S. HRG. 107–32

NATIVE AMERICAN EDUCATION IMPROVEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

S. 211

TO AMEND THE EDUCATION AMENDMENTS OF 1978 AND THE TRIBALLY CONTROLLED SCHOOLS ACT OF 1988 TO IMPROVE EDUCATION FOR INDIANS, NATIVE HAWAIIANS, AND ALASKAN NATIVES

MARCH 14, 2001
WASHINGTON, DC

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NATIVE AMERICAN EDUCATION IMPROVEMENT ACT

WEDNESDAY, MARCH 14, 2001

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 9:45 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Inouye.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Our hearing today will be a legislative hearing on S. 211, the Native American Education Improvement Act of 2001. I have been joined by Senator Inouye in sponsoring this legislation to improve Indian education to try to help native youngsters to be competitive and make their way in a difficult and often harsh world.

This is a timely hearing because last week the Senate Committee on Health, Education, Labor, and Pensions markedup the President's legislation to amend the Elementary and Secondary Education Act. It is expected on the Senate floor very shortly, in fact in a matter of weeks.

S. 211 contains two titles. Title I seeks to amend the Indian Education Amendments of 1978 related to the BIA schools and title II seeks to amend the Tribally Controlled Schools Act of 1988. As the only member of the Senate who lives on an Indian reservation and is also a former teacher, I know all too well the problems faced by Native American youngsters.

I feel very strongly that in America, education holds the key to individual achievement and development of native communities and real Indian self-determination.

Like the President's prescription for improving schools, S. 211 relies on local control and flexibility to develop education programs and continues the trend toward increasing tribal contracting of Federal services.

As Congress has done in other areas such as Indian employment training, this bill would authorize the coordination of existing programs provided that integration brings greater efficiently and improves services to Indian people.

The $1 billion Indian school construction backlog continues to be a problem. The President has committed to eliminating the backlog entirely by fiscal year 2006. I continue to support creative solutions such as the School Bonding bill introduced by Senator Tim Johnson of this committee, which I cosponsored.

[Text of S. 211 follows:]

II

107TH CONGRESS
1ST SESSION

S. 211

To amend the Education Amendments of 1978 and the Tribally Controlled Schools Act of 1988 to improve education for Indians, Native Hawaiians, and Alaskan Natives.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2001

Mr. CAMPBELL (for himself and for Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To amend the Education Amendments of 1978 and the Tribally Controlled Schools Act of 1988 to improve education for Indians, Native Hawaiians, and Alaskan Natives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Education Improvement Act of 2001".

TITLE I—AMENDMENTS TO THE EDUCATION AMENDMENTS OF 1978

SEC. 101. AMENDMENTS TO THE EDUCATION AMENDMENTS OF 1978.

Part B of title XI of the Education Amendments of 1978 (25 U.S.C. 2001 et seq.) is amended to read as follows:

"PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

"SEC. 1120. FINDING AND POLICY.

"(a) FINDING.—Congress finds and recognizes that—

"(1) the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people includes the education of Indian children; and

"(2) the Federal Government has the responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that the Federal Government has established on or near reservations and Indian trust lands throughout the Nation for Indian children.

"(b) POLICY.—It is the policy of the United States to work in full cooperation with tribes toward the goal of

assuring that the programs of the Bureau of Indian Affairs funded school system are of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of these children.

"SEC. 1121. ACCREDITATION AND STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS.

"(a) PURPOSE; DECLARATIONS OF PURPOSE.—

"(1) PURPOSE.—The purpose of the standards implemented under this section shall be to ensure that Indian students being served by a school funded by the Bureau of Indian Affairs are provided with educational opportunities that equal or exceed those for all other students in the United States.

"(2) DECLARATIONS OF PURPOSE.—

"(A) IN GENERAL.—Local school boards for schools operated by the Bureau of Indian Affairs, in cooperation and consultation with the appropriate tribal governing bodies and their communities, are encouraged to adopt declarations of purpose for education for their communities, taking into account the implications of such declarations on education in their communities and for their schools. In adopting

such declarations of purpose, the school boards shall consider the effect the declarations may have on the motivation of students and faculties.

"(B) CONTENTS.—A declaration of purpose for a community shall—

"(i) represent the aspirations of the community for the kinds of people the community would like the community's children to become; and

"(ii) contain an expression of the community's desires that all students in the community shall—

"(I) become accomplished in things and ways important to the students and respected by their parents and community;

"(II) shape worthwhile and satisfying lives for themselves;

"(III) exemplify the best values of the community and humankind; and

"(IV) become increasingly effective in shaping the character and

quality of the world all students share.

"(C) STANDARDS.—The declarations of purpose shall influence the standards for accreditation to be accepted by the schools.

"(b) STUDIES AND SURVEYS RELATING TO STANDARDS.—Not later than 1 year after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary, in consultation with the Secretary of Education, consortia of education organizations, and Indian organizations and tribes, and making the fullest use possible of other existing studies, surveys, and plans, shall carry out, by contract with an Indian organization, studies and surveys to establish and revise standards for the basic education of Indian children attending Bureau funded schools. Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographic isolation, and appropriate teacher-student ratios for such children, and shall be directed toward the attainment of equal educational opportunity for such children.

"(c) REVISION OF MINIMUM ACADEMIC STANDARDS.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Native American

Education Improvement Act of 2001, the Secretary shall—

"(A) propose revisions to the minimum academic standards contained in part 36 of title 25, Code of Federal Regulations (on the date of enactment of the Native American Education Improvement Act of 2001) for the basic education of Indian children attending Bureau funded schools, in accordance with the purpose described in subsection (a) and the findings of the studies and surveys carried out under subsection (b);

"(B) publish such proposed revisions to such standards in the Federal Register for the purpose of receiving comments from the tribes, local school boards, Bureau funded schools, and other interested parties; and

"(C) consistent with the provisions of this section and section 1130, take such actions as are necessary to coordinate standards implemented under this section with—

"(i) the Comprehensive School Reform Plan developed by the Bureau; and

"(ii)(I) the standards of the State in which any Bureau funded school is located; or

"(II) in a case where schools operated by the Bureau are within the boundaries of the reservation land of 1 tribe but within the boundaries of more than 1 State, the standards of the State selected by the tribe.

"(2) FINAL STANDARDS.—Not later than 6 months after the close of the comment period for comments described in paragraph (1)(B), the Secretary shall establish final standards under this subsection, distribute such standards to all tribes, and publish such standards in the Federal Register.

"(3) FURTHER REVISIONS.—The Secretary shall revise standards under this subsection periodically as necessary. Prior to making any revisions of such standards, the Secretary shall distribute proposed revisions of the standards to all the tribes, and publish such proposed revisions in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

"(4) APPLICABILITY OF STANDARDS.—Except as provided in subsection (e), the final standards

published under this subsection shall apply to all Bureau funded schools not accredited under subsection (f), and may also serve as model standards for educational programs for Indian children in public schools.

"(5) CONSIDERATIONS WHEN ESTABLISHING AND REVISING STANDARDS.—In establishing and revising standards under this subsection, the Secretary shall take into account the unique needs of Indian students and support and reinforce the specific cultural heritage of each tribe.

"(d) ALTERNATIVE OR MODIFIED STANDARDS.—With respect to a school that is located in a State or region with standards that are in conflict with the standards established under subsection (c), the Secretary shall provide alternative or modified standards in lieu of the standards established under such subsection so that the programs of such school are in compliance with the minimum accreditation standards required for schools in the State or region where the school is located.

"(e) WAIVER OF STANDARDS; ALTERNATIVE STANDARDS.—

"(1) WAIVER.—A tribal governing body, or the local school board so designated by the tribal governing body, shall have the local authority to waive, in

part or in whole, the standards established under subsection (c) and (d) if such standards are determined by such body or board to be inappropriate for the needs of students from that tribe.

"(2) ALTERNATIVE STANDARDS.—The tribal governing body or school board involved shall, not later than 60 days after providing a waiver under paragraph (1) for a school, submit to the Director a proposal for alternative standards that take into account the specific needs of the tribe's children. Such alternative standards shall be established by the Director for the school involved unless specifically rejected by the Director for good cause and in writing provided to the affected tribes or local school board.

"(f) ACCREDITATION AND IMPLEMENTATION OF STANDARDS.—

"(1) DEADLINE.—Not later than the second academic year after publication of final standards established under subsection (c) or (d), or after the approval of alternative standards under subsection (e), to the extent necessary funding is provided, each Bureau funded school to which such standards would apply shall meet the applicable standards or be accredited—

"(A) by a tribal accrediting body that has been accepted by formal action of the appropriate tribal governing body;

"(B) by a regional accreditation agency;

"(C) in accordance with State accreditation standards for the State in which the school is located; or

"(D) in the case of a school that is located on a reservation that is located in more than 1 State, in accordance with the State accreditation standards of 1 State as selected by the tribal government.

"(2) DETERMINATION OF STANDARDS TO BE APPLIED.—The accreditation type or standards applied for each school shall be determined by the school board of the school, in consultation with the Administrator of the school, provided that in the case where the School Board and the Administrator fail to agree on the type of accreditation and standards to apply, the decision of the school board with the approval of the tribal governing body shall be final.

"(3) ASSISTANCE TO SCHOOL BOARDS.—The Secretary, through contracts and grants, shall assist school boards of contract or grant schools in imple-

menting standards established under subsections (c), (d), and (e), if the school boards request that such standards, in part or in whole, be implemented.

"(4) FISCAL CONTROL AND FUND ACCOUNTING STANDARDS.—The Bureau shall, either directly or through a contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract and grant schools. Such standards shall yield data results comparable to the data provided by Bureau schools.

"(g) ANNUAL PLAN FOR MEETING OF STANDARDS.—

"(1) IN GENERAL.—Except as provided in subsections (e) and (f), the Secretary shall begin to implement the standards established under this section on the date of their establishment.

"(2) PLAN.—On an annual basis, the Secretary shall submit to the appropriate committees of Congress, all Bureau funded schools, and the tribal governing bodies of such schools a detailed plan to bring all Bureau funded schools up to the level required by the applicable standards established under this section. Such plan shall include detailed information on the status of each school's educational

program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific timelines for bringing each school up to the level required by such standards.

"(h) CLOSURE OR CONSOLIDATION OF SCHOOLS.—

"(1) IN GENERAL.—Except as specifically required by law, no Bureau funded school or dormitory operated on or after January 1, 1992, may be closed, consolidated, or transferred to another authority and no program of such a school may be substantially curtailed except in accordance with the requirements of this subsection.

"(2) EXCEPTIONS.—This subsection (other than this paragraph) shall not apply—

"(A) in those cases in which the tribal governing body for a school, or the local school board concerned (if designated by the tribal governing body to act under this paragraph), requests the closure, consolidation, or substantial curtailment; or

"(B) if a temporary closure, consolidation, or substantial curtailment is required by facility conditions that constitute an immediate hazard to health and safety.

"(3) REGULATIONS.—The Secretary shall, by regulation, promulgate standards and procedures for the closure, transfer to another authority, consolidation, or substantial curtailment of school programs of Bureau schools, in accordance with the requirements of this subsection.

"(4) NOTIFICATION.—

"(A) CONSIDERATION.—Whenever closure, transfer to another authority, consolidation, or substantial curtailment of a school program of a Bureau school is under active consideration or review by any division of the Bureau or the Department of the Interior, the head of the division or the Secretary shall ensure that the affected tribe, tribal governing body, and local school board, are notified (in writing) immediately, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review.

"(B) FORMAL DECISION.—When the head of any division of the Bureau or the Secretary makes a formal decision to close, transfer to another authority, consolidate, or substantially curtail a school program of a Bureau school, the head of the division or the Secretary shall

notify (in writing) the affected tribes, tribal governing body, and local school board at least 6 months prior to the end of the academic year preceding the date of the proposed action.

"(C) COPIES OF NOTIFICATIONS AND INFORMATION.—The Secretary shall transmit copies of the notifications described in this paragraph promptly to the appropriate committees of Congress and publish such notifications copies in the Federal Register.

"(5) REPORT.—

"(A) IN GENERAL.—The Secretary shall submit a report to the appropriate committees of Congress, the affected tribal governing body and the designated local school board, describing the process of the active consideration or review referred to in paragraph (4).

"(B) CONTENTS.—The report shall include the results of a study of the impact of the action under consideration or review on the student population of the school involved, identify those students at the school with particular educational and social needs, and ensure that alternative services are available to such students. Such report shall include a description of

consultation conducted between the potential service provider and current service provider of such services, parents, tribal representatives, the tribe involved, and the Director of the Office regarding such students.

"(6) LIMITATION ON CERTAIN ACTIONS.—No irreversible action may be taken to further any proposed school closure, transfer to another authority, consolidation, or substantial curtailment described in this subsection concerning a school (including any action that would prejudice the personnel or programs of such school) prior to the end of the first full academic year after the report described in paragraph (5) is submitted.

"(7) TRIBAL GOVERNING BODY APPROVAL REQUIRED FOR CERTAIN ACTIONS.—The Secretary may terminate, contract, transfer to any other authority, consolidate, or substantially curtail the operation or facilities of—

"(A) any Bureau funded school that is operated on or after January 1, 1999;

"(B) any program of such a school that is operated on or after January 1, 1999; or

"(C) any school board of a school operated under a grant under the Tribally Controlled Schools Act of 1988,

only if the tribal governing body for the school involved approves such action.

"(i) APPLICATION FOR CONTRACTS OR GRANTS FOR NON-BUREAU FUNDED SCHOOLS OR EXPANSION OF BUREAU FUNDED SCHOOLS.—

"(1) IN GENERAL.—

"(A) APPLICATIONS.—

"(i) TRIBES; SCHOOL BOARDS.—The Secretary shall only consider the factors described in subparagraph (B) in reviewing—

"(I) applications from any tribe for the awarding of a contract or grant for a school that is not a Bureau funded school; and

"(II) applications from any tribe or school board associated with any Bureau funded school for the awarding of a contract or grant for the expansion of a Bureau funded school that would increase the amount of

funds received by the tribe or school board under section 1126.

"(ii) LIMITATION.—With respect to applications described in this subparagraph, the Secretary shall give consideration to all the factors described in subparagraph (B), but no such application shall be denied based primarily upon the geographic proximity of comparable public education.

"(B) FACTORS.—With respect to applications described in subparagraph (A) the Secretary shall consider the following factors relating to the program and services that are the subject of the application:

"(i) The adequacy of existing facilities to support the proposed program and services or the applicant's ability to obtain or provide adequate facilities.

"(ii) Geographic and demographic factors in the affected areas.

"(iii) The adequacy of the applicant's program plans or, in the case of a Bureau funded school, of a projected needs analy-

sis conducted either by the tribe or the Bureau.

"(iv) Geographic proximity of comparable public education.

"(v) The stated needs of all affected parties, including students, families, tribal governing bodies at both the central and local levels, and school organizations.

"(vi) Adequacy and comparability of programs and services already available.

"(vii) Consistency of the proposed program and services with tribal educational codes or tribal legislation on education.

"(viii) The history and success of these services for the proposed population to be served, as determined from all factors, including standardized examination performance.

"(2) DETERMINATION ON APPLICATION.—

"(A) PERIOD.—The Secretary shall make a determination concerning whether to approve any application described in paragraph (1)(A) not later than 180 days after the date such application is submitted to the Secretary.

"(B) FAILURE TO MAKE DETERMINATION.—If the Secretary fails to make the determination with respect to an application by the date described in subparagraph (A), the application shall be treated as having been approved by the Secretary.

"(3) REQUIREMENTS FOR APPLICATIONS.—

"(A) APPROVAL.—Notwithstanding paragraph (2)(B), an application described in paragraph (1)(A) may be approved by the Secretary only if—

"(i) the application has been approved by the tribal governing body of the students served by (or to be served by) the school or program that is the subject of the application; and

"(ii) the tribe or designated school board involved submits written evidence of such approval with the application.

"(B) INFORMATION.—Each application described in paragraph (1)(A) shall contain information discussing each of the factors described in paragraph (1)(B).

"(4) DENIAL OF APPLICATIONS.—If the Secretary denies an application described in paragraph (1)(A), the Secretary shall—

"(A) state the objections to the application in writing to the applicant not later than 180 days after the date the application is submitted to the Secretary;

"(B) provide assistance to the applicant to overcome the stated objections;

"(C) provide to the applicant a hearing on the record regarding the denial, under the same rules and regulations as apply under the Indian Self-Determination and Education Assistance Act; and

"(D) provide to the applicant a notice of the applicant's appeals rights and an opportunity to appeal the decision resulting from the hearing under subparagraph (D).

"(5) EFFECTIVE DATE OF A SUBJECT APPLICATION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the action that is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective—

"(i) on the first day of the academic year following the fiscal year in which the application is approved; or

"(ii) on an earlier date determined by the Secretary.

"(B) APPLICATION TREATED AS APPROVED.—If an application is treated as having been approved by the Secretary under paragraph (2)(B), the action that is the subject of the application shall become effective—

"(i) on the date that is 18 months after the date on which the application is submitted to the Secretary; or

"(ii) on an earlier date determined by the Secretary.

