



## NIHSDA Briefing Paper For the 2008 Tribal-OHS Consultations July 10, 2008

**Stated Purpose of this Consultation (which is derived closely from the statutory mandate):** The purpose of the Consultation Sessions is to solicit input on ways to better meet the needs of Indian, including Alaska Native, children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. Specific topics will include policy, research, Head Start/Early Head Start conversion, program quality, and monitorings.” The Office of Head Start invited Tribes to submit written testimony and propose additional topics.

### General Recommendations to Presenters:

- **Speak from Experience.** Offering the actual experiences of your program will be very helpful to federal officials. It makes the issue both “real” and “human.” ***It would be especially helpful if you have real life examples that illustrate some of the points suggested below.***
- **Identify the Problem.** Be as specific as possible about problems you have identified.
- **Propose Specific Solutions.** Proposing specific solutions will be helpful to government officials and guarantee that this consultation will be more than just a gripe session.
- **Comment on Positive Items, as Well.** It is important to emphasize what is working and what it successful so that those policies and actions are reinforced and perhaps expanded to other areas where they would be of benefit.

### Suggested Talking Points

**These talking points are divided into three sections:** (I) Priority Issues; (II) Topics Proposed by the Office of Head Start; and (III) Additional Important Issues. All references to the Head Start Act (or just “Act”) are to the law as amended by the Improving Head Start for School Readiness Act of 2007.

***While NIHSDA has identified these issues as having national significance, individual programs may and will have issues unique to their circumstances which should be raised in these consultations as well.***

### (I) PRIORITY ISSUES

#### A. Introductory Consultation Comments

**Remind the Federal Officials of the Purpose of the Consultation.** Per the Act and the Federal Register notice, this consultation should focus “**on ways to better meet the needs of Indian, including Alaska Native, children and their families ...**” Putting our minds together with this purpose in mind means working together to identify solutions to the issues that confront Indian Head Start.



**Encourage Flexible Thinking on Behalf of the Federal Officials.** Identifying solutions also means flexibility by all parties, including in the development of implementing regulations that address the unique circumstances that face American Indian/Alaska Native Head Start programs and the unique sovereign status of the Indian Nations that administer these programs.

**B. Interpreting and Implementing the Head Start Act Amendments of 2007.** In drafting proposed regulations, the Office of Head Start (OHS) has some flexibility of interpretation with regard to the new Head Start Act amendments passed in December 2007. Indian Head Start urges that the following suggestions be implemented in the regulations (or other guidance issued by OHS).

**(1) New Compositional Requirement for the Governing Body – The Act Provides an Exception for Indian Head Start Programs.** The amended Act establishes new qualifications for the governing board (requiring that it include members with fiscal management, early childhood education and legal backgrounds). As the governing board of most Indian Head Start programs is the tribal council, which is generally an elected body, it would be happenstance if all of the Act's new requirements were met. However, the Act contains an exception for public officials (Sec. 642(c)(1)(B)(v) ("subsection v"). **This provision should be interpreted as an absolute exception for tribal councils that serve as Indian Head Start governing bodies to the new compositional requirements in the Act, without having to hire consultants.**

- **Because subsection (v) is an absolute exception to the new composition requirements, OHS has erred in applying the provisions of the next paragraph, Sec. 642(c)(1)(B)(vi) to Indian programs (subsection vi),** when it issued guidance that stated that tribal councils serving as the governing body of a Head Start program, if they do not meet the new requirements, must use a consultant or another individual with relevant expertise. Retaining consultants is an expense that most Indian Head Start programs cannot afford. Paying for consultants will take funds from the delivery of services and will drive down quality at these programs, not elevate quality.
- **Alternatively, if it is ultimately determined that Indian programs must comply with subsection (vi), even if they meet the terms of (v),** it should suffice for Tribes to use employees or consultants already available to them, such as tribal fiscal officers, tribal attorneys and early childhood experts retained by the tribe's Head Start program. Independent experts will not provide qualitatively better advice, but will cost substantially more.

