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DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810-AB54

[Docket ID ED-2019-0ESE-0126]

Indian Education Discretionary Grant Programs;

(Demonstration Grants for Indian Children and Youth Program)

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Education (Department) proposes to revise the regulations that govern the Demonstration Grants for Indian Children and Youth Program (Demonstration program), authorized under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to implement changes to title VI resulting from the enactment of the Every Student Succeeds Act (ESSA). These proposed regulations would update, clarify, and improve the current regulations. The Secretary also proposes a new priority, and accompanying requirements and selection criteria, for applicants proposing to empower Tribes and families to decide which education services will best support their children to succeed in college and careers.

DATES: We must receive your comments on or before [INSERT

DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about these proposed regulations, address them to Bianca Williams, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W237, Washington, DC 20202-6110. Telephone: (202) 453-5671.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking

Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Bianca Williams, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W237, Washington, DC 20202-6110. Telephone: (202) 453-5671.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's

programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person at 400 Maryland Ave., SW, room 3W327, Washington, DC 20202-6110, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Background

The Department proposes to revise the regulations that govern the Demonstration Grants for Indian Children and Youth Program authorized under title VI of ESEA to implement changes to title VI resulting from the enactment of ESSA and

to better enable the Department and grantees to meet the objectives of the program. As described in the Tribal Consultation section of this document, Tribes favored expanding the ability of families to choose high-quality educational opportunities during recent consultation sessions on the topic. Accordingly, the Department proposes a new priority and accompanying requirements and selection criteria for applicants proposing to empower parents and students to choose education services best suited to their needs.

Applicants addressing the proposed priority on education choice would have the flexibility to determine which academic outcomes are most critical for students in their communities, including students with disabilities, in the overall effort to promote college and career readiness. Applicants would then identify education service options they believe are most likely to help students achieve those outcomes and provide parents and students with the options to choose the services best suited to their needs, while also allowing parents to request a particular service or provider not already identified. Under the proposed priority, applicants would propose to use grant funds to pay for the services that parents or students select. The applicant would need to explain how it would transfer funds

directly to the selected service provider, such as an individual providing tutoring services or a service provider offering supplemental counseling, which could be through an online payment portal.

Because Tribes are not the only eligible applicants for the Demonstration Grants program, we propose to require a non-Tribal applicant addressing the proposed priority to partner with a Tribe. If the student population to be served by the applicant consists of students from multiple Tribes and less than half of the students to be served are from one Tribe, the applicant could partner with a Tribal organization rather than a Tribe. We note that for projects that will serve primarily students who are members of federally recognized Tribes, grantees would be required to give preference in hiring and contracting to Indian persons and entities. (25 U.S.C. 5307(b); 34 CFR 263.23)

Under the proposed priority, the grantee, or the non-Tribal grantee and its partnering Tribe, would identify the services and specific providers from which parents and students would choose and institute a method by which a parent may request a service or provider not included among those identified by the grantee or partnering Tribe. If a grantee or Tribe does not permit the provider or service a parent requests, it must explain in writing to the parent

the rationale for that denial. The grantee would set up a service selection method, such as an online portal, walk-in center, or other method by which parents and students would choose from the list of preapproved providers.

The proposed priority would recognize Tribal sovereignty by giving Tribes a lead role in identifying both the range of services to be provided and the pre-approved providers of those services. For example, one Tribe may determine, based on an analysis of community-level data, that its largest barrier to student success is the lack of school counseling services and mentoring in schools attended by its students. That Tribe could then enter into agreements with entities that would provide students with access to individual counseling services or mentoring when selected by students and parents. As another example, a Tribal applicant may determine that its greatest local need is improving the high school graduation rate. That Tribe could select multiple services and providers to meet that project objective, such as tutoring, and courses provided by a community college from which a parent could choose. Applicants can identify multiple project objectives.

For all proposed projects, we propose language in this priority that would require services to be supplemental to existing school services and existing funding sources. For

example, if there is an existing Native American language course during the school day, grant funds could not be used to pay for the existing teacher but could be used to expand the number of educators offering language classes. Grantees could also establish a new after-school Native American language instruction program.

We would permit applicants addressing the proposed priority to request a planning period within the first year of funding to allow grantees to develop a service selection process and finalize written agreements with service providers before beginning implementation.

We note that, under ESEA section 6121(e), no more than five percent of funds awarded for a grant under this program may be used for administrative purposes, and for grants made using FY 2020 funds this administrative cost cap applies only to direct administrative costs, not indirect costs.

As further described in the proposed regulation, we propose in §263.25(h) to require grantees to spend at least 80 percent of their grant funds on direct services to eligible students. If applicants propose a planning year in the first year of the grant, this 80 percent limit would not apply to that first year. Grantees would also be prohibited from spending more than 15 percent of grant funds on the

service selection method or the parent involvement and feedback process.

We invite comment specifically on the following issues:

(1) We are interested in ensuring that we review all applications in a fair and equitable manner. Would asking applicants to self-select into "rural" and "non-rural" categories help ensure we fairly evaluate applicants with greater or fewer relevant resources to support this work? If not, are there other ways for the Department to objectively and fairly consider applicants?

(2) The Department is considering establishing new performance measures for this program under the Government Performance and Results Act of 1993 (GPRA). While we are not required to seek comment on GPRA performance measures, the Department believes the development of effective performance measures can benefit from public input and invites public comment to help inform the final performance measures for this program. Although the Department will consider the public comments, the Department is not limited by the terms of the proposed performance measures or public comment on those measures in establishing final performance measures. We specifically invite comment on whether the following measures would provide meaningful data, and also

on the feasibility for grantees of collecting and reporting data that would inform the measures:

A. The total number of options offered through the project from which participating students can choose.

B. The percentage of options offered through the project from which participating students can choose education-related services that are culturally relevant, as determined by the grantee.

