

Indian Self-Determination and Education Assistance Act (ISDEEA).”

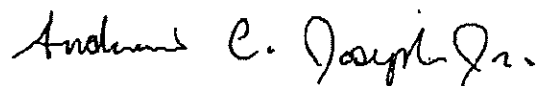
For well over a year, Tribes worked with IHS on a government-to-government basis to reach difficult compromises on contested issues such as accounting for duplication on service unit shares. The parties agreed that the policy will “be reassessed on a regular basis,”¹ but specified that “changes will only be implemented **after** Tribal consultation.”² Revoking the 97/3 option, even temporarily, fundamentally changes the agreement struck between the parties and should be implemented, if at all, only after informed discussion with the Workgroup and full tribal consultation—as IHS agreed in the policy itself.

As a first step, we respectfully request that IHS immediately distribute to the Workgroup the data which IHS relies for its conclusion that the 97/3 split may not “in all cases” conform to the ISDEEA. This should include the annual CSC Funding Report called for in the policy,³ as well as data specific to the composition of service unit funding. To enable meaningful discussion, tribes need to conduct their own analysis of all information that, in IHS’s view, mandates re-opening this issue. IHS should then convene the CSC Workgroup, comprised of tribal leaders and technical experts, to develop a shared interpretation of the data. Finally, any changes agreed to by the Workgroup must be vetted through full tribal consultation.

Throughout this process, and until a final decision is made, IHS should continue to carry out its CSC policy as written, including the 97/3 option. If, in some individual case, IHS can show that the 97/3 split clearly and demonstrably conflicts with the ISDEEA, the policy already recognizes that the statute supersedes it in the event of a conflict.⁴ A complete revocation of the 97/3 option is not necessary. More importantly, it disregards the bargain struck in government-to-government negotiations and ignores the deliberative process for amendments set forth in the policy itself.

Thank you for your prompt attention to this matter. We look forward to working with IHS as the conversation on this issue develops.

Sincerely,



Andrew C. Joseph Jr.
Tribal Co-Chair, IHS CSC Workgroup

cc: IHS CSC Workgroup members

¹ Indian Health Manual, § 6-3.1B(18).

² Indian Health Manual, § 6-3.1D (emphasis added).

³ Indian Health Manual, § 6-3.5B.

⁴ Indian Health Manual, § 6-3.1C.