"(6) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to preclude the expansion of grades and related facilities at a Bureau funded school, if such expansion is paid for with non-Bureau funds.

"(j) JOINT ADMINISTRATION.—Funds received by Bureau funded schools from the Bureau of Indian Affairs and under any program from the Department of Education or any other Federal agency for the purpose of providing education or related services, and other funds re-

ceived for such education and related services from non-Federally funded programs, may apportion joint administrative, transportation, and program costs between such programs and the funds shall be retained at the school.

"(k) GENERAL USE OF FUNDS.—Funds received by Bureau funded schools from the Bureau of Indian Affairs and under any program from the Department of Education or any other Federal agency for the purpose of providing education or related services may be used for schoolwide projects to improve the educational program of the schools for all Indian students.

"(l) STUDY ON ADEQUACY OF FUNDS AND FORMULAS.—

"(1) STUDY.—The Comptroller General of the United States shall conduct a study, in consultation with tribes and local school boards, to determine the adequacy of funding, and formulas used by the Bureau to determine funding, for programs operated by Bureau funded schools, taking into account unique circumstances applicable to Bureau funded schools, including isolation, limited English proficiency of Indian students, the costs of educating disabled Indian students in isolated settings, and other factors that may disproportionately increase per-pupil costs, as

well as expenditures for comparable purposes in public schools nationally.

"(2) FINDINGS.—On completion of the study under paragraph (1), the Secretary shall take such action as may be necessary to ensure distribution of the findings of the study to the appropriate authorizing and appropriating committees of Congress, all affected tribes, local school boards, and associations of local school boards.

"SEC. 1122. NATIONAL STANDARDS FOR HOME LIVING SITUATIONS.

"(a) IN GENERAL.—The Secretary, in accordance with section 1137, shall revise the national standards for home-living (dormitory) situations to include such factors as heating, lighting, cooling, adult-child ratios, need for counselors (including special needs related to off-reservation home-living (dormitory) situations), therapeutic programs, space, and privacy. Such standards shall be implemented in Bureau schools. Any subsequent revisions shall also be in accordance with such section 1137.

"(b) IMPLEMENTATION.—The Secretary shall implement the revised standards established under this section immediately upon their issuance.

"(c) PLAN.—

"(1) IN GENERAL.—Upon the submission of each annual budget request for Bureau educational services (as contained in the President's annual budget request under section 1105 of title 31, United States Code), the Secretary shall submit to the appropriate committees of Congress, the tribes, and the affected schools, and publish in the Federal Register, a detailed plan to bring all Bureau funded schools that have dormitories or provide home-living (dormitory) situations into compliance with the standards established under this section.

"(2) CONTENTS.—Each plan under paragraph (1) shall include—

"(A) a statement of the relative needs of each of the home-living schools and projected future needs of each of the home-living schools;

"(B) detailed information on the status of each of the schools in relation to the standards established under this section;

"(C) specific cost estimates for meeting each standard for each such school;

"(D) aggregate cost estimates for bringing all such schools into compliance with the standards established under this section; and

"(E) specific timelines for bringing each school into compliance with such standards.

"(d) WAIVER.—A tribal governing body or local school board may, in accordance with section 1121(e), waive the standards established under this section for a school described in subsection (a) in the same manner as the governing body or school board may waive the standards provided under section 1121(c) for a Bureau funded school.

"(e) CLOSURE FOR FAILURE TO MEET STANDARDS PROHIBITED.—No school in operation on or before July 1, 1999 (regardless of compliance or noncompliance with the standards established under this section), may be closed, transferred to another authority, or consolidated, and no program of such a school may be substantially curtailed, because the school failed to meet such standards.

"SEC. 1123. SCHOOL BOUNDARIES.

"(a) ESTABLISHMENT BY SECRETARY.—Except as described in subsection (b), the Secretary shall establish, by regulation, separate geographical attendance areas for each Bureau funded school.

"(b) ESTABLISHMENT BY TRIBAL BODY.—In any case in which there is more than 1 Bureau funded school located on a reservation of a tribe, at the direction of the tribal governing body, the relevant school boards of the

Bureau funded schools on the reservation may, by mutual consent, establish the boundaries of the relevant geographical attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.

"(c) BOUNDARY REVISIONS.—

"(1) IN GENERAL.—Effective on July 1, 1999, the Secretary may not establish or revise boundaries of a geographical attendance area with respect to any Bureau funded school unless the tribal governing body concerned or the school board concerned (if designated by the tribal governing body to act under this paragraph) has been afforded—

"(A) at least 6 months notice of the intention of the Secretary to establish or revise such boundaries; and

"(B) the opportunity to propose alternative boundaries.

"(2) PETITIONS.—Any tribe may submit a petition to the Secretary requesting a revision of the geographical attendance area boundaries referred to in paragraph (1).

"(3) BOUNDARIES.—The Secretary shall accept proposed alternative boundaries described in paragraph (1)(B) or revised boundaries described in a

petition submitted under paragraph (2) unless the Secretary finds, after consultation with the affected tribe, that such alternative or revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs. On accepting the boundaries, the Secretary shall publish information describing the boundaries in the Federal Register.

"(4) TRIBAL RESOLUTION DETERMINATION.—Nothing in this section shall be interpreted as denying a tribal governing body the authority, on a continuing basis, to adopt a tribal resolution allowing parents a choice of the Bureau funded school their child may attend, regardless of the geographical attendance area boundaries established under this section.

"(d) FUNDING RESTRICTIONS.—The Secretary shall not deny funding to a Bureau funded school for any eligible Indian student attending the school solely because that student's home or domicile is outside of the boundaries of the geographical attendance area established for that school under this section. No funding shall be made available for transportation without tribal authorization to enable the school to provide transportation for any student

to or from the school and a location outside the approved attendance area of the school.

"(e) RESERVATION AS BOUNDARY.—In any case in which there is only 1 Bureau funded school located on a reservation, the boundaries of the geographical attendance area for the school shall be the boundaries (as established by treaty, agreement, legislation, court decision, or executive decision and as accepted by the tribe involved) of the reservation served, and those students residing near the reservation shall also receive services from such school.

"(f) OFF-RESERVATION HOME-LIVING SCHOOLS.—Notwithstanding the boundaries of the geographical attendance areas established under this section, each Bureau funded school that is an off-reservation home-living school shall implement special emphasis programs and permit the attendance of students requiring the programs. The programs provided for such students shall be coordinated among education line officers, the families of the students, the schools, and the entities operating programs that referred the students to the schools.

"SEC. 1124. FACILITIES CONSTRUCTION.

"(a) NATIONAL SURVEY OF FACILITIES CONDITIONS.—

"(1) IN GENERAL.—Not later than 12 months after the date of enactment of the Native American

Education Improvement Act of 2001, the General Accounting Office shall compile, collect, and secure the data that is needed to prepare a national survey of the physical conditions of all Bureau funded school facilities.

"(2) DATA AND METHODOLOGIES.—In preparing the national survey required under paragraph (1), the General Accounting Office shall use the following data and methodologies:

"(A) The existing Department of Defense formula for determining the condition and adequacy of Department of Defense facilities.

"(B) Data related to conditions of Bureau funded schools that has previously been compiled, collected, or secured from whatever source derived so long as the data is relevant, timely, and necessary to the survey.

"(C) The methodologies of the American Institute of Architects, or other accredited and reputable architecture or engineering associations.

"(3) CONSULTATIONS.—

"(A) IN GENERAL.—In carrying out the survey required under paragraph (1), the General Accounting Office shall, to the maximum

extent practicable, consult (and if necessary contract) with national, regional, and tribal Indian education organizations to ensure that a complete and accurate national survey is achieved.

"(B) REQUESTS FOR INFORMATION.—All Bureau funded schools shall comply with reasonable requests for information by the General Accounting Office and shall respond to such requests in a timely fashion.

"(4) SUBMISSION TO CONGRESS.—Not later than 24 months after the date of enactment of the Native American Education Improvement Act of 2001, the General Accounting Office shall submit the results of the national survey conducted under paragraph (1) to the Committee on Indian Affairs and Committee on Appropriations of the Senate, and the Committee on Resources and Committee on Appropriations of the House.

"(5) NEGOTIATED RULEMAKING COMMITTEE.—

"(A) IN GENERAL.—Not later than 6 months after the date on which the submission is made under paragraph (4), the Secretary shall establish a negotiated rule making committee pursuant to section 1137(c). The nego-

tiated rulemaking committee shall prepare and submit to the Secretary the following:

"(i) A catalogue of the condition of school facilities at all Bureau funded schools that—

"(I) rates such facilities with respect to the rate of deterioration and useful life structures and major systems;

"(II) establishes a routine maintenance schedule for each facility; and

"(III) makes projections on the amount of funds needed to keep each school viable, consistent with the standards of this Act.

"(ii) A school replacement and new construction report that determines replacement and new construction need, and a formula for the equitable distribution of funds to address such need, for Bureau funded schools. Such formula shall utilize necessary factors in determining an equitable distribution of funds, including—

"(I) the size of school;

"(II) school enrollment;

"(III) the age of the school;

"(IV) the condition of the school;

"(V) environmental factors at the school; and

"(VI) school isolation.

"(iii) A renovation repairs report that determines renovation need (major and minor), and a formula for the equitable distribution of funds to address such need, for Bureau funded schools. Such report shall identify needed repairs or renovations with respect to a facility, or a part of a facility, or the grounds of the facility, to remedy a need based on disabilities access or health and safety changes to a facility. The formula developed shall utilize necessary factors in determining an equitable distribution of funds, including the factors described in subparagraph (B).

"(B) Not later 24 months after the negotiated rulemaking committee is established under subparagraph (A), the reports described in clauses (ii) and (iii) of subparagraph (A) shall be submitted to the committees of Congress referred to in paragraph (4), the national

and regional Indian education organizations, and to all Indian tribes.

"(6) FACILITIES INFORMATION SYSTEMS SUPPORT DATABASE.—The Secretary shall develop a Facilities Information Systems Support Database to maintain and update the information contained in the reports under clauses (ii) and (iii) of paragraph (5)(A) and the information contained in the survey conducted under paragraph (1). The system shall be updated every 3 years by the Bureau of Indian Affairs and monitored by General Accounting Office, and shall be made available to Indian tribes, Bureau funded schools, and Congress.

"(b) COMPLIANCE WITH HEALTH AND SAFETY STANDARDS.—The Secretary shall immediately begin to bring all schools, dormitories, and other Indian education-related facilities operated by the Bureau or under contract or grant with the Bureau into compliance with all applicable tribal, Federal, or State health and safety standards, whichever provides greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards), with section 504 of the Rehabilitation Act of 1973, and with the Americans with Disabilities Act of 1990. Nothing in this section shall require termination of the operations of any

facility which does not comply with such provisions and which is in use on the date of the enactment of the Native American Education Improvement Act of 2001.

"(c) COMPLIANCE PLAN.—At the time that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all facilities covered under subsection (b) of this section into compliance with the standards referred to in subsection (b). Such plan shall include detailed information on the status of each facility's compliance with such standards, specific cost estimates for meeting such standards at each school, and specific timelines for bringing each school into compliance with such standards.

"(d) CONSTRUCTION PRIORITIES.—

"(1) SYSTEM TO ESTABLISH PRIORITIES.—The Secretary shall annually prepare and submit to the appropriate committees of Congress, and publish in the Federal Register, information describing the system used by the Secretary to establish priorities for replacement and construction projects for Bureau funded schools and home-living schools, including boarding schools, and dormitories. On making each budget request described in subsection (c), the Secretary shall publish in the Federal Register and sub-

mit with the budget request a list of all of the Bureau funded school construction priorities, as described in paragraph (2).

"(2) LONG-TERM CONSTRUCTION AND REPLACEMENT LIST.—In addition to submitting the plan described in subsection (c), the Secretary shall—

"(A) not later than 18 months after the date of enactment of the Native American Education Improvement Act of 2001, establish a long-term construction and replacement priority list for all Bureau funded schools;

"(B) using the list prepared under subparagraph (A), propose a list for the orderly replacement of all Bureau funded education-related facilities over a period of 40 years to facilitate planning and scheduling of budget requests;

"(C) publish the list prepared under subparagraph (B) in the Federal Register and allow a period of not less than 120 days for public comment;

"(D) make such revisions to the list prepared under subparagraph (B) as are appropriate based on the comments received; and

"(E) publish a final list in the Federal Register.

"(3) EFFECT ON OTHER LIST.—Nothing in this section shall be construed as interfering with or changing in any way the construction and replacement priority list established by the Secretary, as the list exists on the date of enactment of the Native American Education Improvement Act of 2001.

"(e) HAZARDOUS CONDITION AT BUREAU FUNDED SCHOOL.—

"(1) CLOSURE, CONSOLIDATION, OR CURTAILMENT.—

"(A) IN GENERAL.—A Bureau funded school may be closed or consolidated, and the programs of a Bureau funded school may be substantially curtailed by reason of facility conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau and an individual designated by the tribe involved under subparagraph (B), determine that such conditions exist at a facility of the Bureau funded school.

"(B) DESIGNATION OF INDIVIDUAL BY TRIBE.—To be designated by a tribe for pur-

poses of subparagraph (A), an individual shall—

"(i) be a licensed or certified facilities safety inspector;

"(ii) have demonstrated experience in the inspection of facilities for health and safety purposes with respect to occupancy; or

"(iii) have a significant educational background in the health and safety of facilities with respect to occupancy.

"(C) INSPECTION.—In making a determination described in subparagraph (A), the Bureau health and safety officer and the individual designated by the tribe shall conduct an inspection of the conditions of such facility in order to determine whether conditions at such facility constitute an immediate hazard to health and safety.

"(D) FAILURE TO CONCUR.—If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (A) do not concur that conditions at the facility constitute an immediate hazard to

health and safety, such officer and individual shall immediately notify the tribal governing body and provide written information related to their determinations.

"(E) CONSIDERATION BY TRIBAL GOVERNING BODY.—Not later than 10 days after a tribal governing body received notice under subparagraph (D), the tribal governing body shall consider all information related to the determinations of the Bureau health and safety officer and the individual designated by the tribe and make a determination regarding the closure, consolidation, or curtailment involved.

"(F) CESSATION OF CLOSURE, CONSOLIDATION, OR CURTAILMENT.—If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (A), concur that conditions at the facility constitute an immediate hazard to health and safety, or if the tribal governing body makes such a determination under subparagraph (E) the facility involved shall be closed immediately.

"(G) GENERAL CLOSURE REPORT.—If a Bureau funded school is temporarily closed or

consolidated or the programs of a Bureau funded school are temporarily substantially curtailed under this subsection and the Secretary determines that the closure, consolidation, or curtailment will exceed 1 year, the Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the local school board, not later than 3 months after the date on which the closure, consolidation, or curtailment was initiated, a report that specifies—

"(i) the reasons for such temporary action;

"(ii) the actions the Secretary is taking to eliminate the conditions that constitute the hazard;

"(iii) an estimated date by which the actions described in clause (ii) will be concluded; and

"(iv) a plan for providing alternate education services for students enrolled at the school that is to be closed.

"(2) NONAPPLICATION OF CERTAIN STANDARDS FOR TEMPORARY FACILITY USE.—

"(A) CLASSROOM ACTIVITIES.—The Secretary shall permit the local school board to

temporarily utilize facilities adjacent to the school, or satellite facilities, if such facilities are suitable for conducting classroom activities. In permitting the use of facilities under the preceding sentence, the Secretary may waive applicable minor standards under section 1121 relating to such facilities (such as the required number of exit lights or configuration of restrooms) so long as such waivers do not result in the creation of an environment that constitutes an immediate and substantial threat to the health, safety, and life of students and staff.

"(B) ADMINISTRATIVE ACTIVITIES.—The provisions of subparagraph (A) shall apply with respect to administrative personnel if the facilities involved are suitable for activities performed by such personnel.

"(C) TEMPORARY.—In this paragraph, the term 'temporary' means—

"(i) with respect to a school that is to be closed for not more than 1 year, 3 months or less; and

"(ii) with respect to a school that is to be closed for not less than 1 year, a time

period determined appropriate by the Bureau.

"(3) TREATMENT OF CLOSURE.—Any closure of a Bureau funded school under this subsection for a period that exceeds 1 month but is less than 1 year, shall be treated by the Bureau as an emergency facility improvement and repair project.

"(4) USE OF FUNDS.—With respect to a Bureau funded school that is closed under this subsection, the tribal governing body, or the designated local school board of each Bureau funded school, involved may authorize the use of school operations funds, which have otherwise been allocated for such school, to abate the hazardous conditions without further action by Congress.

"(f) FUNDING REQUIREMENT.—

"(1) DISTRIBUTION OF FUNDS.—Beginning with the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001, all funds appropriated to the budget accounts for the operations and maintenance of Bureau funded schools shall be distributed by formula to the schools. No funds from these accounts may be retained or segregated by the Bureau to pay

for administrative or other costs of any facilities branch or office, at any level of the Bureau.