C. The number of grantees that met their educational outcomes objective(s) (e.g., decreased school suspension rates, increased graduation rates), as defined by the grantee.

D. The total number of students served.

E. The percentage of parents who report that the number, variety, and quality of options offered meet their children's needs.

F. The average time it took a grantee to respond to requests for specific services.

G. The percentage of parent requests for additional services that resulted in adding new services to the offerings (submission should include both numerator and denominator).

(3) The Department is considering conducting a national study of the Demonstration program to learn more about how grantees expand educational choice in Tribal communities. How might the Department best implement such a study to yield helpful information about promising practices related to increased educational choice?

Tribal Consultation

The Department solicited Tribal input on whether to add a new priority focused on educational choice to the Demonstration Grants for Indian Children and Youth Program by issuing several email messages to Tribal leaders from each of the federally recognized Indian Tribes, all Tribal College or University (TCU) presidents, current grantees under ESEA title VI formula and discretionary grant programs, and other stakeholders.

The Department held a blended in-person and virtual Tribal consultation in Seattle on May 2, 2019, and another in Washington DC, on May 7, 2019, and continued to solicit Tribal comment through June 7, 2019, through the tribalconsultation@ed.gov mailbox. Specifically, we sought input on whether to add a priority to this program that would allow for opportunities for grantees to give students and parents more choice in deciding which education services will better help their children become ready to succeed in

college and careers, and on the best ways to design and implement such a program, taking into account the current needs of Indian students for such services, the capacity of eligible entities to implement such a program, and the types of education options currently available to help Indian children become ready to succeed in college and career.

The Department requested responses to nine specific questions. We list each question below, followed by a summary of the input we received from the in-person and virtual consultations and from written comments, and provide our response. Several of the written comments provided helpful suggestions for improvement of the proposed priority, and we have incorporated several of the suggestions into these proposed regulations, as indicated below.

1. Do you support a priority to permit grantees to operate a project through which parents of eligible Indian students could choose education services for their child, from a list of Tribally chosen education services?

In total, 63 comments on this topic were received, a majority of which were in favor. The comments in opposition included helpful suggestions for improving the priority.

One Tribe stated in its written comments that it does not have either State-funded charter schools or private

schools in its service area, and there are no commercial options that are culturally relevant. The proposed priority would not require that specific education options, such as charter schools or private schools, be present for an applicant to receive a grant. Applicants would be able to propose services that meet the needs of the local community.

Several Tribal participants objected to using contractors for services rather than letting the Tribe provide all services; one stated that it would be preferable to use the funds to build Tribal capacity for providing all services. Under the proposed priority, applicants could propose to provide services directly, but would also need to name at least one independent provider of the proposed services. Applicants would be required to enter into written agreements with service providers, other than the applicant, to ensure accountability of the funds and oversight of services. If Tribes are interested in grants that support building capacity to administer education programs, the Department also offers grants through the State Tribal Education Partnership grants.

2. Which of the following possible services would your Tribe be interested in including in such a project?
 - a. Native language, history, or culture courses.
 - b. Advanced, remedial, and elective courses, including

those offered exclusively online.

- c. Apprenticeships and industry certifications.
- d. Concurrent and dual enrollment.
- e. Private or home education.
- f. Special education or related services such as speech or physical therapy.
- g. Education technology, including learning software or hardware.
- h. Transportation needed to access supplemental school services, such as after-school or summer services.
- i. Tutoring, especially for students in low-performing schools.
- j. Summer and after-school education programs.
- k. Testing preparation and fees and application fees.

Tribal leaders expressed interest in all of these services, although the ones most favored were Native language, history, or culture (a), tutoring, especially for students in low-performing schools (i), summer and after-school education programs (j), and apprenticeships and industry certifications (c). Several Tribal leaders also emphasized the importance of transportation (h), including being able to support student travel for summer and after-school opportunities, such as a late bus.

One Tribe submitted written comments expressing

opposition to including home schooling as a service that could be funded under the proposed priority because in its State there is limited support or monitoring to ensure that home-schooled children are being educated. In addition, the Tribe stated that, instead of permitting tutoring services, the focus should be on improved teaching. The proposed priority would allow home schooling to be an option, but would not require applicants to offer home schooling under their project. Additionally, while this proposed priority could not support educator professional development since it focuses on expanding the ability of families to choose high-quality educational opportunities, the Department shares the commenter's interest with regard to improving instruction. The Department also provides Indian Education Professional Development grants to train Indian individuals to become effective teachers and administrators serving Indian students.

Another Tribe opposed the idea of encouraging parents to choose off-reservation schools for their students. The proposed priority would not require applicants to offer any particular services from the list above; rather, the applicant would choose which services to offer to parents based on the needs of the local community and would establish a method by which a parent may request a service

not included on such a list. The list of services in this consultation question was provided to illustrate examples of the types of services an applicant might consider.

One Tribe stated that online courses do not have appropriate content for the Tribe's needs but that a hybrid of online and on-site project-based learning would be invaluable. We think that Tribes are best suited to determine a range of education options that would work well for students in their community and that parents are best suited to select services for their children. We note that the model described by the commenter could satisfy the proposed priority.

3. Are there any other education services that you would be interested in including in a project?

At the Seattle consultation, several participants suggested that student counseling services be included in the list, due to the lack of school mental health or counseling services in Indian country. We have added individual counseling as a service that could be included, provided it would be supplemental to existing services. Additionally, grantees would need to offer more than one type of service.

Participants also suggested we allow grantees to spend grant funds on books and other materials. Books and other

materials would be an allowable cost for certain services from which parents could choose under the proposed priority, for example, for homeschooling or afterschool reading services.

One Tribe stated in its written comments that it would be interested in using funds for curricula that address decolonization and resiliency programming. The option to select services that teach these topics could be provided as a service choice to parents under the proposed priority; the Department does not dictate curricula.

