty responsibility promised to Tribal Nations, Tribal citizens, and Tribal communities. This trust responsibility for Indian education is one of the oldest educational obligations the federal government has—nearly 150 years older than ED.

Recognizing Our Political Status and Protecting Tribal Programs

Federal education policies must continue to respect the unique political status of Native students. With nearly 48,000 Native students enrolled in BIE-operated or Tribally Controlled Schools, and thousands more benefiting from Tribal charter schools, Tribal programs in public K-12 schools, and in Tribal Colleges and Universities (TCUs), it is vital that any new policies or funding programs do not diminish the already underfunded resources allocated to these educational institutions.

Education programs serving Native students would be inappropriately categorized under diversity, equity, inclusion, and accessibility (DEIA) frameworks, as doing so undermines Tribal sovereignty and the unique legal relationship between Tribal Nations and the United States. Our treatment under Federal law, including the provision of funding, benefits, and services, is a necessary and recognized right—it is in no way, shape, or form unlawful discrimination and should never be treated as such.

We request government-to-government consultation between the United States and Tribal Nations be prioritized in decisions regarding the planning and implementation of all new or revised programs directly serving AI/AN students. It is essential that such programs do not divert funds away from Tribal schools or undermine the current systems supporting Native students.

School Choice and Local Control in Tribal Education

Tribal Nations believe in school choice—particularly the right of Tribal Nations to determine and control the educational options available to our communities. Yet, any initiatives that advance school choice must be carefully tailored to the unique needs of Indian Country. The passage of the Indian Self-Determination and Education Assistance Act of 1975, the Tribally Controlled Colleges and Universities Assistance Act of 1978, and the Tribally Controlled Schools Act of 1988 ushered in an era ensuring that Tribal Nations have a voice in the education of our communities, which must continue. Whether students are attending a BIE-funded, Tribally Controlled high school, a Tribal technical college, a language immersion charter school, or the local public school, the choice about education rests with the citizens of Tribal Nations and Tribal communities.

Protecting Tribal-Specific Funding Streams

We ask that you and your staff work with us to ensure that programs and funding provided by ED to Indian Country are protected from any reorganization and reprioritization and look for ways to identify and protect funding for Indian Country. Federal funding provided in furtherance of the United States' trust and treaty obligations includes all Tribal programs and funding. Strengthening educational systems in Indian Country not only benefits Native students but also plays a key role in strengthening Tribal economies and workforces. A well-educated Native workforce is critical to fostering economic development, building sustainable businesses, and creating job opportunities within Tribal communities.

Funding Flexibility and Impact on Indian Education

Many of the programs administered under ED are critical to the success of Native students, including Title I funding directed to both public schools serving Native students and BIE-funded schools, Title VI funding for all Native education accounts, Impact Aid funding for students on Federal lands, and funding to support Tribal Education Agencies (TEAs), among others. As the Administration implements its priorities in returning education to the states, it is essential to ensure that any additional school choice programs are carefully designed to avoid any negative impact on Tribal resources. One way to ensure Tribal Nations' sovereignty is protected during these changes is to provide parity for TEAs. TEAs should be eligible recipients for Federal education funding alongside Local Educational Agencies (LEAs) and State Education Agencies (SEAs). TEAs function similarly to LEAs and, in many cases, operate Tribally Controlled Schools, charter schools, or other Federally funded education programs. It is essential that all Indian education funding is designed and implemented in partnership with Tribal Nations, ensuring that we do not lose the gains made in strengthening educational opportunities for Native students.

Strengthening Tribal Colleges and Universities (TCUs) and Economic Development

TCUs are essential in providing higher education opportunities for Native students while preserving and promoting Native cultures, languages, and traditions. These institutions play a crucial role in workforce development and community growth, yet they continue to face chronic underfunding. We urge the Administration to prioritize the adequate funding and strengthening of TCUs to ensure that they can continue their mission of providing high-quality education to Native students. Strengthening TCUs is a powerful strategy for improving the economic outcomes for Tribal communities, ensuring a skilled and well-prepared workforce that can drive local economic development and entrepreneurship.

Commitment to Government-to-Government Consultation with Tribal Nations

Finally, we urge the Administration to engage in formal government-to-government consultation with Tribal Nations' leaders on all matters related to Indian education. This government-to-government consultation is essential to ensure that Native students benefit from educational policies that reflect the priorities of Indian Country, as well as to uphold the trust and treaty obligations made to Tribal Nations. By working together and engaging in regular and meaningful government-to-government consultation with Tribal Nations, we can build an educational system that respects Native sovereignty and fulfills the federal government's trust and treaty obligations.

Other federal agencies have taken steps to clarify that implementation of the Administration's Executive Orders and priorities should not impact the United States' delivery on trust and treaty obligations to Tribal Nations and our people. On January 30th, the U.S. Department of the Interior, in Secretarial Order 3416, recognized that trust and treaty obligations to Tribal Nations and associated statutory authorities are legal requirements that must not be impaired while implementing President Trump's Executive Orders. On February 6th, the U.S. Department of Health and Human Services (HHS) issued a notice stating that the Executive Order affecting diversity, equity, and inclusion programs does not apply to programs or activities that affect or serve AI/AN people, in part because Tribal Nations are separate sovereigns. Furthermore, on February 4th, HHS announced that the Office of Personnel Management had granted the Indian Health Service a partial exclusion from the deferred resignation program.

We request that you take a similar affirmative stance, and that you ensure ED practice aligns with that stance. We request that ED mandate funding to Tribal Nations, our citizens, and our communities is neither paused nor reduced. And we urge ED to exempt from workforce reductions all employees serving in Tribal offices or whose role is to deliver services or funding to Tribal Nations or their citizens or communities.

President Trump's first Administration recognized the important status of Tribal Nations and saw Indian Country as a strong partner, particularly during the COVID-19 pandemic when the Administration supported local government control and access for Tribal Nations to set-asides of federal funds that directly addressed Tribal needs. With this in mind, we ask that you and your staff work with us to ensure that ED's implementation of the Administration's priorities does not harm Tribal Nations or Tribal Nation citizens. Each of the mandates issued by the Administration has acknowledged that it does not affect ongoing legal requirements, and Indian Country programs are legally required by trust and treaty obligations and associated implementing statutes. ***Tribal Nations' exercise of our sovereignty and the United States' delivery on its trust and treaty obligations must not become collateral damage in the Administration's implementation of its priorities.***

Thank you for your attention to this important issue. We invite you to meet with us, and we look forward to working with you and the Administration to ensure that Native students receive the high-quality, culturally relevant education they deserve.

Sincerely,

Affiliated Tribes of Northwest Indians
American Indian Higher Education Consortium
Great Lakes Inter-Tribal Council
Great Plains Tribal Chairman's Association
Midwest Alliance of Sovereign Tribes
National Congress of American Indians
National Indian Child Welfare Association
National Indian Education Association
National Indian Health Board
Self-Governance Communication & Education Tribal Consortium
United South and Eastern Tribes Sovereignty Protection Fund