"(2) REQUIREMENTS FOR CERTAIN USES.—

"(A) AGREEMENT.—The Secretary shall not withhold funds that would be distributed under paragraph (1) to any grant or contract school, in order to use the funds for maintenance or any other facilities or road-related purposes, unless such school—

"(i) has consented to the withholding of such funds, including the amount of the funds, the purpose for which the funds will be used, and the timeline for the services to be provided with the funds; and

"(ii) has provided the consent by entering into an agreement that is—

"(I) a modification to the contract; and

"(II) in writing (in the case of a school that receives a grant).

"(B) CANCELLATION.—The school may, at the end of any fiscal year, cancel an agreement entered into under this paragraph, on giving the Bureau 30 days notice of the intent of the school to cancel the agreement.

"(g) NO REDUCTION IN FEDERAL FUNDING.—Nothing in this section shall be construed to reduce any Federal funding for a school because the school received funding for facilities improvement or construction from a State or any other source.

"SEC. 1125. BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS.

"(a) FORMULATION AND ESTABLISHMENT OF POLICY AND PROCEDURE; SUPERVISION OF PROGRAMS AND EXPENDITURES.—The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure, and supervision of programs and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs.

"(b) DIRECTION AND SUPERVISION OF PERSONNEL OPERATIONS.—

"(1) IN GENERAL.—Not later than 6 months after the date of the enactment of the Native American Education Improvement Act of 2001, the Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education services by the

Bureau, including school or institution custodial or maintenance personnel, and facilities management, contracting, procurement, and finance personnel.

"(2) TRANSFERS.—The Assistant Secretary for Indian Affairs shall coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.

"(c) INHERENT FEDERAL FUNCTION.—For purposes of this Act, all functions relating to education that are located at the Area or Agency level and performed by an education line officer shall be subject to contract under the Indian Self-Determination and Education Assistance Act, unless determined by the Secretary to be inherently Federal functions.

"(d) EVALUATION OF PROGRAMS; SERVICES AND SUPPORT FUNCTIONS; TECHNICAL AND COORDINATION ASSISTANCE.—Education personnel who are under the direction and supervision of the Director of the Office in accordance with subsection (b)(1) shall—

"(1) monitor and evaluate Bureau education programs;

"(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions; and

"(3) provide technical and coordination assistance in areas such as procurement, contracting, budgeting, personnel, curricula, and operation and maintenance of school facilities.

"(e) CONSTRUCTION, IMPROVEMENT, OPERATION, AND MAINTENANCE OF FACILITIES.—

"(1) PLAN FOR CONSTRUCTION.—The Assistant Secretary for Indian Affairs shall submit as part of the annual budget request for educational services (as contained in the President's annual budget request under section 1105 of title 31, United States Code) a plan—

"(A) for the construction of school facilities in accordance with section 1124(d);

"(B) for the improvement and repair of education facilities and for establishing priorities among the improvement and repair projects involved, which together shall form the basis for the distribution of appropriated funds; and

"(C) for capital improvements to education facilities to be made over the 5 years succeeding the year covered by the plan.

"(2) PROGRAM FOR OPERATION AND MAINTENANCE.—

"(A) IN GENERAL.—

"(i) PROGRAM.—The Assistant Secretary shall establish a program, including a program for the distribution of funds appropriated under this part, for the operation and maintenance of education facilities. Such program shall include—

"(I) a method of computing the amount necessary for the operation and maintenance of each education facility;

"(II) a requirement of similar treatment of all Bureau funded schools;

"(III) a notice of an allocation of the appropriated funds from the Director of the Office directly to the appropriate education line officers and school officials;

"(IV) a method for determining the need for, and priority of, facilities improvement and repair projects, both major and minor; and

"(V) a system for conducting routine preventive maintenance.

"(ii) MEETINGS.—In making the determination referred to in clause (i)(IV), the Assistant Secretary shall cause a series of meetings to be conducted at the area and agency level with representatives of the Bureau funded schools in the corresponding areas and served by corresponding agencies, to receive comment on the projects described in clause (i)(IV) and prioritization of such projects.

"(B) MAINTENANCE.—The appropriate education line officers shall make arrangements for the maintenance of the education facilities with the local supervisors of the Bureau maintenance personnel. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made by the appropriate education line officers. No funds made available under this part may be authorized for expenditure for maintenance of such an education facility unless the appropriate education line officer is assured that the necessary maintenance has been, or will be, provided in a reasonable manner.

"(3) IMPLEMENTATION.—The requirements of this subsection shall be implemented as soon as practicable after the date of enactment of the Native American Education Improvement Act of 2001.

"(f) ACCEPTANCE OF GIFTS AND BEQUESTS.—

"(1) GUIDELINES.—Notwithstanding any other provision of law, the Director of the Office shall promulgate guidelines for the establishment and administration of mechanisms for the acceptance of gifts and bequests for the use and benefit of particular schools or designated Bureau operated education programs, including, in appropriate cases, the establishment and administration of trust funds.

"(2) MONITORING AND REPORTS.—Except as provided in paragraph (3), in a case in which a Bureau operated education program is the beneficiary of such a gift or bequest, the Director shall—

"(A) make provisions for monitoring use of the gift or bequest; and

"(B) submit a report to the appropriate committees of Congress that describes the amount and terms of such gift or bequest, the manner in which such gift or bequest shall be used, and any results achieved by such use.

"(3) EXCEPTION.—The requirements of paragraph (2) shall not apply in the case of a gift or bequest that is valued at $5,000 or less.

"(g) FUNCTIONS CLARIFIED.—In this section, the term 'functions' includes powers and duties.

"SEC. 1126. ALLOTMENT FORMULA.

"(a) FACTORS CONSIDERED; REVISION TO REFLECT STANDARDS.—

"(1) FORMULA.—The Secretary shall establish, by regulation adopted in accordance with section 1137, a formula for determining the minimum annual amount of funds necessary to operate each Bureau funded school. In establishing such formula, the Secretary shall consider—

"(A) the number of eligible Indian students served by the school and the total student population of the school;

"(B) special cost factors, such as—

"(i) the isolation of the school;

"(ii) the need for special staffing, transportation, or educational programs;

"(iii) food and housing costs;

"(iv) maintenance and repair costs associated with the physical condition of the educational facilities;

"(v) special transportation and other costs of an isolated or small school;

"(vi) the costs of home-living (dormitory) arrangements, where determined necessary by a tribal governing body or designated school board;

"(vii) costs associated with greater lengths of service by education personnel;

"(viii) the costs of therapeutic programs for students requiring such programs; and

"(ix) special costs for gifted and talented students;

"(C) the costs of providing academic services that are at least equivalent to the services provided by public schools in the State in which the school is located;

"(D) whether the available funding will enable the school involved to comply with the accreditation standards applicable to the school under section 1121; and

"(E) such other relevant factors as the Secretary determines are appropriate.

"(2) REVISION OF FORMULA.—On the establishment of the standards required in sections 1121 and 1122, the Secretary shall—

"(A) revise the formula established under paragraph (1) to reflect the cost of compliance with such standards; and

"(B)(i) by not later than January 1, 2002, review the formula established under paragraph (1) and take such action as may be necessary to increase the availability of counseling and therapeutic programs for students in off-reservation home-living schools and other Bureau operated residential facilities; and

"(ii) concurrently with any actions taken under clause (i), review the standards established under section 1121 to be certain that the standards adequately provide for parental notification regarding, and consent for, such counseling and therapeutic programs.

"(b) PRO RATA ALLOTMENT.—Notwithstanding any other provision of law, Federal funds appropriated for the general local operation of Bureau funded schools shall be allotted on a pro rata basis in accordance with the formula established under subsection (a).

"(c) ANNUAL ADJUSTMENT; RESERVATION OF AMOUNT FOR SCHOOL BOARD ACTIVITIES.—

"(1) ANNUAL ADJUSTMENT.—

"(A) IN GENERAL.—For fiscal year 2002, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) to—

"(i) use a weighted factor of 1.2 for each eligible Indian student enrolled in the seventh and eighth grades of the school in considering the number of eligible Indian students served by the school;

"(ii) consider a school with an enrollment of fewer than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools;

"(iii) take into account the provision of residential services on less than a 9-month basis at a school in a case in which the school board and supervisor of the school determine that the school will provide the services for fewer than 9 months for the academic year involved;

"(iv) use a weighted factor of 2.0 for each eligible Indian student that—

"(I) is gifted and talented; and

"(II) is enrolled in the school on a full-time basis,

in considering the number of eligible Indian students served by the school; and

"(v) use a weighted factor of 0.25 for each eligible Indian student who is enrolled in a year long credit course in an Indian or Native language as part of the regular curriculum of a school, in considering the number of eligible Indian students served by such school.

"(B) TIMING.—The Secretary shall make the adjustment required under subparagraph (A)(v) for such school after—

"(i) the school board of such school provides a certification of the Indian or Native language curriculum of the school to the Secretary, together with an estimate of the number of full-time students expected to be enrolled in the curriculum in the second academic year after the aca-

demic year for which the certification is made; and

"(ii) the funds appropriated for allotments under this section are designated, in the appropriations Act appropriating such funds, as the funds necessary to implement such adjustment at such school without reducing an allotment made under this section to any school by virtue of such adjustment.

"(2) RESERVATION OF AMOUNT.—

"(A) IN GENERAL.—From the funds allotted in accordance with the formula established under subsection (a) for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of—

"(i) $8,000; or

"(ii) the lesser of—

"(I) $15,000; or

"(II) 1 percent of such allotted funds,

for school board activities for such school, including (notwithstanding any other provision of law) meeting expenses and the cost of member-

ship in, and support of, organizations engaged in activities on behalf of Indian education.

"(B) TRAINING.—Each local school board, and any agency school board that serves as a local school board for any grant or contract school, shall ensure that each individual who is a new member of the school board receives, within 12 months after the individual becomes a member of the school board, 40 hours of training relevant to that individual's service on the board. Such training may include training concerning legal issues pertaining to Bureau funded schools, legal issues pertaining to school boards, ethics, and other topics determined to be appropriate by the school board.

"(d) RESERVATION OF AMOUNT FOR EMERGENCIES.—

"(1) IN GENERAL.—The Secretary shall reserve from the funds available for allotment for each fiscal year under this section an amount that, in the aggregate, equals 1 percent of the funds available for allotment for that fiscal year.

"(2) USE OF FUNDS.—Amounts reserved under paragraph (1) shall be used, at the discretion of the Director of the Office, to meet emergencies and un-

foreseen contingencies affecting the education programs funded under this section. Funds reserved under this subsection may only be expended for education services or programs, including emergency repairs of education facilities, at a school site (as defined in section 5204(c)(2) of the Tribally Controlled Schools Act of 1988).

"(3) FUNDS REMAINING AVAILABLE.—Funds reserved under this subsection shall remain available without fiscal year limitation until expended. The aggregate amount of such funds, from all fiscal years, that is available for expenditure in a fiscal year may not exceed an amount equal to 1 percent of the funds available for allotment under this section for that fiscal year.

"(4) REPORTS.—If the Secretary makes funds available under this subsection, the Secretary shall submit a report describing such action to the appropriate committees of Congress as part of the President's next annual budget request under section 1105 of title 31, United States Code).

"(e) SUPPLEMENTAL APPROPRIATIONS.—Any funds provided in a supplemental appropriations Act to meet increased pay costs attributable to school level personnel of Bureau funded schools shall be allotted under this section.

"(f) ELIGIBLE INDIAN STUDENT DEFINED.—In this section, the term 'eligible Indian student' means a student who—

"(1) is a member of, or is at least ¼ degree Indian blood descendant of a member of, a tribe that is eligible for the special programs and services provided by the United States through the Bureau to Indians because of their status as Indians;

"(2) resides on or near a reservation or meets the criteria for attendance at a Bureau off-reservation home-living school; and

"(3) is enrolled in a Bureau funded school.

"(g) TUITION.—

"(1) IN GENERAL.—A Bureau school or contract or grant school may not charge an eligible Indian student tuition for attendance at the school. A Bureau school may not charge a student attending the school under the circumstances described in paragraph (2)(C) tuition for attendance at the school.

"(2) ATTENDANCE OF NON-INDIAN STUDENTS AT BUREAU SCHOOLS.—The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

"(A)(i) the Secretary determines that the student's attendance will not adversely affect the school's program for eligible Indian students because of cost, overcrowding, or violation of standards or accreditation requirements; and

"(ii) the local school board consents; and

"(B)(i) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site; or

"(ii) tuition is paid for the student in an amount that is not more than the amount of tuition charged by the nearest public school district for out-of-district students, and is paid in addition to the school's allotment under this section.

"(3) ATTENDANCE OF NON-INDIAN STUDENTS AT CONTRACT AND GRANT SCHOOLS.—The school board of a contract or grant school may permit students who are not eligible Indian students to attend the contract or grant school. Any tuition collected for those students shall be in addition to the amount the school received under this section.

"(h) FUNDS AVAILABLE WITHOUT FISCAL YEAR LIMITATION.—Notwithstanding any other provision of

law, at the election of the local school board of a Bureau school made at any time during a fiscal year, a portion equal to not more than 15 percent of the funds allotted for the school under this section for the fiscal year shall remain available to the school for expenditure without fiscal year limitation. The Assistant Secretary for Indian Affairs shall take such steps as may be necessary to implement this subsection.

"(i) STUDENTS AT RICHFIELD DORMITORY, RICHFIELD, UTAH.—Tuition for the instruction of each out-of-State Indian student in a home-living situation at the Richfield dormitory in Richfield, Utah, who attends Sevier County high schools in Richfield, Utah, for an academic year, shall be paid from Indian school equalization program funds authorized in this section and section 1129, at a rate not to exceed the weighted amount provided for under subsection (b) for a student for that year. No additional administrative cost funds shall be provided under this part to pay for administrative costs relating to the instruction of the students.

"SEC. 1127. ADMINISTRATIVE COST GRANTS.

"(a) DEFINITIONS.—In this section:

"(1) ADMINISTRATIVE COST.—

"(A) IN GENERAL.—The term 'administrative cost' means the cost of necessary administrative functions which—

"(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program;

"(ii) are not customarily paid by comparable Bureau operated programs out of direct program funds; and

"(iii) are either—

"(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds; or

"(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

"(B) INCLUSIONS.—The term 'administrative cost' may include—

"(i) contract or grant (or other agreement) administration;

"(ii) executive, policy, and corporate leadership and decisionmaking;

"(iii) program planning, development, and management;

"(iv) fiscal, personnel, property, and procurement management;

"(v) related office services and record keeping; and

"(vi) costs of necessary insurance, auditing, legal, safety and security services.

"(2) BUREAU ELEMENTARY AND SECONDARY FUNCTIONS.—The term 'Bureau elementary and secondary functions' means—

"(A) all functions funded at Bureau schools by the Office;

"(B) all programs—

"(i) funds for which are appropriated to other agencies of the Federal Government; and

"(ii) which are administered for the benefit of Indians through Bureau schools; and

"(C) all operation, maintenance, and repair funds for facilities and government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

"(3) DIRECT COST BASE.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

"(i) the second fiscal year preceding such fiscal year; or

"(ii) if such programs have not been operated by the tribe or tribal organization during the two preceding fiscal years, the first fiscal year preceding such fiscal year.

"(B) FUNCTIONS NOT PREVIOUSLY OPERATED.—In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract, grant, or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

"(4) MAXIMUM BASE RATE.—The term 'maximum base rate' means 50 percent.

"(5) MINIMUM BASE RATE.—The term 'minimum base rate' means 11 percent.

"(6) STANDARD DIRECT COST BASE.—The term 'standard direct cost base' means $600,000.

"(7) TRIBAL ELEMENTARY OR SECONDARY EDUCATIONAL PROGRAMS.—The term 'tribal elementary or secondary educational programs' means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are expended through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract, grant, or agreement with the Bureau.

"(b) GRANTS; EFFECT UPON APPROPRIATED AMOUNTS.—

"(1) GRANTS.—

"(A) IN GENERAL.—Subject to the availability of appropriated funds, the Secretary

shall provide a grant to each tribe or tribal organization operating a contract or grant school, in an amount determined under this section, for the purpose of paying the administrative and indirect costs incurred in operating the contract or grant school, in order to—

"(i) enable the tribe or tribal organization operating the school, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice; and

"(ii) carry out other necessary support functions that would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

"(B) AMOUNT.—No school operated as a stand-alone institution shall receive less than $200,000 per year under this paragraph.

"(2) EFFECT UPON APPROPRIATED AMOUNTS.—Amounts appropriated to fund the

grants provided for under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract or grant school.

"(c) DETERMINATION OF GRANT AMOUNT.—

"(1) IN GENERAL.—The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate determined under subsection (d) of the tribe or tribal organization to the aggregate cost of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau. The administrative cost percentage rate does not apply to programs not relating to such functions that are operated by the tribe or tribal organization.