Another Tribe suggested that we add intensive in-service professional development in literacy for grades pre-K through 4. As described above, the Department shares the commenter's interest with regard to improving instruction. The Department also provides Indian Education Professional Development grants to train Indian individuals to become effective teachers and administrators serving Indian students. Educators supported by the Professional Development program can include those focused on literacy in grades pre-K through 4. In addition, Indian Education formula grants to LEAs can support educator professional development, including for literacy educators in grades pre-K through 4. The proposed priority would focus on services that parents could choose rather than ones that schools

provide to all teachers.

One Tribe suggested that we permit certifications and trainings given by Tribal governments to build the next generation of Tribal administrators. Assuming that this service would target high school students and not postsecondary adult learners, this could be a possible service that parents could choose, if it met the local needs of the community.

One Tribal leader suggested that the funds be used to support student participation in after-school sports, arts, and music programs. Because the purpose of the Demonstration grant program is to improve educational opportunities and achievement of Indian children and youth, the proposed priority would permit the use of funds for such activities if the applicant can demonstrate that the activity is culturally relevant or is supported by evidence that ties the activity to relevant education outcomes, and if there is parental interest in the activity.

4. From the list in question 2 above, which are currently available in your area? Are the current options adequate, and are there adequate secular options in your area?

Responses on the issue of current availability varied a great deal depending on the size and location of the Tribe.

Many current Demonstration grantees felt that, given their local graduation and dropout rates, even if some of the services are currently being offered, the options provided are insufficient to meet demand. One Tribe noted it currently offers home education and special education services and therapies; however, the local community is greatly lacking in Native American language courses, advanced and remedial academic courses, access to online courses, summer educational programs, and transportation services for after-school programs. We did not receive any responses to the specific question about secular options.

5. To ensure accountability and allowability of expenses, should the Tribe be responsible for approving providers of the education services? Do you have other ideas for how to ensure that funds are spent on allowable expenses?

Most Tribal leaders supported the concept that Tribes be responsible for approving service providers, although several participants opposed the idea, stating that if a non-Tribal applicant receives a grant, it should be the responsible party, rather than putting the burden on the partnering Tribe to select or approve providers. One commenter suggested in its written comments that the grantee be responsible, through a subcommittee, rather than

requiring the Tribe to be responsible. Under the proposed priority, a Tribal applicant would choose the project focus and specific services based on local needs, but for a non-Tribal applicant, such as a State educational agency (SEA), the applicant and its Tribal partner would jointly make these decisions.

One Tribe suggested in its written comments that, to ensure funds are spent on allowable expenses, the approved providers should provide pre- and post-project assessment data, including student and parent perception surveys as well as budget line-items and budget summaries. We have incorporated this suggestion into a proposed selection criterion under which applicants would be awarded points based on the extent to which the project is designed to improve student and family satisfaction with the student's overall education experience through means such as pre- and post-project surveys. We note that applicants for all Department discretionary grant programs are required to submit detailed information about their proposed budgets (34 CFR 75.117), so we do not need program-specific regulations on that point.

Another Tribe stated that service providers should go through a competitive process at the local level. One Tribe stated that services should be approved for a limited period

of time, subject to review and renewal by the Tribe. We think that applicants will be in the best position to determine how to appropriately select providers while also giving parents the option to request a provider not included on an approved list, subject to written approval or disapproval by the grantee. The selection and oversight process would be up to the applicant to design under the proposed priority, consistent with applicable procurement policies.

Another Tribe that is a current Demonstration program grantee wrote in favor of the proposed priority and suggested that projects include a liaison with parents to address issues and mediate disputes, such as in situations in which a parent is unhappy with the services provided. We have added a proposed requirement for a parent feedback process under this priority. In addition, we note that an applicant could establish a parent liaison position to support this important work, which we propose to include in §263.25 as an example of ways an applicant may implement parent outreach. Such a role would be especially helpful in assisting grantees as they identify options parents can select, or in responding to requests for specific services from individual parents. An individual serving as a parent liaison could also assist with outreach and communications

to parents regarding the availability of services through this program.

6. The Department is considering incentivizing or requiring grantees to establish a website (which could be managed through a contractor) that would allow families to choose how to apply an allotted stipend to certain preapproved education expenses, so that families would not receive payments directly. Do you support the inclusion of such an incentive or requirement for a website in the new priority? Would families have internet access to make that feasible?

Tribal leaders were generally opposed to requiring grantees to create a website portal for families to choose services; they preferred that it be an option, due to lack of internet availability in many areas. However, one participant stated that an online portal would make it easier for parents to choose services and would improve accountability.

One Tribal leader was concerned that requiring grantees to contract with a third party would create additional unnecessary bureaucracy and stated that the Tribe already has a system for paying vendors. Some stated that a better way to have parents select services would be at community meetings, or through home visits. Accordingly, we are not

proposing to require service selection systems to be web-based. Tribes could create or use existing systems or websites or use a different method for choosing services that better fits the needs of their community. Regardless of the mechanism, applicants should ensure that parents are empowered to select individual services for each participating student. These services selected will likely vary among participating students.

7. Should the new priority require eligible entities that are not Tribal (e.g., State educational agencies (SEAs) or LEAs) to partner with a Tribe, Indian organization, or TCU?

Comments were uniformly in favor of requiring non-Tribal applicants to partner with a Tribe. Several written comments urged that we permit only Tribes to be lead applicants. We cannot restrict the statutory eligibility for this program, which permits SEAs and LEAs to apply, in addition to Tribally connected entities (i.e., Tribes, TCUs, Bureau of Indian Education (BIE)-funded schools, and Indian organizations). We propose requiring an applicant that is not a Tribe to partner with a Tribe if it proposes to serve primarily students from that Tribe; if it proposes to serve students from many different Tribes, the applicant would be required to partner with a Tribally connected entity.