**(2) Inter-Tribal Consortia.** Some Indian Head Start programs have governing bodies made up of tribal officials from a consortium of tribes. Such officials participating in inter-tribal consortia should also meet the exception for public officials described above. Notably, inter-tribal entities do meet the Act's definition of "Indian tribe" which includes an "organized group ... of Indians." Sec. 637 (12).

**(3) "Public entity" as an inappropriate term for Indian Nations.** The public official exception in the Act described above uses the term "public entity." The drafters of the Act were clear in discussions with Indian Head Start advocates that they intended "public entity" to include Tribal Nations so that they would fall into this exception. Nonetheless,



this is not the typical language used to refer to Tribal Nations and many tribal leaders find it offensive. We ask that implementing regulations or guidance emphasize the sovereign nature of tribes with regard to this term.

**C. Indian Special Expansion Funding, Sec. 640(a)(3).** It is very likely that Indian Head Start will receive special expansion funding pursuant to the formula provided for in the Act. The regulations, appropriate budget and grant documents should reflect the specificity of this formula, with no room for subjective interpretation. It should also be clear that the AIAN program receives the same COLA as the other programs, in addition to the special expansion funds.

- **Scope of Permissible “Expansion” should be interpreted broadly in the regulations to accomplish Congress’ intent.** Under the Act, expansion is not limited to adding slots, but is also intended to include expanded staff, competitive compensation levels and expanded services as was made clear in the Joint Explanatory Statement of the Committee of Conference (see House Report 110-439): “The Conferees intend for the Secretary to allow Indian Head Start agencies, in using the funds described in section 640(a)(3)(A)(i)(II) to increase enrollment, to use such funds for conversion of programs from part-day to full-day and from home-based to center-based, ....” The regulatory definition of “expansion” should reflect this broad understanding of how special expansion funds can be applied and should be clear that special expansion funds can be used for existing programs as well as for the establishment of new programs across “Indian Country.” Indian country would like to consult with OHS about its plans for spending the special expansion dollars.
- **Assuring That Expansion Funds are Spent.** The Joint Explanatory Statement of the Committee of Conference also stated that: “The Conferees intend for the Secretary to work with the Indian Head Start and Migrant and Seasonal Head Start communities to enable the funds described in section 640(a)(3)(A)(i)(II) to be obligated to the maximum possible extent.” Any time new funding comes down, it can take awhile to efficiently and effectively distribute that funding.
- **The regulations should make clear that if and when Indian special expansion funds are reallocated, they are to be reallocated among AIAN programs, not among all programs.** This reflects the new statutory requirement set forth at section 640(a)(3)(B)(ii)(aa) that special expansion funds remain available to the programs involved or, as provided at (bb), if a portion is reallocated under clause (iii), the portion shall remain available to the recipients of the portion, which should be Indian Head Start programs.
- **Expansion funds to go to both Indian Head Start and Indian Early Head Start.** The Joint Explanatory Statement of the Committee of Conference further stated that: “The Conferees encourage the Secretary to make available from the funds described in section 640(a)(3)(A)(i)(II) for increasing enrollment in Indian Head Start programs, significant portions both for Indian Head Start programs and for provision of services for additional infants and toddlers in Indian Early Head Start programs.” Expansion should occur in both programs.