"(2) DIRECT COST BASE FUNDS.—The Secretary shall—

"(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by a tribe or tribal organization under any Federal education program that is included

in the direct cost base of the tribe or tribal organization; and

"(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government (other than the Department of the Interior) for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

"(3) REDUCTIONS.—If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under paragraph (1) and (2) for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under this subsection for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grants determined under this subsection bears to the total of all grants determined under this subsection for all tribes and tribal organizations for such fiscal year.

"(d) ADMINISTRATIVE COST PERCENTAGE RATE.—

"(1) IN GENERAL.—For purposes of this section, the administrative cost percentage rate for a contract or grant school for a fiscal year is equal to the percentage determined by dividing—

"(A) the sum of—

"(i) the amount equal to—

"(I) the direct cost base of the tribe or tribal organization for the fiscal year; multiplied by

"(II) the minimum base rate; plus

"(ii) the amount equal to—

"(I) the standard direct cost base; multiplied by

"(II) the maximum base rate; by

"(B) the sum of—

"(i) the direct cost base of the tribe or tribal organization for the fiscal year; and

"(ii) the standard direct cost base.

"(2) ROUNDING.—The administrative cost percentage rate shall be determined to 1/100 of a percent.

"(e) COMBINING FUNDS.—

"(1) IN GENERAL.—Funds received by a tribe, tribal organization, or contract or grant school

through grants made under this section for tribal elementary or secondary educational programs may be combined by the tribe, tribal organization, or contract or grant school and placed into a single administrative cost account without the necessity of maintaining separate funding source accounting.

"(2) INDIRECT COST FUNDS.—Indirect cost funds for programs at the school that share common administrative services with the tribal elementary or secondary educational programs may be included in the administrative cost account described in paragraph (1).

"(f) AVAILABILITY OF FUNDS.—Funds received through a grant made under this section with respect to tribal elementary or secondary educational programs at a contract or grant school shall remain available to the contract or grant school—

"(1) without fiscal year limitation; and

"(2) without reducing the amount of any grants otherwise payable to the school under this section for any fiscal year after the fiscal year for which the grant is provided.

"(g) TREATMENT OF FUNDS.—Funds received through a grant made under this section for Bureau funded programs operated by a tribe or tribal organization

under a contract or grant shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

"(h) TREATMENT OF ENTITY OPERATING OTHER PROGRAMS.—In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act with respect to an Indian tribe or tribal organization that—

"(1) receives funds under this section for administrative costs incurred in operating a contract or grant school or a school operated under the Tribally Controlled Schools Act of 1988; and

"(2) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act,

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs that are associated with operating the contract or grant school, and of the indirect costs, that are associated with all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

"(i) APPLICABILITY TO SCHOOLS OPERATING UNDER TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—The provisions of this section that apply to contract or grant schools shall also apply to those schools receiving assistance under the Tribally Controlled Schools Act of 1988.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

"SEC. 1128. DIVISION OF BUDGET ANALYSIS.

"(a) ESTABLISHMENT.—Not later than 12 months after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall establish within the Office of Indian Education Programs a Division of Budget Analysis (referred to in this section as the 'Division'). Such Division shall be under the direct supervision and control of the Director of the Office.

"(b) FUNCTIONS.—In consultation with the tribal governing bodies and local school boards the Director of the Office, through the head of the Division, shall conduct studies, surveys, or other activities to gather demographic information on Bureau funded schools and project the amounts necessary to provide to Indian students in such schools the educational program set forth in this part.

"(c) ANNUAL REPORTS.—Not later than the date that the Assistant Secretary for Indian Affairs submits

the annual budget request as part of the President's annual budget request under section 1105 of title 31, United States Code for each fiscal year after the date of enactment of the Native American Education Improvement Act of 2001, the Director of the Office shall submit to the appropriate committees of Congress (including the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate), all Bureau funded schools, and the tribal governing bodies relating to such schools, a report that shall contain—

"(1) projections, based on the information gathered pursuant to subsection (b) and any other relevant information, of amounts necessary to provide to Indian students in Bureau funded schools the educational program set forth in this part;

"(2) a description of the methods and formulas used to calculate the amounts projected pursuant to paragraph (1); and

"(3) such other information as the Director of the Office considers to be appropriate.

"(d) USE OF REPORTS.—The Director of the Office and the Assistant Secretary for Indian Affairs shall use the information contained in the annual report required by subsection (c) in preparing their annual budget requests.

"SEC. 1129. UNIFORM DIRECT FUNDING AND SUPPORT.

"(a) ESTABLISHMENT OF SYSTEM AND FORWARD FUNDING.—

"(1) IN GENERAL.—The Secretary shall establish, by regulation adopted in accordance with section 1137, a system for the direct funding and support of all Bureau funded schools. Such system shall allot funds in accordance with section 1126. All amounts appropriated for distribution in accordance with this section may be made available in accordance with paragraph (2).

"(2) TIMING FOR USE OF FUNDS.—

"(A) AVAILABILITY.—With regard to funds for affected schools under this part that become available for obligation on October 1 of the fiscal year for which such funds are appropriated, the Secretary shall make payments to such affected schools not later than December 1 of the fiscal year, except that operations and maintenance funds shall be forward funded and shall be available for obligation not later than July 15 and December 1 of each fiscal year, and shall remain available for obligation through the succeeding fiscal year.

"(B) PUBLICATIONS.—The Secretary shall, on the basis of the amounts appropriated as described in this paragraph—

"(i) publish, not later than July 1 of the fiscal year for which the amounts are appropriated, information indicating the amount of the allotments to be made to each affected school under section 1126, of 85 percent of such appropriated amounts; and

"(ii) publish, not later than September 30 of such fiscal year, information indicating the amount of the allotments to be made under section 1126, from the remaining 15 percent of such appropriated amounts, adjusted to reflect the actual student attendance.

"(3) LIMITATION.—

"(A) EXPENDITURES.—Notwithstanding any other provision of law (including a regulation), the supervisor of a Bureau school may expend an aggregate of not more than $50,000 of the amount allotted to the school under section 1126 to acquire materials, supplies, equipment, operation services, maintenance services, and

other services for the school, and amounts received as operations and maintenance funds, funds received from the Department of Education, or funds received from other Federal sources, without competitive bidding if—

"(i) the cost for any single item acquired does not exceed $15,000;

"(ii) the school board approves the acquisition;

"(iii) the supervisor certifies that the cost is fair and reasonable;

"(iv) the documents relating to the acquisition executed by the supervisor of the school or other school staff cite this paragraph as authority for the acquisition; and

"(v) the acquisition transaction is documented in a journal maintained at the school that clearly identifies when the transaction occurred, the item that was acquired and from whom, the price paid, the quantities acquired, and any other information the supervisor or the school board considers to be relevant.

"(B) NOTICE.—Not later than 6 months after the date of enactment of the Native Amer-

ican Education Improvement Act of 2001, the Secretary shall send notice of the provisions of this paragraph to each supervisor of a Bureau school and associated school board chairperson, the education line officer of each agency and area, and the Bureau division in charge of procurement, at both the local and national levels.

"(C) APPLICATION AND GUIDELINES.—The Director of the Office shall be responsible for—

"(i) determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph;

"(ii) ensuring that there is at least 1 such individual at each Bureau facility; and

"(iii) the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

"(b) LOCAL FINANCIAL PLANS FOR EXPENDITURE OF FUNDS.—

"(1) PLAN REQUIRED.—

"(A) IN GENERAL.—Each Bureau school that receives an allotment under section 1126

shall prepare a local financial plan that specifies the manner in which the school will expend the funds made available under the allotment and ensures that the school will meet the accreditation requirements or standards for the school established pursuant to section 1121.

"(B) REQUIREMENT.—A local financial plan under subparagraph (A) shall comply with all applicable Federal and tribal laws.

"(C) PREPARATION AND REVISION.—The financial plan for a school under subparagraph (A) shall be prepared by the supervisor of the school in active consultation with the local school board for the school. The local school board for each school shall have the authority to ratify, reject, or amend such financial plan and, at the initiative of the local school board or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan.

"(D) ROLE OF SUPERVISOR.—The supervisor of the school—

"(i) shall put into effect the decisions of the school board relating to the financial plan under subparagraph (A); and

"(ii) shall provide the appropriate local union representative of the education employees of the school with copies of proposed financial plans relating to the school and all modifications and proposed modifications to the plans, and at the same time submit such copies to the local school board.

"(iii) may appeal any such action of the local school board to the appropriate education line officer of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned.

A copy of statement under clause (iii) shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the appropriate education line officer may, for good cause, overturn the action of the local school board. The appropriate education line officer

shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

"(2) REQUIREMENT.—A Bureau school shall expend amounts received under an allotment under section 1126 in accordance with the local financial plan prepared under paragraph (1).

"(c) TRIBAL DIVISION OF EDUCATION, SELF-DETERMINATION GRANT AND CONTRACT FUNDS.—The Secretary may approve applications for funding tribal divisions of education and developing tribal codes of education, from funds made available pursuant to section 103(a) of the Indian Self-Determination and Education Assistance Act.

"(d) TECHNICAL ASSISTANCE AND TRAINING.—A local school board may, in the exercise of the authority of the school board under this section, request technical assistance and training from the Secretary. The Secretary shall, to the greatest extent possible, provide such assistance and training, and make appropriate provision in the budget of the Office for such assistance and training.

"(e) SUMMER PROGRAM OF ACADEMIC AND SUPPORT SERVICES.—

"(1) IN GENERAL.—A financial plan prepared under subsection (b) for a school may include, at the discretion of the supervisor and the local school board of such school, a provision for funding a summer program of academic and support services for students of the school. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary for Indian Affairs shall provide for the utilization of facilities of the school for such program during any summer in which such utilization is requested.

"(2) USE OF OTHER FUNDS.—Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (commonly known as the 'Johnson-O'Malley Act'; 48 Stat. 596, chapter 147) and this Act may be used to augment the services provided in each summer program referred to in paragraph (1) at the option of the tribe or school receiving such funds. The augmented services shall be under the control of the tribe or school.

"(3) TECHNICAL ASSISTANCE AND PROGRAM COORDINATION.—The Assistant Secretary for Indian Affairs, acting through the Director of the Office, shall provide technical assistance and coordination of activities for any program described in paragraph

(1) and shall, to the extent possible, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of such programs.

"(f) COOPERATIVE AGREEMENTS.—

"(1) IN GENERAL.—From funds allotted to a Bureau school under section 1126, the Secretary shall, if specifically requested by the appropriate tribal governing body, implement a cooperative agreement that is entered into between the tribe, the Bureau, the local school board, and a local public school district that meets the requirements of paragraph (2) and involves the school. The tribe, the Bureau, the school board, and the local public school district shall determine the terms of the agreement.

"(2) COORDINATION PROVISIONS.—An agreement under paragraph (1) may, with respect to the Bureau school and schools in the school district involved, encompass coordination of all or any part of the following:

"(A) The academic program and curriculum, unless the Bureau school is accredited by a State or regional accrediting entity and would

not continue to be so accredited if the agreement encompassed the program and curriculum.

"(B) Support services, including procurement and facilities maintenance.

"(C) Transportation.

"(3) EQUAL BENEFIT AND BURDEN.—

"(A) IN GENERAL.—Each agreement entered into pursuant to the authority provided in paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed by the school.

"(B) LIMITATION.—Subparagraph (A) shall not be construed to require equal expenditures, or an exchange of similar services, by the Bureau school and schools in the school district.

"(g) PRODUCT OR RESULT OF STUDENT PROJECTS.—Notwithstanding any other provision of law, where there is agreement on action between the superintendent and the school board of a Bureau funded school, the product or result of a project conducted in whole or in major part by a student may be given to that student upon the completion of such project.

"(h) MATCHING FUND REQUIREMENTS.—

"(1) NOT CONSIDERED FEDERAL FUNDS.—Notwithstanding any other provision of law, funds re-

ceived by a Bureau funded school under this title for education-related activities (not including funds for construction, maintenance and facilities, improvement or repair) shall not be considered to be Federal funds for the purposes of meeting a matching funds requirement for any Federal program.

"(2) NONAPPLICATION OF REQUIREMENTS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, no requirement relating to the provision of matching funds or the provision of services or in-kind activity as a condition of participation in a program or project or receipt of a grant, shall apply to a Bureau funded school unless the provision of law authorizing such requirement specifies that such requirement applies to such a school.

"(B) LIMITATION.—In considering an application from a Bureau funded school for participation in a program or project that has a requirement described in subparagraph (A), the entity administering such program or project or receiving such grant shall not give positive or negative weight to such application based solely on the provisions of this paragraph. Such an

application shall be considered as if it fully met any matching requirement.

"SEC. 1130. POLICY FOR INDIAN CONTROL OF INDIAN EDUCATION.

"(a) FACILITATION OF INDIAN CONTROL.—It shall be the policy of the Secretary and the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

"(b) CONSULTATION WITH TRIBES.—

"(1) IN GENERAL.—All actions under this Act shall be done with active consultation with tribes. The Bureau and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.

"(2) REQUIREMENTS.—The consultation required under paragraph (1) means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties. During such discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau. All interested parties shall be

given an opportunity to participate and discuss the options presented or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action. The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Secretary which is not consistent with the views of the interested parties.

"SEC. 1131. INDIAN EDUCATION PERSONNEL.

"(a) DEFINITIONS.—In this section:

"(1) EDUCATION POSITION.—The term 'education position' means a position in the Bureau the duties and responsibilities of which—

"(A) are performed on a school-year basis principally in a Bureau school and involve—

"(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

"(ii) any activity (other than teaching) that requires academic credits in edu-

cational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education;

"(iii) any activity in or related to the field of education, whether or not academic credits in educational theory and practice are a formal requirement for the conduct of such activity; or

"(iv) provision of support services at, or associated with, the site of the school; or

"(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs, other than the position of agency superintendent for education.

"(2) EDUCATOR.—The term 'educator' means an individual whose services are required, or who is employed, in an education position.

"(b) CIVIL SERVICE AUTHORITIES INAPPLICABLE.—Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, United States Code, relating to classification, pay, and leave, respectively, and the sections of such title relating to the appointment, promotion, hours of work,

and removal of civil service employees, shall not apply to educators or to education positions.

"(c) REGULATIONS.—Not later than 60 days after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall prescribe regulations to carry out this section. Such regulations shall include provisions relating to—

"(1) the establishment of education positions;

"(2) the establishment of qualifications for educators and education personnel;

"(3) the fixing of basic compensation for educators and education positions;

"(4) the appointment of educators;

"(5) the discharge of educators;

"(6) the entitlement of educators to compensation;

"(7) the payment of compensation to educators;

"(8) the conditions of employment of educators;

"(9) the leave system for educators;

"(10) the length of the school year applicable to education positions described in subsection (a)(1)(A); and

"(11) such matters as may be appropriate.

"(d) QUALIFICATIONS OF EDUCATORS.—

"(1) REQUIREMENTS.—In prescribing regulations to govern the qualifications of educators, the Secretary shall require—

"(A) that lists of qualified and interviewed applicants for education positions be maintained in the appropriate agency or area office of the Bureau or, in the case of individuals applying at the national level, the Office;

"(B)(i) that a local school board have the authority to waive, on a case-by-case basis, any formal education or degree qualification established by regulation, in order for a tribal member to be hired in an education position to teach courses on tribal culture and language; and

"(ii) that a determination by a local school board that such a tribal member be hired shall be instituted by the supervisor of the school involved; and

"(C) that it shall not be a prerequisite to the employment of an individual in an education position at the local level—

"(i) that such individual's name appear on a list maintained pursuant to subparagraph (A); or

"(ii) that such individual have applied at the national level for an education position.

"(2) EXCEPTION FOR CERTAIN TEMPORARY EMPLOYMENT.—The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations, if the Secretary determines that failure to authorize the employment would result in that position remaining vacant.

"(e) HIRING OF EDUCATORS.—

"(1) REQUIREMENTS.—In prescribing regulations to govern the appointment of educators, the Secretary shall require—

"(A)(i)(I) that educators employed in a Bureau school (other than the supervisor of the school) shall be hired by the supervisor of the school; and

"(II) that, in a case in which there are no qualified applicants available to fill a vacancy at a Bureau school, the supervisor may consult a list maintained pursuant to subsection (d)(1)(A);

"(ii) each supervisor of a Bureau school shall be hired by the education line officer of the agency office of the Bureau for the jurisdiction in which the school is located;

"(iii) each educator employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office; and

"(iv) each education line officer and educator employed in the office of the Director of the Office shall be hired by the Director;

"(B)(i) that, before an individual is employed in an education position in a Bureau school by the supervisor of the school (or, with respect to the position of supervisor, by the appropriate agency education line officer), the local school board for the school shall be consulted; and

"(ii) that a determination by such school board, as evidenced by school board records, that such individual should or should not be so employed shall be instituted by the supervisor (or with respect to the position of supervisor, by the superintendent for education of the agency office);

"(C)(i) that, before an individual is employed in an education position in an agency office of the Bureau, the appropriate agency school board shall be consulted; and

"(ii) that a determination by such school board, as evidenced by school board records, that such individual should or should not be employed shall be instituted by the superintendent for education of the agency office;

"(D) that before an individual is employed in an education position (as described in subsection (a)(1)(B)) in the office of the Director of the Office (other than the position of Director), the school boards representing all Bureau schools shall be consulted; and

"(E) that all employment decisions or actions be in compliance with all applicable Federal, State and tribal laws.