One Tribe suggested that the proposed priority would create a risk that a non-Tribal entity could target a vulnerable Indian school population for monetary gain while providing poor-quality services. Under the proposed priority, the grantee would be responsible for overseeing all providers and ensuring quality. We have added to the proposed requirements a plan for how the applicant would oversee service providers and ensure that students are receiving high-quality services under the project, and a description, in the requirement for an agreement with providers, of how the grantee will hold the provider accountable to the terms of the agreement. We have also proposed a selection factor evaluating the quality of an applicant's proposed plan to oversee the service providers.

8. How should grant amounts be determined?

a. Should the grant amounts for projects planning to fund a full-time education program be based on a percentage of the per-pupil expenditure in your area or State multiplied by the number of students to be served?

One Tribe, in its written comments, opposed this idea on the basis that per-pupil expenditures do not consider local and geographic constraints; another stated that due to differences between urban and rural areas, consideration should be given to regional rather than State-average

expenditures. Accordingly, we propose a selection criterion related to the way an applicant determines the appropriate requested amount for their projects, which should generally reflect the average per-pupil amount to be made available, and the number of students whom the applicant intends to serve.

b. How should grant amounts for applicants who propose to provide supplemental services be calculated?

One Tribal leader stated that this should be based on the Tribe's capacity and budget. We agree.

c. On what other factors should the budget be based?

One Tribe suggested in its written comments that in awarding grants we use the factors of innovation, reproducibility, and post-grant sustainability. We agree that the ability to sustain the project following the grant period, as well as the applicant's plans and ability to share the project design and results with others, are important considerations, and we will take those into account when choosing which selection criteria to include in the NIA.

9. What other considerations should go into the design of this priority?

Several Tribes commented that the program should reflect Tribal sovereignty, in particular the sovereign

right to determine education programming and services. We agree with these comments and have drafted the proposed priority in a way that we believe reflects Tribal sovereignty, but we welcome feedback on the specific language in the proposed regulations.

One Tribe suggested that we consider urban and rural applicants separately, as rural applicants often face higher costs and have fewer existing resources, and that we consider the applicant's capacity and infrastructure. Another stated that we should take into account a Tribe's existing capacity. The existing regulations already include a priority for rural applicants, so we are not proposing such a priority for rural applicants in this NPRM. We are proposing a priority for applicants who do not meet the existing rural priority; this proposed "non-rural" priority would allow us to consider rural and non-rural applicants separately in future competitions. We have included in this NPRM a targeted question regarding whether differentiating between rural and non-rural applicants is an appropriate proxy for discerning between applicants with limited resources and applicants with multiple resources.

Another Tribe that is a current Demonstration grantee, writing in favor of the proposed priority, stated that the Department should consider outcomes as a factor when making

award decisions, and that continued communication and ongoing feedback should be used for planning and implementation of the projects. We agree that measurable project objectives and clear plans for continuous improvement should be important parts of an applicant's proposal and will consider including selection criteria in the NIA to ensure that peer reviewers consider these factors.

Significant Proposed Regulations

We group major issues according to section of the regulations.

What definitions apply to the Demonstration Grants for Indian Children and Youth program? (§263.20)

Statute: ESEA section 6121(d)(3) requires that applications include a description of how parents and family of Indian children have been and will be involved in implementing the project activities. ESEA section 8101(38) contains a definition of "parent."

Current Regulations: The current regulations do not define "parent."

Proposed Regulations: We propose to add the definition of "parent" from section 8101 of the ESEA.

Reasons: We propose to add the ESEA definition of "parent" to make it clear that the term includes a legal guardian or

other person standing in loco parentis, such as a grandparent (§263.20).

What priority is given to certain projects and applicants?

(§263.21)

Statute: ESEA section 6121(a) provides that the purpose of the program is to support projects to develop, test, and demonstrate the effectiveness of services and programs to improve education opportunities and achievement of Indian children and youth. Section 6143 requires the Secretary to give a preference to Indian Tribes, Tribal organizations, and TCUs in making grants under this program.

Current Regulations: Section 263.21 contains three mandatory priorities in paragraphs (a) and (b), and five optional priorities in paragraph (c) that the Secretary may choose in any year in which there is a new competition.

Proposed Regulations: We propose to add BIE-funded schools to the list of entities in §263.21(b)(1) that receive competitive preference. We also propose to add a priority in §263.21(c) for entities that are not rural, that is, that do not meet the existing priority for rural entities.

In addition, we propose to add a priority for projects that would expand educational choice for parents, allowing them to direct funding to particular education services to expand the ability of parents to choose high-quality

educational opportunities to meet the needs of Native youth. The requirements pertaining to this proposed priority would be in a new §263.25.

Reasons: We propose to add BIE-funded schools to the list of entities for which we give competitive preference in order to clarify in the regulations our long-standing interpretation of section 6143 of the ESEA in this regard. That statutory provision requires that, in making grants under the Demonstration program as well as under certain other programs, the Department must give preference to Indian tribes, organizations, and institutions of higher education. The Department treats all BIE-funded schools as "Indian organizations" for purposes of this provision, and this regulation would provide clarity to applicants that are BIE-funded schools.

We propose to add a priority for entities that do not meet the existing rural priority in order to give the Department the ability to consider rural and non-rural applicants separately. The regulations already contain a priority for rural applicants in §263.21(c). The proposed priority would define the inverse population and would be used in conjunction with the priority for rural applicants; the Department could use multiple absolute priorities to create separate funding slates for applicants that propose

to serve rural communities compared with applicants that do not. This would give the Department the ability to distribute the grants fairly among high-scoring rural and non-rural applicants, so as not to disadvantage rural entities that may not have access to the same resources as non-rural applicants.