## **(II) TOPICS PROPOSED BY THE OFFICE OF HEAD START**

**(A) Policy.** Policy matters are discussed throughout these talking points.

**(B) Research.** Tribal officials need to indicate their research preferences, with the following being recommendations from the National Indian Head Start Directors Association (note that the Act has some requirements, as well):

- Funding allocations and distribution formulas, including cost of providing services with the rural, isolated and remote locations of American Indian and Alaska Native populations
- Determine the eligible Indian population throughout the United States including populations served by current Indian Head Start Agencies including the need for services
- Identification of culturally appropriate, relevant curricular, assessment, and screening tools and provide guidance on selecting curricular based upon price, adaptability and their research grounding

**Note that the Act requires three Indian-related studies:**

- **Overall study of Indian Head Start, Sec.649(k).** The Act requires a study or studies, undertaken in collaboration with tribes, the collaboration director and the National Indian Head Start Directors Association, addressing a wide range of issues.
  - The act also requires that certain factors unique to Indian country, including the trust responsibility, be taken into account.
  - What are the approaches for accomplishing this substantial task, and how are priorities going to be set (priorities should be set in consultation with interested Indian entities).
  - How will the results of the study be used.
  - Determination of the actual cost per child in rural and remote areas is frequently set too low and needs to be examined with greater rigor.
- **Delivery Study. Sec. 650(a)(14).** The Act also requires a study of the delivery of Head Start programs to Indian children living on and near Indian reservations and to children of Alaska Natives.
- **Facilities Study, Sec. 650(b).** Finding, financing and otherwise securing adequate facilities is a major issue in Indian country. The Act provides for a facilities study every five years that includes information on the condition, location, and ownership of the facilities used or available to be used by Indian Head Start agencies including Alaska Native Head Start and Native Hawaiian Head Start agencies. Indian Head Start has heard that previous facility reports have been completed, but to the best of our knowledge not released to the public for review. Adequate funding is needed to ensure a thorough and credible report.

**(C) Head Start/Early Head Start conversion - Reallocation of funds between Indian Head Start and Early Head Start, Sec. 645(d)(3).**

- The regulations should make this process flexible and easy to administer at the local level so that fluctuations, which are most strongly felt in the smaller programs, can be addressed to the maximum benefit of the community.
- The transfer of slots should be at the Indian Head Start programs discretion and permissible at any time during the grant period.
- The primary administrative issue is the appropriate allocation of dollars, so the regulations should provide clear guidance on this point.



- Also, the regulations should reflect the Act's mandate that a program's decision to reallocate funds cannot serve as the basis for reducing a base grant in succeeding years.

**Further Issues for Discussion regarding slot conversion**

- Cost considerations for birth to three conversions for Indian programs operating pre-school HS programs - two preschool slots equal one EHS slot could indicate a reduction in enrollment when implementing this provision.
- Dollars do not lose their preschool identity or do they?
- Income eligibility for children transitioning from EHS to PHS – maintain income eligibility rather than new determination

**(D) Program Quality. Regrettably, program quality remains a major concern for many Indian country programs.** We are in agreement with what we understand to be the new approach at OHS, which is to work with programs throughout the three year evaluation period so that when Federal monitoring teams arrive there are no surprises. This approach achieves much better outcomes than a “gotcha approach” that seemed to prevail a few years ago.

- We need funding for quality that takes into account that most Indian programs cannot rely on any other sources for funding, unlike some urban programs.
- **On-Site Reviews.** On-site reviews should be led by a current employee of HHS. The Act provides that a current or former employee should be on the review team to the maximum extent practicable. As a matter of treating tribal programs within the context of the government-to-government relationship, NIHSDA believes that having a current employee involved is absolutely essential. There should also be recruitment of additional Indian reviewers with appropriate experience and skills – there has been a lack of cultural appropriateness of non-Indian reviewers in some instances.
- **Risk Management Assessment** – there is indication that there is a lack of consistency on how the RAM's are conducted, how the assessments are scheduled/timing, the types and quality of information requested of the grantees and the actual conducting of the assessment. Some grantees feel they have been treated fairly and the sessions have been positive while others feel they have been interrogated and put on the spot. New technologies need to be used for conducting meetings, e.g., GoTo Meetings, web casting, etc.