"(2) INFORMATION REGARDING APPLICATION AT NATIONAL LEVEL.—

"(A) IN GENERAL.—Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position.

"(B) EFFECT OF INACCURATE STATEMENT.—If an individual described in subparagraph (A) is employed at the local level, such individual's name shall be immediately forwarded to the Secretary by the local employer. The Secretary shall, as soon as practicable but in no event later than 30 days after the receipt of the name, ascertain the accuracy of the statement made by such individual pursuant to subparagraph (A). Notwithstanding subsection (g), if the Secretary finds that the individual's statement was false, such individual, at the Secretary's discretion, may be disciplined or discharged.

"(C) EFFECT OF APPLICATION AT NATIONAL LEVEL.—If an individual described in subparagraph (A) has applied at the national level for an education position, the appointment of such individual at the local level shall be conditional for a period of 90 days. During that period, the Secretary may appoint a more qualified individual (as determined by the Secretary) from a list maintained pursuant to subsection (e)(1)(A) to the position to which such individual was appointed.

"(3) STATUTORY CONSTRUCTION.—Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards authority over, or control of, educators at Bureau funded schools or the authority to issue management decisions.

"(4) APPEALS.—

"(A) BY SUPERVISOR.—The supervisor of a school may appeal to the appropriate agency education line officer any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, overturn the determination of the local school board. The education line officer shall transmit the determination of such appeal in the form of a writ-

ten opinion to such board and to such supervisor identifying the reasons for overturning such determination.

"(B) BY EDUCATION LINE OFFICER.—The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded. an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

"(5) OTHER APPEALS.—The education line officer of an agency office of the Bureau may appeal to

the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

"(f) DISCHARGE AND CONDITIONS OF EMPLOYMENT OF EDUCATORS.—

"(1) REGULATIONS.—In prescribing regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

"(A) that procedures shall be established for the rapid and equitable resolution of grievances of educators;

"(B) that no educator may be discharged without notice of the reasons for the discharge and an opportunity for a hearing under procedures that comport with the requirements of due process; and

"(C) that each educator employed in a Bureau school shall be notified 30 days prior to the end of an academic year whether the employment contract of the individual will be renewed for the following year.

"(2) PROCEDURES FOR DISCHARGE.—

"(A) DETERMINATIONS.—The supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school. On giving notice to an educator of the supervisor's intention to discharge the educator, the supervisor shall immediately notify the local school board of the proposed discharge. A determination by the local school board that such educator shall not be discharged shall be followed by the supervisor.

"(B) APPEALS.—The supervisor shall have the right to appeal a determination by a local

school board under subparagraph (A), as evidenced by school board records, not to discharge an educator to the education line officer of the appropriate agency office of the Bureau. Upon hearing such an appeal, the agency education line officer may, for good cause, issue a decision overturning the determination of the local school board with respect to the employment of such individual. The education line officer shall make the decision in writing and submit the decision to the local school board.

"(3) RECOMMENDATIONS OF SCHOOL BOARDS FOR DISCHARGE.—Each local school board for a Bureau school shall have the right—

"(A) to recommend to the supervisor that an educator employed in the school be discharged; and

"(B) to recommend to the education line officer of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

"(g) APPLICABILITY OF INDIAN PREFERENCE LAWS.—

"(1) IN GENERAL.—Notwithstanding any provision of the Indian preference laws, such laws shall

not apply in the case of any personnel action carried out under this section with respect to an applicant or employee not entitled to an Indian preference if each tribal organization concerned grants a written waiver of the application of such laws with respect to such personnel action and states that such waiver is necessary. This paragraph shall not be construed to relieve the Bureau's responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if such action is intended to fill a vacancy (no matter how such vacancy is created).

"(2) DEFINITIONS.—In this subsection:

"(A) INDIAN PREFERENCE LAWS.—The term 'Indian preference laws' means section 12 of the Act of June 18, 1934 (48 Stat. 986, chapter 576) or any other provision of law granting a preference to Indians in promotions and other personnel actions. Such term shall not include section 7(b) of the Indian Self-Determination and Education Assistance Act.

"(B) TRIBAL ORGANIZATION.—The term 'tribal organization' means—

"(i) the recognized governing body of any Indian tribe, band, nation, pueblo, or

other organized community, including a Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act); or

"(ii) in connection with any personnel action referred to in this subsection, any local school board to which the governing body has delegated the authority to grant a waiver under this subsection with respect to a personnel action.

"(h) COMPENSATION OR ANNUAL SALARY.—

"(1) IN GENERAL.—

"(A) COMPENSATION FOR EDUCATORS AND EDUCATION POSITIONS.—Except as otherwise provided in this section, the Secretary shall fix the basic compensation for educators and education positions—

"(i) at rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5, United States Code, is applicable; or

"(ii) on the basis of the Federal Wage System schedule in effect for the locality

involved, and for the comparable positions, at the rates of compensation in effect for the senior executive service.

"(B) COMPENSATION OR SALARY FOR TEACHERS AND COUNSELORS.—The Secretary shall establish the rate of basic compensation, or annual salary rate, for the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rate of basic compensation applicable (on the date of enactment of the Native American Education Improvement Act of 2001 and thereafter) for comparable positions in the overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act. The Secretary shall allow the local school boards involved authority to implement only the aspects of the Defense Department Overseas Teachers Pay and Personnel Practices Act pay provisions that are considered essential for recruitment and retention of teachers and counselors. Implementation of such provisions shall not be construed to require the implementation of that entire Act.

"(C) RATES FOR NEW HIRES.—

"(i) IN GENERAL.—Beginning with the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001, each local school board of a Bureau school may establish a rate of compensation or annual salary rate described in clause (ii) for teachers and counselors (including academic counselors) who are new hires at the school and who had not worked at the school, as of the first day of such fiscal year.

"(ii) CONSISTENT RATES.—The rates established under clause (i) shall be consistent with the rates paid for individuals in the same positions, with the same tenure and training, as the teachers and counselors, in any other school within whose boundaries the Bureau school is located.

"(iii) DECREASES.—In an instance in which the establishment of rates under clause (i) causes a reduction in compensation at a school from the rate of compensation that was in effect for the first fiscal year following the date of enactment of the

Native American Education Improvement Act of 2001, the new rates of compensation may be applied to the compensation of employees of the school who worked at the school as of such date of enactment by applying those rates at each contract renewal for the employees so that the reduction takes effect in 3 equal installments.

"(iv) INCREASES.—In an instance in which the establishment of such rates at a school causes an increase in compensation from the rate of compensation that was in effect for the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001, the school board may apply the new rates at the next contract renewal so that either—

"(I) the entire increase occurs on 1 date; or

"(II) the increase takes effect in 3 equal installments.

"(D) ESTABLISHED REGULATIONS, PROCEDURES, AND ARRANGEMENTS.—

"(i) PROMOTIONS AND ADVANCEMENTS.—The establishment of rates of

basic compensation and annual salary rates under subparagraphs (B) and (C) shall not preclude the use of regulations and procedures used by the Bureau prior to April 28, 1988, in making determinations regarding promotions and advancements through levels of pay that are based on the merit, education, experience, or tenure of an educator.

"(ii) CONTINUED EMPLOYMENT OR COMPENSATION.—The establishment of rates of basic compensation and annual salary rates under subparagraphs (B) and (C) shall not affect the continued employment or compensation of an educator who was employed in an education position on October 31, 1979, and who did not make an election under subsection (o), as in effect on January 1, 1990.

"(2) POST DIFFERENTIAL RATES.—

"(A) IN GENERAL.—The Secretary may pay a post differential rate not to exceed 25 percent of the rate of basic compensation, for educators or education positions, on the basis of conditions of environment or work that warrant

additional pay, as a recruitment and retention incentive.

"(B) SUPERVISOR'S AUTHORITY.—

"(i) IN GENERAL.—Except as provided in clause (ii) on the request of the supervisor and the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide 1 or more post differential rates under subparagraph (A).

"(ii) EXCEPTION.—The Secretary shall disapprove, or approve with a modification, a request for authorization to provide a post differential rate if the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that the rate should be disapproved or decreased because the disparity of compensation between the appropriate educators or positions in the Bureau school, and the comparable educators or positions at the nearest public school, is—

"(I)(aa) at least 5 percent; or

"(bb) less than 5 percent; and

"(II) does not affect the recruitment or retention of employees at the school.

"(iii) APPROVAL OF REQUESTS.—A request made under clause (i) shall be considered to be approved at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time the request is approved, approved with a modification, or disapproved by the Secretary.

"(iv) DISCONTINUATION OF OR DECREASE IN RATES.—The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential rate provided for under this paragraph at the beginning of an academic year if—

"(I) the local school board requests that such differential be discontinued or decreased; or

"(II) the Secretary or the supervisor, respectively, determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of

compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

"(v) REPORTS.—On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and approvals of authorization made under this paragraph during the previous year and listing the positions receiving post differential rates under contracts entered into under those authorizations.

"(i) LIQUIDATION OF REMAINING LEAVE UPON TERMINATION.—Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, United States Code, except that leave earned or accrued under regulations prescribed pursuant to subsection (c)(9) shall not be so liquidated.

"(j) TRANSFER OF REMAINING LEAVE UPON TRANSFER, PROMOTION, OR REEMPLOYMENT.—In the case of any educator who—

"(1) is transferred, promoted, or reappointed, without a break in service, to a position in the Fed-

eral Government under a different leave system than the system for leave described in subsection (c)(9); and

"(2) earned or was credited with leave under the regulations prescribed under subsection (c)(9) and has such leave remaining to the credit of such educator;

such leave shall be transferred to such educator's credit in the employing agency for the position on an adjusted basis in accordance with regulations that shall be prescribed by the Director of the Office of Personnel Management.

"(k) INELIGIBILITY FOR EMPLOYMENT OF VOLUNTARILY TERMINATED EDUCATORS.—An educator who voluntarily terminates employment under an employment contract with the Bureau before the expiration of the employment contract shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

"(l) DUAL COMPENSATION.—In the case of any educator employed in an education position described in subsection (a)(1)(A) who—

"(1) is employed at the end of an academic year;

"(2) agrees in writing to serve in such position for the next academic year; and

"(3) is employed in another position during the recess period immediately preceding such next academic year, or during such recess period receives additional compensation referred to in section 5533 of title 5, United States Code, relating to dual compensation;

such section 5533 shall not apply to such educator by reason of any such employment during the recess period with respect to any receipt of additional compensation.

"(m) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may, subject to the approval of the local school boards concerned, accept voluntary services on behalf of Bureau schools. Nothing in this part shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees. An individual providing volunteer services under this section shall be considered to be a Federal employee only for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

"(n) PRORATION OF PAY.—

"(1) ELECTION OF EMPLOYEE.—Notwithstanding any other provision of law, including laws relating to dual compensation, the Secretary, at the election of an educator, shall prorate the salary of the educator for an academic year over a 12-month period. Each educator employed for the academic year shall annually elect to be paid on a 12-month basis or for those months while school is in session. No educator shall suffer a loss of pay or benefits, including benefits under unemployment or other Federal or federally assisted programs, because of such election.

"(2) CHANGE OF ELECTION.—During the course of such academic year, the employee may change the election made under paragraph (1) once.

"(3) LUMP-SUM PAYMENT.—That portion of the employee's pay that would be paid between academic years may be paid in a lump sum at the election of the employee.

"(4) APPLICATION.—This subsection applies to educators, whether employed under this section or title 5, United States Code.

"(o) EXTRACURRICULAR ACTIVITIES.—

"(1) STIPEND.—Notwithstanding any other provision of law, the Secretary may provide, for Bu-

reau employees in each Bureau area, a stipend in lieu of overtime premium pay or compensatory time off for overtime work. Any employee of the Bureau who performs overtime work that consists of additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend. Such stipend shall be paid as a supplement to the employee's base pay.

"(2) ELECTION NOT TO RECEIVE STIPEND.—If an employee elects not to be compensated through the stipend established by this subsection, the appropriate provisions of title 5, United States Code, shall apply with respect to the work involved.

"(3) APPLICATION.—This subsection applies to Bureau employees, whether employed under this section or title 5, United States Code.

"(p) COVERED INDIVIDUALS; ELECTION.—This section shall apply with respect to any educator hired after November 1, 1979 (and to any educator who elected to be covered under this section or a corresponding provision after November 1, 1979) and to the position in which such educator is employed. The enactment of this section shall not affect the continued employment of an individual employed on October 31, 1979 in an education position, or

such person's right to receive the compensation attached to such position.

"(q) FURLOUGH WITHOUT CONSENT.—

"(1) IN GENERAL.—An educator who was employed in an education position on October 31, 1979, who was eligible to make an election under subsection (p) at that time, and who did not make the election under paragraph such subsection, may not be placed on furlough (within the meaning of section 7511(a)(5) of title 5, United States Code, without the consent of such educator for an aggregate of more than 4 weeks within the same calendar year, unless—

"(A) the supervisor, with the approval of the local school board (or of the education line officer upon appeal under paragraph (2)), of the Bureau school at which such educator provides services determines that a longer period of furlough is necessary due to an insufficient amount of funds available for personnel compensation at such school, as determined under the financial plan process as determined under section 1129(b); and

"(B) all educators (other than principals and clerical employees) providing services at

such Bureau school are placed on furloughs of equal length, except that the supervisor, with the approval of the local school board (or of the agency education line officer upon appeal under paragraph (2)), may continue 1 or more educators in pay status if—

"(i) such educators are needed to operate summer programs, attend summer training sessions, or participate in special activities including curriculum development committees; and

"(ii) such educators are selected based upon such educator's qualifications after public notice of the minimum qualifications reasonably necessary and without discrimination as to supervisory, nonsupervisory, or other status of the educators who apply.

"(2) APPEALS.—The supervisor of a Bureau school may appeal to the appropriate agency education line officer any refusal by the local school board to approve any determination of the supervisor that is described in paragraph (1)(A) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be approved. A copy of such state-

ment shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, approve the determination of the supervisor. The educational line officer shall transmit the determination of such appeal in the form of a written opinion to such local school board and to the supervisor identifying the reasons for approving such determination.

"SEC. 1132. COMPUTERIZED MANAGEMENT INFORMATION SYSTEM.

"(a) ESTABLISHMENT OF SYSTEM.—Not later than July 1, 2002, the Secretary shall establish within the Office a computerized management information system, which shall provide processing and information to the Office. The information provided shall include information regarding—

"(1) student enrollment;

"(2) curricula;

"(3) staffing;

"(4) facilities;

"(5) community demographics;

"(6) student assessment information;

"(7) information on the administrative and program costs attributable to each Bureau program, divided into discrete elements;

"(8) relevant reports;

"(9) personnel records;

"(10) finance and payroll; and

"(11) such other items as the Secretary determines to be appropriate.

"(b) IMPLEMENTATION OF SYSTEM.—Not later than July 1, 2003, the Secretary shall complete implementation of such a system at each Bureau field office and Bureau funded school.

"SEC. 1133. UNIFORM EDUCATION PROCEDURES AND PRACTICES.

"Not later than 90 days after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall cause the various divisions of the Bureau to formulate uniform procedures and practices with respect to such concerns of those divisions as relate to education, and shall submit a report on the procedures and practices to Congress.

"SEC. 1134. RECRUITMENT OF INDIAN EDUCATORS.

"The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan

shall include provisions for opportunities for acquiring work experience prior to receiving an actual work assignment.

"SEC. 1135. ANNUAL REPORT; AUDITS.

"(a) ANNUAL REPORTS.—The Secretary shall submit to each appropriate committee of Congress, all Bureau funded schools, and the tribal governing bodies of such schools, a detailed annual report on the state of education within the Bureau and any problems encountered in Indian education during the period covered by the report. Such report shall contain suggestions for the improvement of the Bureau educational system and for increasing tribal or local Indian control of such system. Such report shall also include information on the status of tribally controlled community colleges.

"(b) BUDGET REQUEST.—The annual budget request for the Bureau's education programs, as submitted as part of the President's next annual budget request under section 1105 of title 31, United States Code) shall include the plans required by sections 1121(g), 1122(c), and 1124(c).

"(c) FINANCIAL AND COMPLIANCE AUDITS.—The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted for each Bureau school at least once

in every 3 years. Such an audit of a Bureau school shall examine the extent to which such school has complied with the local financial plan prepared by the school under section 1129(b).

"(d) ADMINISTRATIVE EVALUATION OF SCHOOLS.—The Director shall, at least once every 3 to 5 years, conduct a comprehensive evaluation of Bureau operated schools. Such evaluation shall be in addition to any other program review or evaluation that may be required under Federal law.

"SEC. 1136. RIGHTS OF INDIAN STUDENTS.

"The Secretary shall prescribe such rules and regulations as may be necessary to ensure the protection of the constitutional and civil rights of Indian students attending Bureau funded schools, including such students' right to privacy under the laws of the United States, such students' right to freedom of religion and expression, and such students' right to due process in connection with disciplinary actions, suspensions, and expulsions.

"SEC. 1137. REGULATIONS.

"(a) IN GENERAL.—The Secretary may issue only such regulations as may be necessary to ensure compliance with the specific provisions of this part. In issuing the regulations, the Secretary shall publish proposed regulations in the Federal Register, and shall provide a period of not

less than 120 days for public comment and consultation on the regulations. The regulations shall contain, immediately following each regulatory section, a citation to any statutory provision providing authority to issue such regulatory section.

"(b) REGIONAL MEETINGS.—Prior to publishing any proposed regulations under subsection (a) and prior to establishing the negotiated rulemaking committee under subsection (c), the Secretary shall convene regional meetings to consult with personnel of the Office of Indian Education Programs, educators at Bureau schools, representatives of Bureau employees, and tribal officials, parents, teachers and school board members of tribes served by Bureau funded schools to provide guidance to the Secretary on the content of regulations authorized to be issued under this part and the Tribally Controlled Schools Act of 1988.

"(c) NEGOTIATED RULEMAKING.—

"(1) IN GENERAL.—Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, the Secretary shall promulgate regulations authorized under subsection (a) and under the Tribally Controlled Schools Act of 1988, in accordance with the negotiated rulemaking procedures provided for under subchapter III of chapter 5 of title 5, United

States Code, and shall publish final regulations in the Federal Register.

"(2) EXPIRATION OF AUTHORITY.—The authority of the Secretary to promulgate regulations under this part and under the Tribally Controlled Schools Act of 1988, shall expire on the date than is 18 months after the date of enactment of this part. If the Secretary determines that an extension of the deadline under this paragraph is appropriate, the Secretary may submit proposed legislation to Congress for an extension of such deadline.

"(3) RULEMAKING COMMITTEE.—The Secretary shall establish a negotiated rulemaking committee to carry out this subsection. In establishing such committee, the Secretary shall—

"(A) apply the procedures provided for under subchapter III of chapter 5 of title 5, United States Code, in a manner that reflects the unique government-to-government relationship between Indian tribes and the United States;

"(B) ensure that the membership of the committee includes only representatives of the Federal Government and of tribes served by Bureau-funded schools;

"(C) select the tribal representatives of the committee from among individuals nominated by the representatives of the tribal and tribally-operated schools;

"(D) ensure, to the maximum extent possible, that the tribal representative membership on the committee reflects the proportionate share of students from tribes served by the Bureau funded school system; and

"(E) comply with the Federal Advisory Committee Act (5 U.S.C. App. 2).

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as necessary to carry out the negotiated rulemaking provided for under this section. In the absence of a specific appropriation to carry out this subsection, the Secretary shall pay the costs of the negotiated rulemaking proceedings from the general administrative funds of the Department of the Interior.

"(d) APPLICATION OF SECTION.—

"(1) SUPREMACY OF PROVISIONS.—The provisions of this section shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of this part, and the Secretary may repeal any

regulation that is inconsistent with the provisions of this part.

"(2) MODIFICATIONS.—The Secretary may modify regulations promulgated under this section or the Tribally Controlled Schools Act of 1988, only in accordance with this section.

"SEC. 1138. EARLY CHILDHOOD DEVELOPMENT PROGRAM.

"(a) GRANTS.—The Secretary shall make grants to tribes, tribal organizations, and consortia of tribes and tribal organizations to fund early childhood development programs that are operated by such tribes, organizations, or consortia.

"(b) AMOUNT OF GRANTS.—

"(1) IN GENERAL.—The amount of the grant made under subsection (a) to each eligible tribe, tribal organization, or consortium of tribes or tribal organizations for each fiscal year shall be equal to the amount that bears the same relationship to the total amount appropriated under subsection (g) for such fiscal year (other than amounts reserved under subsection (f)) as—

"(A) the total number of children under age 6 who are members of—

"(i) such tribe;

"(ii) the tribe that authorized such tribal organization; or

"(iii) any tribe that—

"(I) is a member of such consortium; or

"(II) so authorizes any tribal organization that is a member of such consortium; bears to

"(B) the total number of all children under age 6 who are members of any tribe that—

"(i) is eligible to receive funds under subsection (a);

"(ii) is a member of a consortium that is eligible to receive such funds; or

"(iii) is authorized by any tribal organization that is eligible to receive such funds.

"(2) LIMITATION.—No grant may be made under subsection (a)—

"(A) to any tribe that has fewer than 500 members;

"(B) to any tribal organization that is authorized to act—

"(i) on behalf of only 1 tribe that has fewer than 500 members; or

"(ii) on behalf of 1 or more tribes that have a combined total membership of fewer than 500 members; or

"(C) to any consortium composed of tribes, or tribal organizations authorized by tribes to act on behalf of the tribes, that have a combined total tribal membership of fewer than 500 members.

"(c) APPLICATIONS.—

"(1) IN GENERAL.—To be eligible to receive a grant under subsection (a), a tribe, tribal organization, or consortium shall submit to the Secretary an application for the grant at such time, in such manner, and containing such information as the Secretary shall prescribe.

"(2) CONTENTS.—An application submitted under paragraph (1) shall describe the early childhood development program that the applicant desires to operate.

"(d) REQUIREMENT OF PROGRAMS FUNDED.—In operating an early childhood development program that is funded through a grant made under subsection (a), a tribe, tribal organization, or consortium—

"(1) shall coordinate the program with other childhood development programs and may provide

services that meet identified needs of parents, and children under age 6, that are not being met by the programs, including needs for—

"(A) prenatal care;

"(B) nutrition education;

"(C) health education and screening;

"(D) family literacy services;

"(E) educational testing; and

"(F) other educational services;

"(2) may include, in the early childhood development program funded through the grant, instruction in the language, art, and culture of the tribe served by the program; and

"(3) shall provide for periodic assessments of the program.

"(e) COORDINATION OF FAMILY LITERACY PROGRAMS.—An entity that operates a family literacy program under this section or another similar program funded by the Bureau shall coordinate the program involved with family literacy programs for Indian children carried out under part B of title I of the Elementary and Secondary Education Act of 1965 in order to avoid duplication and to encourage the dissemination of information on quality family literacy programs serving Indians.

"(f) ADMINISTRATIVE COSTS.—The Secretary shall reserve funds appropriated under subsection (g) to include in each grant made under subsection (a) an amount for administrative costs incurred by the tribe, tribal organization, or consortium involved in establishing and maintaining the early childhood development program.

"(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2002, 2003, 2004, 2005, and 2006.

"SEC. 1139. TRIBAL DEPARTMENTS OR DIVISIONS OF EDUCATION.

"(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make grants and provide technical assistance to tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe.

"(b) APPLICATIONS.—For a tribe to be eligible to receive a grant under this section, the governing body of the tribe shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(c) DIVERSITY.—The Secretary shall award grants under this section in a manner that fosters geographic and population diversity.

"(d) USE.—Tribes that receive grants under this section shall use the funds made available through the grants—

"(1) to facilitate tribal control in all matters relating to the education of Indian children on reservations (and on former Indian reservations in Oklahoma);

"(2) to provide for the development of coordinated educational programs (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) on reservations (and on former Indian reservations in Oklahoma) by encouraging tribal administrative support of all Bureau funded educational programs as well as encouraging tribal cooperation and coordination with entities carrying out all educational programs receiving financial support from other Federal agencies, State agencies, or private entities; and

"(3) to provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applica-

ble to curriculum, personnel, students, facilities, and support programs.

"(e) PRIORITIES.—In making grants under this section, the Secretary shall give priority to any application that—

"(1) includes—

"(A) assurances that the applicant serves 3 or more separate Bureau funded schools; and

"(B) assurances from the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools; and

"(2) includes assurances that all education programs for which funds are provided by such a contract or grant will be monitored and audited, by or through the tribal department of education, to ensure that the programs meet the requirements of law; and

"(3) provides a plan and schedule that—

"(A) provides for—

"(i) the assumption, by the tribal department of education, of all assets and functions of the Bureau agency office asso-

ciated with the tribe, to the extent the assets and functions relate to education; and

"(ii) the termination by the Bureau of such functions and office at the time of such assumption; and

"(B) provides that the assumption shall occur over the term of the grant made under this section, except that, when mutually agreeable to the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

"(e) TIME PERIOD OF GRANT.—Subject to the availability of appropriated funds, a grant provided under this section shall be provided for a period of 3 years. If the performance of the grant recipient is satisfactory to the Secretary, the grant may be renewed for additional 3-year terms.

"(f) TERMS, CONDITIONS, OR REQUIREMENTS.—A tribe that receives a grant under this section shall comply with regulations relating to grants made under section 103(a) of the Indian Self-Determination and Education Assistance Act that are in effect on the date that the tribal governing body submits the application for the grant under subsection (c). The Secretary shall not impose any

terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

"(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003, 2004, 2005, and 2006.

"SEC. 1140. DEFINITIONS.

"In this part, unless otherwise specified:

"(1) AGENCY SCHOOL BOARD.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'agency school board' means a body, for which—

"(i) the members are appointed by all of the school boards of the schools located within an agency, including schools operated under contracts or grants; and

"(ii) the number of such members shall be determined by the Secretary in consultation with the affected tribes.

"(B) EXCEPTIONS.—In the case of an agency serving a single school, the school board of such school shall be considered to be the agency school board. In the case of an agency

serving a school or schools operated under a contract or grant, at least 1 member of the body described in subparagraph (A) shall be from such a school.

"(2) BUREAU.—The term 'Bureau' means the Bureau of Indian Affairs of the Department of the Interior.

"(3) BUREAU FUNDED SCHOOL.—The term 'Bureau funded school' means—

"(A) a Bureau school;

"(B) a contract or grant school; or

"(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

"(4) BUREAU SCHOOL.—The term 'Bureau school' means—

"(A) a Bureau operated elementary school or secondary school that is a day or boarding school; or

"(B) a Bureau operated dormitory for students attending a school other than a Bureau school.

"(5) CONTRACT OR GRANT SCHOOL.—The term 'contract or grant school' means an elementary school, secondary school, or dormitory that receives

financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act, or under the Tribally Controlled Schools Act of 1988.

"(6) EDUCATION LINE OFFICER.—The term 'education line officer' means a member of the education personnel under the supervision of the Director of the Office, whether located in a central, area, or agency office.

"(7) FINANCIAL PLAN.—The term 'financial plan' means a plan of services provided by each Bureau school.

"(8) INDIAN ORGANIZATION.—The term 'Indian organization' means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized tribes.

"(9) INHERENTLY FEDERAL FUNCTIONS.—The term 'inherently Federal functions' means functions and responsibilities which, under section 1125(c), are non-contractible, including—

"(A) the allocation and obligation of Federal funds and determinations as to the amounts of expenditures;

"(B) the administration of Federal personnel laws for Federal employees;

"(C) the administration of Federal contracting and grant laws, including the monitoring and auditing of contracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;

"(D) the conducting of administrative hearings and deciding of administrative appeals;

"(E) the determination of the Secretary's views and recommendations concerning administrative appeals or litigation and the representation of the Secretary in administrative appeals and litigation;

"(F) the issuance of Federal regulations and policies as well as any documents published in the Federal Register;

"(G) reporting to Congress and the President;

"(H) the formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and

"(I) the non-delegable statutory duties of the Secretary relating to trust resources.

"(10) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, or independent or other school district located within a State, and includes any State agency that directly operates and maintains facilities for providing free public education.

"(11) LOCAL SCHOOL BOARD.—The term 'local school board', when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that, for a school serving a substantial number of students from different tribes—

"(A) the members of the body shall be appointed by the tribal governing bodies of the tribes affected; and

"(B) the number of such members shall be determined by the Secretary in consultation with the affected tribes.

"(12) OFFICE.—The term 'Office' means the Office of Indian Education Programs within the Bureau.

"(13) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(14) SUPERVISOR.—The term 'supervisor' means the individual in the position of ultimate authority at a Bureau school.

"(15) TRIBAL GOVERNING BODY.—The term 'tribal governing body' means, with respect to any school, the tribal governing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school.

"(16) TRIBE.—The term 'tribe' means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Regional Corporation or Village Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

TITLE II—TRIBALLY CONTROLLED SCHOOLS ACT OF 1988

SEC. 201. TRIBALLY CONTROLLED SCHOOLS.

Sections 5202 through 5213 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) are amended to read as follows:

"SEC. 5202. FINDINGS.

"Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, Indians, finds that—

"(1) the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step towards tribal and community control;

"(2) because of the Bureau of Indian Affairs' administration and domination of the contracting process under such Act, Indians have not been provided with the full opportunity to develop leadership skills crucial to the realization of self-government and have been denied an effective voice in the planning and implementation of programs for the benefit of Indians that are responsive to the true needs of Indian communities;

"(3) Indians will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons;

"(4) true self-determination in any society of people is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles;

"(5) the Federal administration of education for Indian children have not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction that education can and should provide;

"(6) true local control requires the least possible Federal interference; and

"(7) the time has come to enhance the concepts made manifest in the Indian Self-Determination and Education Assistance Act.

"SEC. 5203. DECLARATION OF POLICY.

"(a) RECOGNITION.—Congress recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational services so as to render the persons administering

such services and the services themselves more responsive to the needs and desires of Indian communities.

"(b) COMMITMENT.—Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.

"(c) NATIONAL GOAL.—Congress declares that a major national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children—

"(1) to compete and excel in the life areas of their choice; and

"(2) to achieve the measure of self-determination essential to their social and economic well-being.

"(d) EDUCATIONAL NEEDS.—Congress affirms—

"(1) the reality of the special and unique educational needs of Indian people, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and

"(2) that the needs may best be met through a grant process.

"(e) FEDERAL RELATIONS.—Congress declares a commitment to the policies described in this section and support, to the full extent of congressional responsibility, for Federal relations with the Indian nations.

"(f) TERMINATION.—Congress repudiates and rejects House Concurrent Resolution 108 of the 83d Congress and any policy of unilateral termination of Federal relations with any Indian Nation.

"SEC. 5204. GRANTS AUTHORIZED.

"(a) IN GENERAL.—

"(1) ELIGIBILITY.—The Secretary shall provide grants to Indian tribes and tribal organizations that—

"(A) operate contract schools under title XI of the Education Amendments of 1978 and notify the Secretary of their election to operate the schools with assistance under this part rather than continuing to operate such schools as contract schools under such title;

"(B) operate other tribally controlled schools eligible for assistance under this part and submit applications (which are approved by

their tribal governing bodies) to the Secretary for such grants; or

"(C) elect to assume operation of Bureau funded schools with the assistance provided under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

"(2) DEPOSIT OF FUNDS.—Funds made available through a grant provided under this part shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is made.

"(3) USE OF FUNDS.—

"(A) EDUCATION RELATED ACTIVITIES.—Except as otherwise provided in this paragraph, funds made available through a grant provided under this part shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education related activities for which the grant may be used under the laws described in section 5205(a), or any similar activities, including expenditures for—

"(i) school operations, and academic, educational, residential, guidance and counseling, and administrative purposes; and

"(ii) support services for the school, including transportation.

"(B) OPERATIONS AND MAINTENANCE EXPENDITURES.—Funds made available through a grant provided under this part may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided, be used to defray operations and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 5205(a).

"(4) WAIVER OF FEDERAL TORT CLAIMS ACT.—Notwithstanding section 314 of the Department of Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512), the Federal Tort Claims Act shall not apply to a program operated by a tribally controlled school if the program is not funded by the Federal agency. Nothing in the preceding sentence shall be construed to apply to—

"(A) the employees of the school involved; and

"(B) any entity that enters into a contract with a grantee under this section.

"(b) LIMITATIONS.—

"(1) 1 GRANT PER TRIBE OR ORGANIZATION PER FISCAL YEAR.—Not more than 1 grant may be provided under this part with respect to any Indian tribe or tribal organization for any fiscal year.

"(2) NONSECTARIAN USE.—Funds made available through any grant provided under this part may not be used in connection with religious worship or sectarian instruction.

"(3) ADMINISTRATIVE COSTS LIMITATION.—Funds made available through any grant provided under this part may not be expended for administrative cost (as defined in section 1127(a) of the Education Amendments of 1978) in excess of the amount generated for such cost under section 1127 of such Act.

"(c) LIMITATION ON TRANSFER OF FUNDS AMONG SCHOOL SITES.—

"(1) IN GENERAL.—In the case of a recipient of a grant under this part that operates schools at

more than 1 school site, the grant recipient may expend not more than the lesser of—

"(A) 10 percent of the funds allocated for such school site, under section 1127 of the Education Amendments of 1978; or

"(B) $400,000 of such funds;

at any other school site.

"(2) DEFINITION OF SCHOOL SITE.—In this subsection, the term 'school site' means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract or grant with, the Bureau for which a discrete student count is identified under the funding formula established under section 1126 of the Education Amendments of 1978.

"(d) NO REQUIREMENT TO ACCEPT GRANTS.—Nothing in this part may be construed—

"(1) to require a tribe or tribal organization to apply for or accept; or

"(2) to allow any person to coerce any tribe or tribal organization to apply for, or accept,

a grant under this part to plan, conduct, and administer all of, or any portion of, any Bureau program. The submission of such applications and the timing of such applications shall be strictly voluntary. Nothing in this part

may be construed as allowing or requiring the grant recipient to make any grant under this part to any other entity.

"(e) NO EFFECT ON FEDERAL RESPONSIBILITY.—Grants provided under this part shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide an educational program.

"(f) RETROCESSION.—

"(1) IN GENERAL.—Whenever a tribal governing body requests retrocession of any program for which assistance is provided under this part, such retrocession shall become effective on a date specified by the Secretary that is not later than 120 days after the date on which the tribal governing body requests the retrocession. A later date may be specified if mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this part prior to the retrocession.

"(2) STATUS AFTER RETROCESSION.—The tribe requesting retrocession shall specify whether the retrocession relates to status as a Bureau operated

school or as a school operated under a contract under the Indian Self-Determination Act.

"(3) TRANSFER OF EQUIPMENT AND MATERIALS.—Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded shall transfer to the Secretary (or to the tribe or tribal organization that will operate the program as a contract school) the existing equipment and materials that were acquired—

"(A) with assistance under this part; or

"(B) upon assumption of operation of the program under this part if the school was a Bureau funded school under title XI of the Education Amendments of 1978 before receiving assistance under this part.

"(g) PROHIBITION OF TERMINATION FOR ADMINISTRATIVE CONVENIENCE.—Grants provided under this part may not be terminated, modified, suspended, or reduced solely for the convenience of the administering agency.

"SEC. 5205. COMPOSITION OF GRANTS.

"(a) IN GENERAL.—The funds made available through a grant provided under this part to an Indian tribe or tribal organization for any fiscal year shall consist of—

"(1) the total amount of funds allocated for such fiscal year under sections 1126 and 1127 of the Education Amendments of 1978 with respect to the tribally controlled school eligible for assistance under this part that is operated by such Indian tribe or tribal organization, including funds provided under such sections, or under any other provision of law, for transportation costs for such school;

"(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 105 of the Indian Self-Determination and Education Assistance Act or any other provision of law, other facilities accounts for such school for such fiscal year (including accounts for facilities referred to in section 1125(d) of the Education Amendments of 1978 or any other law); and

"(3) the total amount of funds that are allocated to such school for such fiscal year under—

"(A) title I of the Elementary and Secondary Education Act of 1965;

"(B) the Individuals with Disabilities Education Act; and

"(C) any other Federal education law.

"(b) SPECIAL RULES.—

"(1) IN GENERAL.—

"(A) APPLICABLE PROVISIONS.—Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) of subsection (a) shall be subject to the provisions of this part and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

"(i) title I of the Elementary and Secondary Education Act of 1965;

"(ii) the Individuals with Disabilities Education Act; or

"(iii) any Federal education law other than title XI of the Education Amendments of 1978.

"(B) OTHER BUREAU REQUIREMENTS.—Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds

provided under any law referred to in clause (i), (ii) or (iii) of subparagraph (A).

"(2) SCHOOLS CONSIDERED CONTRACT SCHOOLS.—Tribally controlled schools for which grants are provided under this part shall be treated as contract schools for the purposes of allocation of funds under sections 1125(d), 1126, and 1127 of the Education Amendments of 1978.

"(3) SCHOOLS CONSIDERED BUREAU SCHOOLS.—Tribally controlled schools for which grants are provided under this part shall be treated as Bureau schools for the purposes of allocation of funds provided under—

"(A) title I of the Elementary and Secondary Education Act of 1965;

"(B) the Individuals with Disabilities Education Act; and

"(C) any other Federal education law, that are distributed through the Bureau.

"(4) ACCOUNTS; USE OF CERTAIN FUNDS.—

"(A) SEPARATE ACCOUNT.—Notwithstanding section 5204(a)(2), with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts in-

cluded in the grant provided under section 5204(a), the grant recipient shall maintain a separate account for such funds. At the end of the period designated for the work covered by the funds received, the grant recipient shall submit to the Secretary a separate accounting of the work done and the funds expended. Funds received from those accounts may only be used for the purpose for which the funds were appropriated and for the work encompassed by the application or submission for which the funds were received.

"(B) REQUIREMENTS FOR PROJECTS.—

"(i) REGULATORY REQUIREMENTS.—With respect to a grant to a tribally controlled school under this part for new construction or facilities improvements and repair in excess of $100,000, such grant shall be subject to the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in part 12 of title 43, Code of Federal Regulations.

"(ii) EXCEPTION.—Notwithstanding clause (i), grants described in such clause

shall not be subject to section 12.61 of title 43, Code of Federal Regulations. The Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed.

"(iii) APPLICATIONS.—In considering applications for a grant described in clause (i), the Secretary shall consider whether the Indian tribe or tribal organization involved would be deficient in assuring that the construction projects under the proposed grant conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required under section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a)) with respect to organizational and financial management capabilities.

"(iv) DISPUTES.—Any disputes between the Secretary and any grantee concerning a grant described in clause (i) shall be subject to the dispute provisions contained in section 5209(e).

"(C) NEW CONSTRUCTION.—Notwithstanding subparagraph (A), a school receiving a

grant under this part for facilities improvement and repair may use such grant funds for new construction if the tribal governing body or tribal organization that submits the application for the grant provides funding for the new construction equal to at least 25 percent of the total cost of such new construction.

"(D) PERIOD.—Where the appropriations measure under which the funds described in subparagraph (A) are made available or the application submitted for the funds does not stipulate a period for the work covered by the funds, the Secretary and the grant recipient shall consult and determine such a period prior to the transfer of the funds. A period so determined may be extended upon mutual agreement of the Secretary and the grant recipient.

"(5) ENFORCEMENT OF REQUEST TO INCLUDE FUNDS.—

"(A) IN GENERAL.—If the Secretary fails to carry out a request filed by an Indian tribe or tribal organization to include in such tribe or organization's grant under this part the funds described in subsection (a)(2) within 180 days

after the filing of the request, the Secretary shall—

"(i) be deemed to have approved such request; and

"(ii) immediately upon the expiration of such 180-day period amend the grant accordingly.

"(B) RIGHTS.—A tribe or organization described in subparagraph (A) may enforce its rights under subsection (a)(2) and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 5209(e).

"SEC. 5206. ELIGIBILITY FOR GRANTS.

"(a) RULES.—

"(1) IN GENERAL.—A tribally controlled school is eligible for assistance under this part if the school—

"(A) on April 28, 1988, was a contract school under title XI of the Education Amendments of 1978 and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this part;

"(B) was a Bureau operated school under title XI of the Education Amendments of 1978 and has met the requirements of subsection (b);

"(C) is not a Bureau funded school, but has met the requirements of subsection (c); or

"(D) is a school with respect to which an election has been made under paragraph (2) and that has met the requirements of subsection (b).

"(2) NEW SCHOOLS.—Notwithstanding paragraph (1), for purposes of determining eligibility for assistance under this part, any application that has been submitted under the Indian Self-Determination and Education Assistance Act by an Indian tribe or tribal organization for a school that is not in operation on the date of enactment of the Native American Education Improvement Act of 2001 shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b).

"(b) ADDITIONAL REQUIREMENTS FOR BUREAU FUNDED SCHOOLS AND CERTAIN ELECTING SCHOOLS.—

"(1) BUREAU FUNDED SCHOOLS.—A school that was a Bureau funded school under title XI of the Education Amendments of 1978 on the date of enactment of the Native American Education Improvement Act of 2001, and any school with respect to which an election is made under subsection (a)(2), meets the requirements of this subsection if—

"(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

"(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school; and

"(ii) make a determination as to whether the school is eligible for assistance under this part; and

"(B) the Secretary makes a determination that the school is eligible for assistance under this part.

"(2) CERTAIN ELECTING SCHOOLS.—

"(A) DETERMINATION.—By not later than 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

"(i) in the case of a school that is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization; and

"(ii) whether the school is eligible for assistance under this part.

"(B) CONSIDERATION; TRANSFERS AND ELIGIBILITY.—In considering applications submitted under paragraph (1)(A), the Secretary—

"(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the tribe or tribal organization is not already operating the school; and

"(ii) shall determine that the school is eligible for assistance under this part, unless the Secretary finds by clear and convincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare

of the Indians served by the school and will not carry out the purposes of this Act.

"(C) CONSIDERATION; POSSIBLE DEFICIENCIES.—In considering applications submitted under paragraph (1)(A), the Secretary shall only consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

"(i) equipment;

"(ii) bookkeeping and accounting procedures;

"(iii) ability to adequately manage a school; or

"(iv) adequately trained personnel.

"(c) ADDITIONAL REQUIREMENTS FOR A SCHOOL THAT IS NOT A BUREAU FUNDED SCHOOL.—

"(1) IN GENERAL.—A school that is not a Bureau funded school under title XI of the Education Amendments of 1978 meets the requirements of this subsection if—

"(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting a determination by the Secretary as to

whether the school is eligible for assistance under this part; and

"(B) the Secretary makes a determination that the school is eligible for assistance under this part.

"(2) DEADLINE FOR DETERMINATION BY SECRETARY.—

"(A) DETERMINATION.—By not later than 180 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine whether the school is eligible for assistance under this part.

"(B) FACTORS.—In making the determination under subparagraph (A), the Secretary shall give equal consideration to each of the following factors:

"(i) With respect to the applicant's proposal—

"(I) the adequacy of facilities or the potential to obtain or provide adequate facilities;

"(II) geographic and demographic factors in the affected areas;

"(III) adequacy of the applicant's program plans;

"(IV) geographic proximity of comparable public education; and

"(V) the needs to be met by the school, as expressed by all affected parties, including but not limited to students, families, tribal governments at both the central and local levels, and school organizations.

"(ii) With respect to all education services already available—

"(I) geographic and demographic factors in the affected areas;

"(II) adequacy and comparability of programs already available;

"(III) consistency of available programs with tribal education codes or tribal legislation on education; and

"(IV) the history and success of those services for the proposed population to be served, as determined from all factors including, if relevant, standardized examination performance.

"(C) EXCEPTION REGARDING PROXIMITY.—The Secretary may not make a determination under this paragraph that is primarily based upon the geographic proximity of comparable public education.

"(D) INFORMATION ON FACTORS.—An application submitted under paragraph (1)(A) shall include information on the factors described in subparagraph (B)(i), but the applicant may also provide the Secretary such information relative to the factors described in subparagraph (B)(ii) as the applicant considers to be appropriate.

"(E) TREATMENT OF LACK OF DETERMINATION.—If the Secretary fails to make a determination under subparagraph (A) with respect to an application within 180 days after the date on which the Secretary received the application—

"(i) the Secretary shall be deemed to have made a determination that the tribally controlled school is eligible for assistance under this part; and

"(ii) the grant shall become effective 18 months after the date on which the

Secretary received the application, or on an earlier date, at the Secretary's discretion.

"(d) FILING OF APPLICATIONS AND REPORTS.—

"(1) IN GENERAL.—Each application or report submitted to the Secretary under this part, and any amendment to such application or report, shall be filed with the education line officer designated by the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs. The date on which the filing occurs shall, for purposes of this part, be treated as the date on which the application, report, or amendment was submitted to the Secretary.

"(2) SUPPORTING DOCUMENTATION.—

"(A) IN GENERAL.—Any application that is submitted under this part shall be accompanied by a document indicating the action taken by the appropriate tribal governing body concerning authorizing such application.

"(B) AUTHORIZATION ACTION.—The Secretary shall administer the requirement of subparagraph (A) in a manner so as to ensure that the tribe involved, through the official action of the tribal governing body, has approved of the application for the grant.

"(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as making a tribal governing body (or tribe) that takes an action described in subparagraph (A) a party to the grant (unless the tribal governing body or the tribe is the grantee) or as making the tribal governing body or tribe financially or programmatically responsible for the actions of the grantee.

"(3) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as making a tribe act as a surety for the performance of a grantee under a grant under this part.

"(4) CLARIFICATION.—The provisions of paragraphs (2) and (3) shall be construed as a clarification of policy in existence on the date of enactment of the Native American Education Improvement Act of 2001 with respect to grants under this part and shall not be construed as altering such policy or as a new policy.

"(e) EFFECTIVE DATE FOR APPROVED APPLICATIONS.—Except as provided in subsection (c)(2)(E), a grant provided under this part shall be made, and any transfer of the operation of a Bureau school made under subsection (b) shall become effective, beginning on the

first day of the academic year succeeding the fiscal year in which the application for the grant or transfer is made, or on an earlier date determined by the Secretary.

"(f) DENIAL OF APPLICATIONS.—

"(1) IN GENERAL.—If the Secretary disapproves a grant under this part, disapproves the transfer of operations of a Bureau school under subsection (b), or determines that a school is not eligible for assistance under this part, the Secretary shall—

"(A) state the objections in writing to the tribe or tribal organization involved within the allotted time;

"(B) provide assistance to the tribe or tribal organization to cure all stated objections;

"(C) at the request of the tribe or tribal organization, provide to the tribe or tribal organization a hearing on the record regarding the refusal or determination involved, under the same rules and regulations as apply under the Indian Self-Determination and Education Assistance Act; and

"(D) provide to the tribe or tribal organization an opportunity to appeal the decision resulting from the hearing.

"(2) TIMELINE FOR RECONSIDERATION OF AMENDED APPLICATIONS.—The Secretary shall reconsider any amended application submitted under this part within 60 days after the amended application is submitted to the Secretary and shall submit the determinations of the Secretary with respect to such reconsideration to the tribe or the tribal organization.

"(g) REPORT.—The Bureau shall prepare and submit to Congress an annual report on all applications received, and actions taken (including the costs associated with such actions), under this section on the same date as the date on which the President is required to submit to Congress a budget of the United States Government under section 1105 of title 31, United States Code.

"SEC. 5207. DURATION OF ELIGIBILITY DETERMINATION.

"(a) IN GENERAL.—If the Secretary determines that a tribally controlled school is eligible for assistance under this part, the eligibility determination shall remain in effect until the determination is revoked by the Secretary, and the requirements of subsection (b) or (c) of section 5206, if applicable, shall be considered to have been met with respect to such school until the eligibility determination is revoked by the Secretary.

"(b) ANNUAL REPORTS.—

"(1) IN GENERAL.—Each recipient of a grant provided under this part for a school shall prepare an annual report concerning the school involved, the contents of which shall be limited to—

"(A) an annual financial statement reporting revenue and expenditures as defined by the cost accounting standards established by the grant recipient;

"(B) a biannual financial audit conducted pursuant to the standards of chapter 71 of title 31, United States Code;

"(C) a biannual compliance audit of the procurement of personal property during the period for which the report is being prepared that shall be in compliance with written procurement standards that are developed by the local school board;

"(D) an annual submission to the Secretary containing information on the number of students served and a brief description of programs offered through the grant; and

"(E) a program evaluation conducted by an impartial evaluation review team, to be based on the standards established for purposes of subsection (c)(1)(A)(ii).

"(2) EVALUATION REVIEW TEAMS.—In appropriate cases, representatives of other tribally controlled schools and representatives of tribally controlled community colleges shall be members of the evaluation review teams.

"(3) EVALUATIONS.—In the case of a school that is accredited, the evaluations required under this subsection shall be conducted at intervals under the terms of the accreditation.

"(4) SUBMISSION OF REPORT.—

"(A) TO TRIBAL GOVERNING BODY.—Upon completion of the annual report required under paragraph (1), the recipient of the grant shall send (via first class mail, return receipt requested) a copy of such annual report to the tribal governing body.

"(B) TO SECRETARY.—Not later than 30 days after receiving written confirmation that the tribal governing body has received the report sent pursuant to subparagraph (A), the recipient of the grant shall send a copy of the report to the Secretary.

"(c) REVOCATION OF ELIGIBILITY.—

"(1) IN GENERAL.—

"(A) NONREVOCATION CONDITIONS.—The Secretary shall not revoke a determination that a school is eligible for assistance under this part if—

"(i) the Indian tribe or tribal organization submits the reports required under subsection (b) with respect to the school; and

"(ii) at least 1 of the following conditions applies with respect to the school:

"(I) The school is certified or accredited by a State certification or regional accrediting association or is a candidate in good standing for such certification or accreditation under the rules of the State certification or regional accrediting association, showing that credits achieved by the students within the education programs of the school are, or will be, accepted at grade level by a State certified or regionally accredited institution.

"(II) The Secretary determines that there is a reasonable expectation that the certification or accreditation

described in subclause (I), or candidacy in good standing for such certification or accreditation, will be achieved by the school within 3 years and that the program offered by the school is beneficial to Indian students.