We propose the new educational choice priority in order to support Tribal communities in designing projects to meet their goals and objectives while giving parents the opportunity to select the specific services that best meet the needs of their own children. Under the priority used in the Demonstration Grants program for fiscal years (FY) 2015-2018, the Native Youth Community Projects, the applicant, whether an LEA, a Tribe, or a Tribal organization, designed the objectives and services and arranged to provide those services. The proposed priority would include parents and families in the decision-making process by providing them with a choice of services or of service providers, consistent with the statutory provision in section 6121(d) (3) of the ESEA that requires all applicants for Demonstration Grants to describe how parents and families of Indian children will be involved in developing and implementing the activities in each project.

The proposed priority would give to Tribes and other

grantees the ability to select local entities that can provide high-quality services to students. The grantee would enter into a contract with these providers and oversee the providers to ensure quality. Parents would then select the specific service(s) and provider(s) for their child. The grantee would also establish a process by which a parent may request a service or provider not specifically offered. The process would include a response, in writing, from the grantee to the parent if such a request cannot be accommodated, which must explain the reason for denying the request, as further described in new §263.25.

We are not proposing to remove any of the existing priorities from the regulations. The new proposed priority would be added to the regulations to provide an additional option from which the Department may choose, for any competition under the Demonstration Grants program. Because the purpose of the Demonstration Grants program is to test and demonstrate the effectiveness of various programs in improving education opportunities and achievement of Indian children and youth, adding this proposed priority would provide a new way to potentially improve outcomes and may provide the Department with new information to disseminate to the field to inform future local efforts to improve students' outcomes. The details of this proposed priority,

as reflected in these proposed regulations, were informed by the Tribal consultations held on this topic.

What are the application requirements for these grants?

(§263.22)

Statute: ESEA section 6121 includes four specific application requirements, in addition to other assurances and information as the Secretary may reasonably require.

Current Regulations: Section 263.22 contains the statutory application requirements.

Proposed Regulations: We propose to add two application requirements in new §263.22(b)(4) that could be used in any year, although they are designed to accompany the proposed priority for educational choice. Under the first proposed application requirement, a non-Tribal applicant would be required to partner with a Tribe or Tribal organization in order to receive a grant; if 50 percent or more of the students to be served are from one Tribe, the application must include that Tribe as a partner. If the majority of students are from different Tribes, however, then the applicant could choose as a partner a single local Tribe, local or national Tribal organization, a TCU, or a BIE-funded school. Under the second proposed application requirement, an applicant would be required to include in its application a plan for how the applicant will oversee

service providers and ensure that students are receiving high-quality services under the project.

Reasons: We agree with the input received from Tribes during consultation that, in order to maximize opportunities for Tribal sovereignty, projects that serve Native students must include a Tribal partner. We propose the 50 percent cutoff for Tribal affiliation in order to provide clear guidance for applicants that are not Tribes regarding when they are required to partner with a specific Tribe. We chose 50 percent because that is the percentage of the school district enrollment that is set forth in section 8538 of the ESEA to distinguish school districts that must consult with Tribes from those that do not. To the extent that certain areas lack local Tribal organizations, we acknowledge that an applicant might need to partner with a national Tribal organization. We propose the requirement that applicants provide a plan to oversee service providers in order to ensure that applicants carry out their oversight responsibilities and that students receive high-quality services.

How does the Secretary evaluate applications for the Demonstration grant program? (§263.24)

Statute: ESEA section 6121 does not include selection criteria.

Current Regulations: The current regulations do not include selection criteria for this program.

Proposed Regulations: Proposed §263.24 would add three selection criteria, for this program. Under the selection criterion relating to project services, we propose three selection factors. The proposed selection factor in §263.24(a)(1), which would be specific to the priority for educational choice, would allow us to evaluate an application based on the extent to which the project would offer high-quality choices of services, including culturally relevant services, and providers that build on existing options. The second and third proposed selection factors could be applied regardless of which priority is used: the factor in §263.24(a)(2) would require applicants to describe the extent to which the services to be offered meet the needs of the local population, as demonstrated by an analysis of community-level data, including input from students and/or parents; the factor in §263.24(a)(3) would allow applications to be judged on the quality of their response to the statutory provision in section 6121(d)(3) of the ESEA regarding evidence-based projects. The definition of "evidence-based" in section §77.1 would apply; this definition includes all four levels of evidence: strong, moderate, and promising evidence as well as evidence that

demonstrates a rationale. The definition of “demonstrates a rationale” in the same section clarifies that it “means a key project component included in the project’s logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.” Accordingly, an applicant may provide a logic model for the proposed project, including at least one component informed by research, and receive points under this proposed criterion.

We propose four selection factors under the criterion relating to project design. One proposed factor could be used with any priority and would allow us to evaluate applicants based on the extent to which their project is designed to improve student and parent satisfaction with the student’s overall education experience through pre- and post-project data. Two of the proposed factors would be specific to the priority for educational choice and would ask applicants to describe (1) their process for selecting providers and (2) their method for informing parents of the choices available to them. The fourth proposed factor would allow us to evaluate the quality of the applicant’s plan to oversee service providers and ensure that students are receiving high-quality services under the project.

Finally, we propose a selection criterion relating to

reasonableness of budget, with two sub criteria. The first relates to the reasonableness of the proposed per-pupil amount for services in relation to the project objectives, and the second concerns the transparency of those per-pupil costs for parents.

Reasons: By establishing in the regulations selection factors that are tailored to the needs of Tribal applicants, the Department would have the ability to choose, in any grant competition, from the unique selection criteria established through these proposed regulations as well as from the general selection criteria in 34 CFR 75.210.

What are the program requirements when the Secretary uses the priority for educational choice in §263.21(c)(7)?
(§263.25)

Statute: ESEA section 6121 does not address educational choice.

Current Regulations: The current regulations do not address educational choice.

