



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SD-15-002

TITLE: Exempt Tribes from FERPA's Advance Consent Requirement and Thereby Provide Access to Tribal Student Records

EXECUTIVE COMMITTEE

PRESIDENT
Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT
Randy Noka
Narragansett Tribe

RECORDING SECRETARY
Aaron Payment
*Sault Ste. Marie Tribe of Chippewa
Indians of Michigan*

TREASURER
W. Ron Allen
Jamestown S'Kallam Tribe

REGIONAL VICE- PRESIDENTS

ALASKA
Jerry Isaac
Native Village of Tanacross

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Leander McDonald
Spirit Lake Nation

MIDWEST
Roger Rader
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Fawn Sharp
Quinalt Indian Nation

PACIFIC
Jack Potter, Jr.
Redding Rancheria

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Liana Onnen
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Bruce Ignacio
Ute Indian Tribe

EXECUTIVE DIRECTOR
Jacqueline Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, over ninety percent (90%) of American Indian and Alaska Native students attend state-run public schools; and

WHEREAS, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, (P.L. 90-247), Title IV, Sec. 438, 88 Stat. 571, governs access to the student records of children attending public schools; and

WHEREAS, FERPA generally provides federal, state, and local education agencies, authorities, and officials access to student records and other personally-identifiable information kept by educational institutions without the advance consent of parents or students; and

WHEREAS, these student records typically include attendance, grades, test scores, etc.; and

WHEREAS, FERPA does not include tribes or tribal education agencies (TEAs) as among the governmental entities eligible to obtain student data without advance parental consent; and

WHEREAS, in all but a few instances, this exclusion of tribes from FERPA has thwarted tribal access to Native student data, which has consequently hampered tribal efforts to develop and coordinate education programs, develop education codes, provide support services and technical assistance to schools, collaborate with state and local education agencies, and most importantly, work to close tribal student achievement gaps; and

WHEREAS, accurate, comprehensive, and meaningful data on Native students is often lacking because federal education reporting requirements often omit Native students due to their small numbers, and the state and local education agencies that do track Native students in public schools are unable to also monitor some of the most at-need Native students attending schools other than public schools; and

WHEREAS, tribes and TEAs are in the best position to track and coordinate Native student data, regardless of the education provider and student location; and

WHEREAS, student data analysis is a central tool in evaluating educational practices, tracking students' academic performance, and developing school improvement plans and support services; and

WHEREAS, TEAs need access to the records of Native students so that they can monitor and analyze the needs and progress of their students and make data-driven decisions to improve Native education outcomes; and

WHEREAS, under 20 U.S.C. § 1232g(b)(1)(C) and 34 C.F.R. § 99.31(a)(3)(iii), the Secretary of the Department of Education can designate TEAs as authorized representatives of the Secretary for the purpose of accessing student records without advance parental or student consent when the disclosure is in connection with the enforcement of or compliance with Federal legal requirements that relate to federal programs; and

WHEREAS, some of the State Tribal Education Partnership (STEP) Programs administered by the Department of Education have agreements that call for or require the use of student data to ensure proper enforcement, compliance, and implementation of the Program.

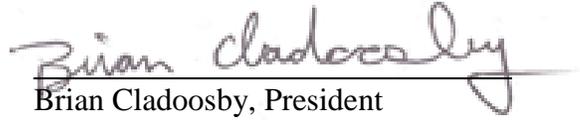
NOW THEREFORE BE IT RESOLVED, the Department of Education should use its authority under 20 U.S.C. § 1232g(b)(1)(C) and 34 C.F.R. § 99.31(a)(3)(iii) to exempt tribes and TEAs from FERPA's advance consent requirement by designating TEAs as the Secretary of Education's authorized representatives for certain federal programs that tribes and TEAs are involved in to ensure proper enforcement, compliance, and implementation of the programs; and

BE IT FURTHER RESOLVED, the Department of Education should provide technical assistance to TEAs on the protection of student records, similar to that provided by the Department of Education's Privacy Technical Assistance Center; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary