I am proud of the amazing amount of hard work undertaken on behalf of tribal students at all levels by federal, state, and tribal officials, administrators, teachers, parents, families, communities, and organizations.

As you know, in federal law and policy, American Indian and Alaska Native tribes are sovereign governments. Under the great leadership of Native and non-Native people in this country, for the last fifty years or so, the exercise of tribal sovereign governance has been steadfastly increasing in many areas, such as law enforcement, natural resources protection, and economic development.

In education we also see some progress, with an increasing number of Tribal Education Departments, more state education laws recognizing tribal sovereignty, and Executive Orders from the past two Presidents that affirmatively acknowledge the government-to-government relationship between the United States and tribal nations in education.

Robert and Ted Kennedy understood and embraced Tribal Sovereignty completely in Education. Today, we strive to make tribal sovereignty in education the law as the reauthorization of the Elementary and Secondary Education Act (ESEA) and in amending part of enacting other federal education legislation.

In 1969, after a two-year study by a Special Senate Subcommittee on Indian Education led by Senators Robert and Ted Kennedy, the historic Kennedy Report was released. The Kennedy Report spoke aptly about both the failures and the potential of Indian education. It noted that, at that time, about 160,000 elementary and secondary tribal students nationwide, one third were in schools run by the Bureau of Indian Affairs (BIA), and two-thirds were in the state public schools. Neither school system was doing a good job; problems included poor facilities, irrelevant curricula, and indifferent or hostile teachers. Indians were prohibited from serving on many state public school boards, and most of the BIA schools didn’t even have school boards.

The Kennedy Report made 60 specific suggestions for improvement.

Many were quite similar to those made 40 years before, in the previous most comprehensive Indian education study, The Meriam Report of 1928. This in itself suggested the difficulty or failure of the federal government and the states to improve Indian education. Thus, the primary recommendation of The Kennedy Report was “increased Indian participation in and control over their own education programs and schools.”

Congress responded to The Kennedy Report in 1972 by enacting the Indian Education Act (IEA). The IEA authorized new supplemental education programs for Indian students, including a formula grant program to meet the “unique educational and culturally relevant academic needs of Indian students” that requires open consultation by state public schools with Indian parents. I remind you, the vast majority - today over 90% - of the over 500,000 elementary and secondary tribal students attend state public schools; so, the IEA programs are not and never have been administered by the BIA (or, currently, the Bureau of Indian Education (BIE)); they are now administered by the Department of Education and they primarily serve tribal students in the state public schools.
"The primary recommendation of The Kennedy Report was 'increased Indian participation in and control over their own education programs and schools.'"

Over the years the IEA’s formula grant program, along with IEA discretionary grants, teacher training programs, graduate school fellowships, and national activities grants have helped tribal students. Precisely how many students wouldn’t be where they are today without the IEA we may never know. Yet every time the ESEA gets reauthorized, there are those in Congress that would eliminate some or all of the IEA programs. In fact some of the programs (like the graduate fellowships and adult literacy programs) have been de-funded by Congress now for years; others, like funding for Tribal Education Departments, the authorization for which came in the ESEA reauthorization of 1994, never have been funded. But the original basis of the IEA – that the federal government has a moral obligation to help remedy the past injustices it caused to American Indians – remains intact; it is the law.

All these good things can be attributed to Robert and Ted Kennedy. Now, in this 21st century, we need another individual or individuals to champion Indian education.

The IEA is almost 40 years old. The current incarnation of the ESEA, including the IEA, known as the No Child Left Behind (NCLB) Act, is again up for reauthorization. And what we need now is not just an IEA, but a “Tribal Sovereignty Education Act.”

Notwithstanding all of its good provisions, the IEA simply doesn’t recognize tribal sovereignty as much as it could. The IEA pre-dates the Indian Self-Determination and Education Assistance Act of 1975 and all the other modern laws that more fully recognize tribal sovereignty. The IEA pre-dates contemporary Executive Branch policy strongly affirming the government-to-government relationship between the United States and Native nations.

Congress can and should align education legislation with these other federal laws and policies. Significantly, NCLB took some important steps in this direction by adding to the IEA policy provisions the recognition of the federal government’s trust relationship in Indian education, and its commitment to work in education with Indian tribes. NCLB added specific provisions to help enhance the exercise of tribal sovereignty over the BIE-funded schools, including options for tribal accreditation and tribal AYP standards. In this upcoming ESEA reauthorization, we urge Congress to take these kinds of next steps with respect to the state public schools, which most tribal students attend.

Some states already are moving in this direction on their own – without any federal mandate to do so. At least a dozen states now have comprehensive Indian education laws. Some of these laws recognize tribal sovereignty not just in terms of public school tribal language courses and teacher certification – though these are extremely important matters – but with respect to general education requirements and programs. And five states – California, Maine, Montana, Oregon, and Wisconsin – now mandate the teaching of tribal sovereignty itself in their public school curricula. Congress needs to support these growing tribal-state efforts that acknowledge the role of tribal sovereignty in public school education by authorizing and funding intergovernmental options for tribes and states (or local education agencies), perhaps starting with existing programs and funding like the IEA grants, Title I, and Impact Aid. Congress needs to fund Tribal Education Departments – these authorizations are now 20 and 15 years old and never have been funded.

Also, Congress very much needs to put tribal education agencies on a par with state education agencies regarding public school data collection, reporting, and analysis. Many of these recommendations are in or follow from existing federal reports, like the Indian Nations at Risk Report (1991), and the annual reports to Congress of the National Advisory Council on Indian Education (NACIE), an under-utilized entity created by the IEA. Over the years tribes and national organizations like NIEA, the National Congress of American Indians, and the Tribal Education Departments National Assembly have made other helpful recommendations for federal education law and policy. Very useful federal-tribal collaborative work led to the two Executive Orders on Indian Education signed by Presidents Clinton and Bush. A tremendous amount of reason and wisdom lies behind the many new state Indian education laws, and in state public education organizations working with tribes to help Native students like the Council of Chief State School Officers. The partnerships are there, and with the leadership and action of individuals and collective bodies like you, we can put together a Tribal Sovereignty Education Act.

John Echobawk (Pawnee) is the Executive Director of the Native American Rights Fund. He was the first graduate of the University of New Mexico’s special program to train Indian lawyers, and was a founding member of the American Indian Law Students Association while in law school. John has been with NARF since its inception, having served continuously as Executive Director since 1977. Next year NARF also turns 40. www.narf.org