Proposed Regulations: Proposed §263.25 would add eight requirements that would apply to any competition in which the Secretary uses the proposed priority for educational choice. Section 263.25(a) would require grantees to choose a project focus and specific service providers that are based on the needs of the local community. In §263.25(b) we

propose to require grantees to offer more than one education-related option for services from among the twelve listed in that paragraph. Multiple service providers may address a single education-related option. Separately, we propose in §263.26(d) to require multiple service providers, including service providers that are not the applicant, though the applicant may also provide services. We propose in §263.25(c) to ensure that all services would supplement and not supplant existing services and funding sources.

We further propose in §263.26(d) to require grantees to establish a method through which parents could select from various services and providers tailored to the project objective. The service selection method could not include direct financial transfers to parents. Grantees would also be required under proposed §263.25(e) to have a system in place for parents to advocate for services their children need, such as a parent feedback process, that would require the grantee to provide a written explanation for not providing the requested service; the explanations would need to be provided within thirty (30) days.

We also propose in §263.25(f) a requirement that grantees enter into a written agreement with each service provider under the project, and that the agreement include a nondiscrimination clause, including a provision prohibiting

the provider from discriminating against Indian students who are eligible for services under this program on the basis of affiliation with a particular Tribe. The agreement would also be required to contain a description of the oversight to be provided by the grantee, a description of how students' progress will be measured, and provide for the termination of the agreement if the provider is unable to meet the terms of the agreement.

In the event that the number of requests from parents of eligible students for services under the project exceeds the available capacity, we would require in proposed §263.25(g) that the grantee or provider include a fair and documented process to choose students to be served, such as a lottery, or another transparent set of consistently-applied criteria, such as first-come, first-served, or need-based criteria.

Finally, we propose in §263.25(h) to require grantees to spend at least 80 percent of their grant funds on direct services to eligible students. If applicants propose a planning year in the first year of the grant, this 80 percent limit would not apply to that first year. Grantees would also be prohibited from spending more than 15 percent of grant funds on the service selection method or the parent involvement and feedback process described in paragraph (e)

of this section. If an applicant proposes a planning year in the first year of the grant, this 15 percent limit would not apply to that first year.

Reasons: We propose to require that services be based on local needs because we heard from Tribes that it is important that projects be tailored to the unique needs of each community. We propose the requirement that grantees offer more than one specific service to ensure that families have adequate choices. We propose to require that services supplement existing options in the community to ensure that these funds are not used to supplant other funding sources that already exist. We propose to require a service selection method to help ensure that grantees have a carefully planned administrative system through which parents can access the services. It is important that grant funds go only to service providers and not the parents, as there will be an agreement with service providers that includes expectations for reporting activities and financial oversight. We propose to require a system for parent input, in response to suggestions from Tribal consultation, to ensure that parent voices are heard and responded to with regard to quality of services, the administrative convenience of the system, choice of providers and specific services, and other matters. This system must include a

mechanism by which parents can request specific services or providers and receive responses in writing indicating the reason for denying any request the grantee cannot satisfy.

We propose to require that grantees enter into written agreements with each provider to ensure that grantees have the necessary programmatic and fiscal oversight of all services under the project and that grantees and providers are held accountable to the terms of the agreement. In addition, the proposed requirement that agreements include a nondiscrimination clause, including a provision prohibiting the service provider from giving priority to members of one Tribe over another, is designed to ensure that all American Indian and Alaska Native students who are eligible for services under this program (pursuant to the definition of Indian in ESEA section 6151) have an equal opportunity to obtain services. We propose the requirement of a fair and documented selection process, such as a lottery, to ensure there would be no favoritism in choosing which students are included in the project.

We propose that at least 80 percent of grant funds be used for direct services so that most of the grant funds are used to support services for students, not to implement the service selection process. Under the proposed rule, grantees could use up to 15 percent of the award for the

service selection method or the parent involvement and feedback process. We propose that the 80 percent requirement would not apply in the planning year, if the grantee requests and obtains permission for the first year of the grant to be used for planning, because we understand that setting up a service selection method can require a large amount of funds at the start of the grant that would not be continued in subsequent years. Thus, if a grantee uses the first year of the grant as a planning year, it will not have its costs limited to a total of 20 percent of the grant for the service selection method, its indirect cost rate, and its direct administrative costs, as will be the case in future grant years.

Technical Changes

We are also making minor technical changes to these program regulations, some of which are required to align the regulations with the ESEA, as amended by ESSA. The technical changes to align the regulations with the ESSA amendments to title VI of ESEA are as follows:

1. We add "and youth" to the name of the program in the title for subpart B of part 263, in the title of §263.20, and in the definitions in §263.20, to align with ESEA section 6121(a)(1).

2. In §263.20, we delete the definition of "Indian

institution of higher education” and replace it with the statutory definition of “Tribal college or university,” and make conforming changes to §263.21, in alignment with ESEA section 6121(b).

3. In §263.22, we add to the application requirements the expansion from involvement of parents to include family members, and we change “scientifically-based” to “evidence-based,” in alignment with ESEA section 6121(d)(3)(B).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment, or otherwise promulgates, that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The proposed regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

We have also reviewed these proposed regulations under Executive Order 13563, which supplements and explicitly

reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired

behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory

action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The potential costs associated with the proposed priorities and requirements would be minimal, while the potential benefits are significant.

We have determined that these proposed regulations would impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these proposed regulations would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the programs--for example, expanding the choices available to parents and students, and improving access to services such as Native language programs or providing new internship or apprenticeship programs--would outweigh any costs incurred by applicants, and the costs of carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be excessively burdensome for eligible applicants, including small entities.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, "\$263.2 What definitions apply to the Demonstration Grants for Indian Children and Youth program?")
- Could the description of the proposed regulations in

the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are LEAs, TCUs, Tribes, Indian organizations, and BIE-funded schools receiving Federal funds under this program. The proposed regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. Participation in the Demonstration Grant program is voluntary and the Department believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be limited to the costs related to providing the documentation outlined in the proposed

definitions and requirements when preparing an application and that those costs would not be significant. We note that those grantees that would be subject to the minimal requirements that these proposed regulations would impose would be able to meet the costs of compliance using Federal funds provided through the Indian Education Demonstration Grant program.