### (III) OTHER IMPORTANT ISSUES

#### A. Consultation Process.

- **Notice for this consultation was too short.** Tribes and tribal programs have had to scramble on what has effectively been a month's notice to prepare for these consultations. We would like to refer you to Department of Health and Human Services' detailed document regarding tribal consultation. Search for DHHS Tribal Consultation Policy on the Web.
- **Consultations were suppose to occur “in each affected Head Start region”** – there are AIAN grantees in all regions except Region 3 –Delaware, Maryland, Pennsylvania, Virginia and West Virginia, as well as the District of Columbia.
- **The regulations should address the consultation process**, scheduling, reporting requirements and how the information that is gathered will be used.



**B. Distance Learning.** Indian Head Start programs can be improved through expanded distance learning opportunities. With regard to distance learning, the language from Senate Report 110-049 is helpful: “The committee also notes the challenge facing Indian Head Start programs which are often located in remote and isolated areas without access to post-secondary institutions. It is the committee's hope, however, that these challenges can be addressed by additional access to distance education. The committee bill includes a provision to provide additional funding to Tribal Colleges and Universities. The committee intends for this funding to help the staff of Indian Head Start programs attend Tribal Colleges and Universities where such institutions exist to meet the teacher requirements of this legislation in a way that respects the traditional values of Native American tribes.” “Staff” should include not just teaching staff and education coordinators, but all Head Start staff.

**C. Leadership of AI/ANPB and preference for qualified Indian staff.** We urge stronger Native recruitment practices, including relocation expenses not provided in the current announcement for the Regional Program Manager's position. Do not use AI/ANPB as a dumping ground for ineffective and inefficient DHHS, ACF, ACYF and OHS employees which appears to have been the practice over the years. Program specialists must have baseline knowledge of early childhood care and education with preference given to knowledge of the Head Start model. Preference should be given to potential employees having knowledge and experience in working with American Indian and Alaska Natives.

**D. Challenges for Indian grantees in implementing the requirements of the Act/Regulations due to unfunded mandates:**

- a. Staffing requirements with limited employment pools, educational programs, and salaries/benefits in a competitive market
- b. Cost of consultants for the governing body, particularly the early childhood expert
- c. PROGRAMS SHOULD ADD THEIR OWN EXAMPLES HERE.

**E. Culture and Language Preservation.** Indian Head Start is on the front-line in preserving Native language and culture, with the double outcome that students strongly grounded in their culture and languages perform better and that the culture and language is preserved. In several committee reports, the Senate and House emphasized the importance of language and culture, including Senate Report 110-049: “The committee recognizes the development of native language immersion and cultural programs as an important strategy for meeting the needs of children served by Indian Head Start programs, guided by the discretion of the individual Tribal grantees.” The regulations should strongly reflect this policy view. The regulations should also indicate that supplemental tribal culture and language curricular should be exempt from the requirement of being research based.

**F. Transportation as an In-kind service** –New regulations and interpretation that in-kind services can not be counted when parents transport children to and from Head Start services is harmful and illogical.

**G. Program Governance – Impasse Policies, etc.** Although the Head Start Act, 2007 does not mention the concept of “shared decision-making” it does call for the Secretary to develop impasse policies, procedures, and guidance for Head Start agencies concerning the resolution of internal disputes and impasses in the governance of the Head Start program and to facilitate meaningful consultation and collaboration about decisions of the governing body and policy council, thereby implying the governing body and policy council share responsibilities in the management of the Head Start program.



- The regulations should clarify the roles of the governing body and policy council and indicate specific areas where concurrence of two entities must be reached. How does the impasse requirement fit into the picture if shared governance is not in the Act?
- Intrusion on the sovereign rights of federally recognized tribes to establish and maintain their own form of governance structure. The Act is unclear and regulations should be more explicit on the government-to-government relationships.

**H. Program Governance – “Direction.”** The Act states that the policy council is responsible for the direction of the Head Start program. The term “direction” implies control, authority, command and supervision. The regulations should define “direction” so as not to interfere with the day-to-day administration and management of the Head Start program. This would serve to forestall conflict and impasses between the Head Start Agency key management staff, policy council and governing body.