However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Indian Education Demonstration Grant program. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the

public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed §§263.22 (Application Requirements) and 263.24 (Selection Criteria) contain information collection requirements (ICR) for the program application package. As a result of the proposed revisions to these sections, we would transfer the grant application package information collection burden from 1810-0722 to 1894-0006, resulting in discontinuation of 1810-0722. In Table 1 below, we assume 100 applicants each spend 30 hours preparing their applications.

TABLE 1: Demonstration Grants Program Information
Collection Status

OMB Control Number	Relevant Regulations	Expiration	Current Burden (Total Hours)	Proposed Burden (Total Hours)	Proposed Action Under Final Rule
1810-0722	Proposed §§263.22 and 263.24	07/31/2021	For Applicants: 4,000 hours	0	Discontinue by 07/31/2021
1894-0006	Proposed §§263.22 and 263.24	January 31, 2021	0	Applicants: 3,000 hours	Obtain approval under 1894-0006

If your comments relate to the ICR for these proposed regulations, please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments.

Written requests for information or comments, submitted by postal mail or delivery, related to the information collection requirements should be addressed to the Director of the Information Collection Clearance Program, U.S. Department of Education, 550 12th Street, SW, room 9086, Washington, DC 20202.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial

direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. These proposed regulations may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published

in the *Federal Register*, in text or portable document format PDF. To use PDF, you must have Adobe Acrobat Reader, which is available for free on the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number: 84.299A Demonstration Grants for Indian Children and Youth Program.)

List of Subjects in 34 CFR Part 263

Business and industry, Colleges and Universities, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, scholarships and fellowships.

Dated:

Frank T. Brogan,
*Assistant Secretary for
Elementary and Secondary
Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 263 of title 34 of the Code of the Federal Regulations as follows:

1. The title of subpart B is revised to read as follows:

Subpart B – Demonstration Grants for Indian Children and Youth Program

2. The authority citation for part 263, subpart B continues to read as follows:

AUTHORITY: 20 U.S.C. 7441, unless otherwise noted.

3. Section 263.20 is amended by:

a. In the title, adding the words “and Youth” after the word “Children”.

b. Removing the definition of “Indian institution of higher education”.

c. In paragraph (6)(i) of the definition of “Native Youth community project”, adding the words “and Youth” after the word “Children”.

d. Adding a definition of “Parent.”

e. In the definition of “Professional development activities”, adding the words “and Youth” after the word “Children”.

f. Adding in alphabetical order a definition for “Tribal College or University (TCU)”.

The additions read as follows:

§263.20 What definitions apply to the Demonstration Grants for Indian Children and Youth program?

* * * * *

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

Tribal College or University (TCU) means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

4. Section 263.21 is amended by:

a. In paragraph (a), removing the number "7121(c)" and adding, in its place, the number "6121(c)".

b. In paragraph (b)(1), adding the words "school funded by the Bureau of Indian Education," after the words "Indian organization," each time they appear, and removing the words "Indian institution of higher education" and replacing them with "TCU" each time they appear.

c. In paragraph (b)(2)(i), adding the words "school funded by the Bureau of Indian Education," after the words "Indian organization," each time they appear, and removing the words "Indian institution of higher education" and replacing them with "TCU".

d. In paragraph (c)(3), removing the number "7116" and adding, in its place, "6116".

e. In paragraph (c)(4), removing the number "7121(c)" and adding, in its place, the number "6121(c)".

f. Revising paragraph (c)(5).

g. Adding new paragraphs (c)(6) and (7).

The revision and additions read as follows:

§263.21 What priority is given to certain projects and applicants?

* * * * *

(c) * * *

(5) * * *

(i) An LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the ESEA; or

(ii) A BIE-funded school that is located in an area designated with locale code of either 41, 42, or 43 as designated by the National Center for Education Statistics.

(6) Non-rural projects that do not meet the priority in paragraph (c)(5) of this section. This priority can only be used in competitions where the priority in paragraph (c) (5) of this section is also used.

(7) Projects to expand educational choice by enabling a Tribe, or the grantee and its Tribal partner, to select a project focus that meets the needs of their students and enabling parents of Indian students, or the student, to choose education services by selecting the specific service and provider desired.

* * * * *

5. Section 263.22 is amended by:

- a. Revising paragraphs (a)(1) and (3).
- b. Adding paragraphs (b)(4) and (5).

The revision and addition read as follows:

§263.22 What are the application requirements for these grants?

(a) * * *

(1) A description of how Indian Tribes and parents and families of Indian children and youth have been, and will be, involved in developing and implementing the proposed activities;

(2) * * *

(3) Information demonstrating that the proposed

project is evidence-based, where applicable, or is based on an existing evidence-based program that has been modified to be culturally appropriate for Indian students;

* * * * *

(b) * * *

(4) A plan for how the applicant will oversee service providers and ensure that students receive high-quality services under the project.

(5) For an applicant that is not a Tribe--

(i) If 50 percent or more of the student body to be served consists of members of one Tribe, the applicant must include that Tribe as a documented partner for the proposed project; or

(ii) If less than 50 percent of the student body to be served consists of members of one Tribe, the applicant must include a local Tribe, local or national Tribal organization, TCU, or BIE-funded school as a documented partner for the proposed project.

6. Revising the authority citation following §263.23.

The revision reads as follows:

(Authority: 25 U.S.C. 5304, 5307)

7. Adding §263.24 to read as follows:

§263.24 How does the Secretary evaluate applications for the Demonstration Grants for Indian Children and Youth grants

program?

The Secretary uses the procedures in 34 CFR 75.200 through 75.210 to establish the selection criteria and factors used to evaluate applications submitted in a grant competition for the Demonstration Grants for Indian Children and Youth program. The Secretary may also consider one or more of the criteria and factors in paragraphs (a) and (b) of this section to evaluate applications.

(a) *Quality of project services.* The Secretary considers one or more of the following factors in determining the quality of project services:

(1) The extent to which the project would offer high-quality choices of services, including culturally relevant services, and providers, for parents and students to select.

(2) The extent to which the services to be offered would meet the needs of the local population, as demonstrated by an analysis of community-level data, including direct input from parents and families of Indian children and youth.

(3) The extent to which the services to be offered are evidence-based.

(b) *Quality of the project design.* The Secretary considers one or more of the following factors in determining the quality of the project design:

(1) The extent to which the project is designed to improve student and parent satisfaction with the student's overall education experience, as measured by pre- and post-project data.

(2) The extent to which the applicant proposes a fair and neutral process of selecting service providers that will result in high-quality options from which parents and students can select services.

(3) The quality of the proposed plan to inform parents and students about available service choices under the project, and about the timeline for termination of the project.

(4) The quality of the applicant's plan to oversee service providers and ensure that students receive high-quality services under the project.

(c) *Reasonableness of budget.* The Secretary considers one or more of the following factors in determining the reasonableness of the project budget:

(1) The extent to which the budget reflects the number of students to be served and a per-pupil amount for services, not including funds for project administration, that is reasonable in relation to the project objectives; and

(2) The extent to which the per-pupil costs of

specific services and per-pupil funds available are transparent to parents and other stakeholders.

8. Adding §263.25 to read as follows:

§263.25 What are the program requirements when the Secretary uses the priority in §263.21(c)(7)?

In any year in which the Secretary uses the priority in §263.21(c)(7) for a competition, each project must--

(a) Include the following, which are chosen by the grantee, or the grantee and its partnering Tribe if the grantee is not a Tribe:

(1) A project focus and specific services that are based on the needs of the local community; and

(2) Service providers;

(b) Include more than one education option from which parents and students may choose, which may include--

(1) Native language, history, or culture courses;

(2) Advanced, remedial, or elective courses, which may be online;

(3) Apprenticeships or training programs that lead to industry certifications;

(4) Concurrent and dual enrollment;

(5) Tuition for private school or home education expenses;

(6) Special education and related services that

supplement, and are not part of, the special education and related services, supplementary aids and services, and program modifications or supports for school personnel required to make available a free appropriate public education (FAPE) under Part B of the Individuals with Disabilities Education Act (IDEA) to a child with a disability in conformity with the child's individualized education program (IEP) or the regular or special education and related aids and services required to ensure FAPE under Section 504 of the Rehabilitation Act of 1973 (Section 504);

(7) Books, materials, or education technology, including learning software or hardware that are accessible to all children;

(8) Tutoring;

(9) Summer or afterschool education programs, and student transportation needed for those specific programs. Such programs could include instruction in the arts, music, or sports, to the extent that the applicant can demonstrate that such services are culturally related or are supported by evidence that suggests the services may have a positive effect on relevant education outcomes;

(10) Testing preparation and application fees, including for private school and graduating students;

(11) Supplemental counseling services, not to include

psychiatric or medical services; or

(12) Other education-related services that are reasonable and necessary for the project;

(c)(1) Provide additional services that are supplemental to the education program provided by local schools attended by the students to be served;

(2) Ensure that funding is supplemental to existing sources, such as Johnson O'Malley funding; and

(3) Ensure that the availability of funds for supplemental special education and related services (i.e., services that are not part of the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that are required to make FAPE available under Part B of the IDEA to a child with a disability in conformity with the child's IEP or the regular or special education and related aids and services required to make FAPE available under a Section 504 plan, if any) does not affect the right of the child to receive FAPE under Part B of the IDEA or Section 504, and the respective implementing regulations;

(d) Provide a method to enable parents and students to select services. Such a method must--

(1) Ensure that funds will be transferred directly from the grantee to the selected service provider;

(2) Include service providers other than the applicant, although the applicant may be one of the service providers; and

(3) Be supplemental to any existing service selection method;

(e) Include a parent involvement and feedback process that:

(1) Describes a way for parents to request services or providers that are not currently offered and provide input on services provided through the project, and describes how the grantee will provide parents with written responses within thirty days; and

(2) May include a parent liaison to support the grantee in outreach to parents and assist parents and the grantee with the process by which a parent can request services or providers not already specified by the grantee.

(f) Include a written agreement between the grantee and each service provider under the project. The agreements must include--

(1) A nondiscrimination clause that--

(i) Requires the provider to abide by all applicable non-discrimination laws with regard to students to be served, e.g., on the basis of race, color, national origin,

religion, sex, or disability; and

(ii) Prohibits the provider from discriminating among students who are eligible for services under this program, i.e., that meet the definition of "Indian" in section 6151 of the ESEA, on the basis of affiliation with a particular Tribe;

(2) A description of how the grantee will oversee the service provider and hold the provider accountable for--

(i) The terms of the written agreement; and

(ii) The use of funds, including compliance with generally accepted accounting procedures and Federal cost principles;

(3) A description of how students' progress will be measured; and

(4) A provision for the termination of the agreement if the provider is unable to meet the terms of the agreement;

(g) Include a fair and documented process to choose students to be served, such as a lottery or other transparent criteria (e.g., based on particular types of need), in the event that the number of requests from parents of eligible students for services under the project exceeds the available capacity, with regard to the number or intensity of services offered; and

(h) Ensure that—

(1) At least 80 percent of grant funds are used for direct services to eligible students, provided that, if a grantee requests and receives approval for the first year of its grant to be a planning year, the 80 percent requirement does not apply to that planning year; and

(2) Not more than 15 percent of grant funds are used on the service selection method described in paragraph (d) of this section or the parent involvement and feedback process described in paragraph (e) of this section, except in an authorized planning year.