**I. Implementation of the Designation Renewal System – Tribal Provisions, Sec. 641 (c)(7)(A)(iii) and (B) and 641(e) and (f).** OHS should work to achieve the intent of these provisions, which is to assure that every reasonable opportunity is afforded to tribal governments to turn-around an Indian Head Start program before that program gets turned over to a non-Indian provider. These provisions also reflect respect for the government-to-government relationship.

**J. Tribal Government Relationships with the State Collaboration Office and the National Indian Collaboration Office.** Tribes will be required to report to a lower status state agency in meeting the requirements of the Act with regard to reporting their local collaboration efforts with pre-k and LEAs. Tribes should report to the National Indian Collaboration office which would then work with the appropriate state collaboration offices. Topics for State and Indian Collaboration Office interface include: Tribal government collaboration with pre-k and other child care programs; and LEA collaboration requirements placed on tribes that violate principles of tribal sovereignty vis a vis state governments (e.g., reporting to the State Collaboration Director).

**K. National Indian/TA system and inclusion of Indian programs within the state T/TA system.** Need to discuss staff/level of effort, experience and quality of services. Experience indicates that the T/TA providers for AI/ANPB have always been underfunded which has inhibited the timely provision of services to the grantees; restriction on providing training clusters, etc have hampered the delivery of services. More consistency in the skill and knowledge levels of T/TA providers is needed within the new T/TA national system for Indian programs. Do not use the existing model for Indian T/TA for the new national system for it has proven to be in-effective and in-efficient.

**L. Training and Technical Assistance to be provided by knowledgeable staff, Sec. 640(l)(3)(B).** The regulations should reflect the requirement that training and technical assistance should be provided to Indian Head Start programs by staff with knowledge of and experience working with Indian populations.

**M. Definition of homeless children “priority” for services –** what is the priority for services and does this override the selection criteria developed by the program, e.g., Indian preference?



**N. Health and Mental Health Services.** Such services vary across Indian Health Service areas and units – need stronger collaboration between IHS and Indian programs. Facilities inspections vary across regions and from program to program.

**O. Need for facility renovation and construction.** IF YOUR PROGRAM HAS A FACILITY ISSUE, PLEASE CONSIDER RAISING IT.

**P. Redistribution of recovered funds, Sec. 641A. (h)(6)(A)(i) & (ii).** If there are funds recovered from AIAN grantees due to underenrollment, or any reductions in the base grant including a tribe's voluntary relinquishment of the program (such as when a tribe decides to run its early childhood program using exclusively its own funds) the redistribution of these recovered funds shall be to increase enrollment in one or more tribal grantees by no later than the end of the following fiscal year. The regulations should establish the process for recapturing and the criteria for redistribution (e.g., open competition within the AIAN "region" and/or within the Indian programs in the state where tribal funds are reclaimed).

**Q. Waivers available for agencies serving significant numbers of highly mobile children, Sec. 641A(h)(5)(B)(i).** The Act has added language to provide for waivers for programs that have a significant number of highly mobile children. Because many Native families move back and forth from reservation to off-reservation communities, the regulations should reflect the possibility of the need for such waivers in the Indian Head Start program.

**R. Underenrollment Issues.** In some programs, although we know the need and the children are there in the community, underenrollment remains an issue. Partially, this is due to the mobile nature of Native families (moving on and off tribal lands), as well as transportation difficulties not found in urban environments. Increasingly, this issue is compounded by the establishment of pre-K programs by most states, even when those programs do not match the standards of the Head Start program.

We need OHS's support to assist in improving the "marketing and outreach" of AIAN programs. This is not something that comes naturally to Head Start programs but given that the need and eligible population exist, we must focus more attention on how we reach that population better.

**For additional information on the talking points contact NIHSDA's Management Consultant Service.**

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