"(III) The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized State certification or regional accrediting agency.

"(IV) The school accepts the standards issued under section 1121 of the Education Amendments of 1978 and an impartial evaluator chosen by the grant recipient conducts a program evaluation for the school under this section in conformance with the regulations pertaining to Bureau operated schools, but no grant recipient shall be required to comply with the standards to a greater degree than a comparable Bureau operated school.

"(V)(aa) Every 3 years, an impartial evaluator agreed upon by the Secretary and the grant recipient conducts evaluations of the school, and the school receives a positive assessment under such evaluations. The evaluations are conducted under standards adopted by a contractor under a contract for the school entered into under the Indian Self-Determination and Education Assistance Act (or revisions of such standards agreed to by the Secretary and the grant recipient) prior to the date of enactment of the Native American Education Improvement Act of 2001.

"(bb) If the Secretary and a grant recipient other than a tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation. If the Secretary and a grant recipient that is a tribal governing body fail to agree on such

an evaluator, item (aa) shall not apply.

"(B) STANDARDS.—The choice of standards employed for the purposes of subparagraph (A)(ii) shall be consistent with section 1121(e) of the Education Amendments of 1978.

"(2) NOTICE REQUIREMENTS FOR REVOCATION.—The Secretary shall not revoke a determination that a school is eligible for assistance under this part, or reassume control of a school that was a Bureau school prior to approval of an application submitted under section 5206(b)(1)(A), until the Secretary—

"(A) provides notice, to the tribally controlled school involved and the appropriate tribal governing body (within the meaning of section 1140 of the Education Amendments of 1978) for the tribally controlled school, which states—

"(i) the specific deficiencies that led to the revocation or reassumption determination; and

"(ii) the actions that are needed to remedy such deficiencies; and

"(B) affords such school and governing body an opportunity to carry out the remedial actions.

"(3) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical assistance to enable the school and governing body to carry out such remedial actions.

"(4) HEARING AND APPEAL.—In addition to notice and technical assistance under this subsection, the Secretary shall provide to the school and governing body—

"(A) at the request of the school or governing body, a hearing on the record regarding the revocation or reassumption determination, to be conducted under the rules and regulations described in section 5206(f)(1)(C); and

"(B) an opportunity to appeal the decision resulting from the hearing.

"(d) APPLICABILITY OF SECTION PURSUANT TO ELECTION UNDER SECTION 5209(b).—With respect to a tribally controlled school that receives assistance under this part pursuant to an election made under section 5209(b)—

"(1) subsection (b) shall apply; and

"(2) the Secretary may not revoke eligibility for assistance under this part except in conformance with subsection (c).

"SEC. 5208. PAYMENT OF GRANTS; INVESTMENT OF FUNDS; STATE PAYMENTS TO SCHOOLS.

"(a) PAYMENTS.—

"(1) MANNER OF PAYMENTS.—

"(A) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary shall make payments to grant recipients under this part in 2 payments, of which—

"(i) the first payment shall be made not later than July 15 of each year in an amount equal to 80 percent of the amount that the grant recipient was entitled to receive during the preceding academic year; and

"(ii) the second payment, consisting of the remainder to which the grant recipient was entitled for the academic year, shall be made not later than December 1 of each year.

"(B) EXCESS FUNDING.—In a case in which the amount provided to a grant recipient under subparagraph (A)(i) is in excess of the

amount that the recipient is entitled to receive for the academic year involved, the recipient shall return to the Secretary such excess amount. The amount returned to the Secretary under this subparagraph shall be distributed equally to all schools in the system.

"(2) NEWLY FUNDED SCHOOLS.—For any school for which no payment under this part was made from Bureau funds in the academic year preceding the year for which the payments are being made, full payment of the amount computed for the school for the first academic year of eligibility under this part shall be made not later than December 1 of the academic year.

"(3) LATE FUNDING.—With regard to funds for grant recipients under this part that become available for obligation on October 1 of the fiscal year for which such funds are appropriated, the Secretary shall make payments to the grant recipients not later than December 1 of the fiscal year, except that operations and maintenance funds shall be forward funded and shall be available for obligation not later than July 15 and December 1 of each fiscal year.

"(4) APPLICABILITY OF CERTAIN TITLE 31 PROVISIONS.—The provisions of chapter 39 of title 31,

United States Code, shall apply to the payments required to be made under paragraphs (1), (2), and (3).

"(5) RESTRICTIONS.—Payments made under paragraphs (1), (2), and (3) shall be subject to any restriction on amounts of payments under this part that is imposed by a continuing resolution or other Act appropriating the funds involved.

"(b) INVESTMENT OF FUNDS.—

"(1) TREATMENT OF INTEREST AND INVESTMENT INCOME.—Notwithstanding any other provision of law, any interest or investment income that accrues on or is derived from any funds provided under this part for a school after such funds are paid to an Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this part shall be the property of the Indian tribe or tribal organization. The interest or income shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance to be provided, under any provision of Federal law.

"(2) PERMISSIBLE INVESTMENTS.—Funds provided under this part may be invested by an Indian

tribe or tribal organization, as approved by the grantee, before such funds are expended for the objectives of this part if such funds are—

"(A) invested by the Indian tribe or tribal organization only—

"(i) in obligations of the United States;

"(ii) in obligations or securities that are guaranteed or insured by the United States; or

"(iii) in mutual (or other) funds that are registered with the Securities and Exchange Commission and that only invest in obligations of the United States, or securities that are guaranteed or insured by the United States; or

"(B) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully supported by collateral to ensure protection of the funds, even in the event of a bank failure.

"(c) RECOVERIES.—Funds received under this part shall not be taken into consideration by any Federal agency for the purposes of making underrecovery and over-

recovery determinations for any other funds, from whatever source derived.

"(d) PAYMENTS BY STATES.—

"(1) IN GENERAL.—With respect to a school that receives assistance under this part, a State shall not—

"(A) take into account the amount of such assistance in determining the amount of funds that such school is eligible to receive under applicable State law; or

"(B) reduce any State payments that such school is eligible to receive under applicable State law because of the assistance received by the school under this part.

"(2) VIOLATIONS.—

"(A) IN GENERAL.—Upon receipt of any information from any source that a State is in violation of paragraph (1), the Secretary shall immediately, but in no case later than 90 days after the receipt of such information, conduct an investigation and make a determination of whether such violation has occurred.

"(B) DETERMINATION.—If the Secretary makes a determination under subparagraph (A) that a State has violated paragraph (1), the

Secretary shall inform the Secretary of Education of such determination and the basis for the determination. The Secretary of Education shall, in an expedient manner, pursue penalties under paragraph (3) with respect to the State.

"(3) PENALTIES.—A State determined to have violated paragraph (1) shall be subject to penalties similar to the penalties described in section 8809(e) of the Elementary and Secondary Education Act of 1965 for a violation of title VIII of such Act.

"SEC. 5209. APPLICATION WITH RESPECT TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

"(a) CERTAIN PROVISIONS TO APPLY TO GRANTS.—The following provisions of the Indian Self-Determination and Education Assistance Act (and any subsequent revisions thereto or renumbering thereof), shall apply to grants provided under this part and the schools funded under such grants:

"(1) Section 5(f) (relating to single agency audits).

"(2) Section 6 (relating to criminal activities; penalties).

"(3) Section 7 (relating to wage and labor standards).

"(4) Section 104 (relating to retention of Federal employee coverage).

"(5) Section 105(f) (relating to Federal property).

"(6) Section 105(k) (relating to access to Federal sources of supply).

"(7) Section 105(l) (relating to lease of facility used for administration and delivery of services).

"(8) Section 106(e) (relating to limitation on remedies relating to cost allowances).

"(9) Section 106(i) (relating to use of funds for matching or cost participation requirements).

"(10) Section 106(j) (relating to allowable uses of funds).

"(11) The portions of section 108(c) that consist of model agreements provisions 1(b)(5) (relating to limitations of costs), 1(b)(7) (relating to records and monitoring), 1(b)(8) (relating to property), and 1(b)(9) (relating to availability of funds).

"(12) Section 109 (relating to reassumption).

"(13) Section 111 (relating to sovereign immunity and trusteeship rights unaffected).

"(b) ELECTION FOR GRANT IN LIEU OF CONTRACT.—

"(1) IN GENERAL.—A contractor that carries out an activity to which this part applies and who has entered into a contract under the Indian Self-Determination and Education Assistance Act that is in effect on the date of enactment of the Native American Education Improvement Act of 2001 may, by giving notice to the Secretary, elect to receive a grant under this part in lieu of such contract and to have the provisions of this part apply to such activity.

"(2) EFFECTIVE DATE OF ELECTION.—Any election made under paragraph (1) shall take effect on the first day of July immediately following the date of such election.

"(3) EXCEPTION.—In any case in which the first day of July immediately following the date of an election under paragraph (1) is less than 60 days after such election, such election shall not take effect until the first day of July of year following the year in which the election is made.

"(c) NO DUPLICATION.—No funds may be provided under any contract entered into under the Indian Self-Determination and Education Assistance Act to pay any expenses incurred in providing any program or services if

a grant has been made under this part to pay such expenses.

"(d) TRANSFERS AND CARRYOVERS.—

"(1) BUILDINGS, EQUIPMENT, SUPPLIES, MATERIALS.—A tribe or tribal organization assuming the operation of—

"(A) a Bureau school with assistance under this part shall be entitled to the transfer or use of buildings, equipment, supplies, and materials to the same extent as if the tribe or tribal organization were contracting under the Indian Self-Determination and Education Assistance Act; or

"(B) a contract school with assistance under this part shall be entitled to funding for improvements, alterations, replacement and code compliance in facilities where programs approved under this part were used in the operation of the contract school to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act and to the transfer or use of buildings, equipment, supplies, and materials that were used in the operation of the contract school to the same

extent as if the tribe or tribal organization were contracting under such Act.

"(2) FUNDS.—Any tribe or tribal organization that assumes operation of a Bureau school with assistance under this part and any tribe or tribal organization that elects to operate a school with assistance under this part rather than to continue to operate the school as a contract school shall be entitled to any funds that would remain available from the previous fiscal year if such school remained a Bureau school or was operated as a contract school, respectively.

"(e) EXCEPTIONS, PROBLEMS, AND DISPUTES.—

"(1) IN GENERAL.—Any exception or problem cited in an audit conducted pursuant to section 5207(b)(1)(B), any dispute regarding a grant authorized to be made pursuant to this part or any modification of such grant, and any dispute involving an administrative cost grant under section 1127 of the Education Amendments of 1978, shall be administered under the provisions governing such exceptions, problems, or disputes described in this paragraph in the case of contracts under the Indian Self-Determination and Education Assistance Act.

"(2) ADMINISTRATIVE APPEALS.—The Equal Access to Justice Act (as amended) and the amendments made by such Act shall apply to an administrative appeal filed after September 8, 1988, by a grant recipient regarding a grant provided under this part, including an administrative cost grant.

"SEC. 5210. ROLE OF THE DIRECTOR.

"Applications for grants under this part, and all modifications to the applications, shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Reports required under this part shall be submitted to education personnel under the direction and control of the Director of such Office.

"SEC. 5211. REGULATIONS.

"The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary in this part. For all other matters relating to the details of planning, developing, implementing, and evaluating grants under this part, the Secretary shall not issue regulations. Regulations issued pursuant to this part shall not have the standing of a Federal statute for purposes of judicial review.

"SEC. 5212. THE TRIBALLY CONTROLLED GRANT SCHOOL ENDOWMENT PROGRAM.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—Each school receiving a grant under this part may establish, at a federally insured financial institution, a trust fund for the purposes of this section.

"(2) DEPOSITS AND USE.—The school may provide—

"(A) for deposit into the trust fund, only funds from non-Federal sources, except that the interest on funds received from grants provided under this part may be used for that purpose;

"(B) for deposit into the trust fund, any earnings on funds deposited in the fund; and

"(C) for the sole use of the school any noncash, in-kind contributions of real or personal property, which may at any time be used, sold, or otherwise disposed of.

"(b) INTEREST.—Interest from the fund established under subsection (a) may periodically be withdrawn and used, at the discretion of the school, to defray any expenses associated with the operation of the school consistent with the purposes of this Act.

"SEC. 5213. DEFINITIONS.

"In this part:

"(1) BUREAU.—The term 'Bureau' means the Bureau of Indian Affairs of the Department of the Interior.

"(2) ELIGIBLE INDIAN STUDENT.—The term 'eligible Indian student' has the meaning given such term in section 1126(a) of the Education Amendments of 1978.

"(3) INDIAN.—The term 'Indian' means a member of an Indian tribe, and includes individuals who are eligible for membership in a tribe, and the child or grandchild of such an individual.

"(4) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Village Corporation or Regional Corporation (as defined in or established pursuant to the Alaskan Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(5) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function

for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State or such combination of school districts or counties as are recognized in a State as an administrative agency for the State's public elementary schools or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

"(6) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(7) TRIBAL GOVERNING BODY.—The term 'tribal governing body' means, with respect to any school that receives assistance under this Act, the recognized governing body of the Indian tribe involved.

"(8) TRIBAL ORGANIZATION.—

"(A) IN GENERAL.—The term 'tribal organization' means—

"(i) the recognized governing body of any Indian tribe; or

"(ii) any legally established organization of Indians that—

"(I) is controlled, sanctioned, or chartered by such governing body or

is democratically elected by the adult members of the Indian community to be served by such organization; and

"(II) includes the maximum participation of Indians in all phases of the organization's activities.

"(B) AUTHORIZATION.—In any case in which a grant is provided under this part to an organization to provide services through a tribally controlled school benefiting more than 1 Indian tribe, the approval of the governing bodies of Indian tribes representing 80 percent of the students attending the tribally controlled school shall be considered a sufficient tribal authorization for such grant.

"(9) TRIBALLY CONTROLLED SCHOOL.—The term 'tribally controlled school' means a school that—

"(A) is operated by an Indian tribe or a tribal organization, enrolling students in kindergarten through grade 12, including a preschool;

"(B) is not a local educational agency; and

"(C) is not directly administered by the Bureau of Indian Affairs.".

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The CHAIRMAN. Senator Inouye, did you have an opening statement?

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. Mr. Chairman I would like to thank you for holding these hearings.

I would just like to make a few observations. It has been estimated that for school year 1998–99 the Federal Government provided an average of $3,285 per student attending BIA-funded schools.

This may sound like a lot of money until one considers that Department of Education's National Center for Education Statistics, estimates that the average student expenditure at public elementary and secondary schools was $7,317 per student in school year 1996–97 and the adverage student expenditure school year for 1998–99 was much more.

In addition, it is estimated that for fiscal year 2002 Administrative Cost Grants will be funded at less than 80 percent of whyat is necessary to sustain operation at some schools. Now, this may interfere with the ability of schools to conduct the audits that are required by Federal law.

I believe that the Federal Government must take responsibility for the conditions of the schools. It is estimated that approximately $1 billion is needed to complete the current backlog in new school construction, repair, and improvements.

There is no other jurisdiction in the United States that will allow children to attend school in condemned buildings, buildings without adequate heating facilities and facilities where there is no cafeteria or library.

We must not allow these conditions to continue. The Congress must be committed to ensure a timely passage of this bill and full funding for all educational programs.

Mr. Chairman, once again, I thank you for holding this hearing.

The CHAIRMAN. Thank you.

With that, we will go to panel 1, which is Bill Mehojah, the director of the Office of Indian Education, Department of the Interior.

Welcome to the committee, Bill. It is nice to see you again.

STATEMENT OF BILL MEHOJAH, DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY JAMES MARTIN, OFFICE OF INDIAN EDUCATION PROGRAMS, BUDGET AND PLANNING

Mr. MEHOJAH. Thank you very much, Mr. Chairman.

I am accompanied this morning by Dr. James Martin who works in our office as well and is in charge of budgets and planning.

I would like to submit our comments for the record.

The CHAIRMAN. Without objection, your complete testimony will be included. If you would like to abbreviate or depart from the printed format, that is fine.

Mr. MEHOJAH. Thank you very much, Mr. Chairman.

I just wanted to make a few comments this morning about our observations concerning S. 211. A few weeks ago the Secretary of

the Interior, Ms. Norton, appeared before this committee and made some comments concerning the five goals that the BIA, Office of Indian Education Programs is focusing on over the next 5 years.

On January 30–February 1, we had a meeting of 100 people to form a strategic plan and to take a look at our goals that are going to guide us over the next 5 years.

Briefly, those goals are:

No. 1, that all children should read independently by the third grade.

No. 2, 70 percent of the students will be proficient or advanced in reading and mathematics.No. 3, that individual student attendance rates should be at 90 percent or better.

No. 4, students shall demonstrate knowledge of their tribal language and culture.

No. 5, there shall be in increase in the enrollment, retention, placement, and graduation rates for post-secondary students.

The comment I have to make is that any of the legislation that is under consideration will help the BIA meet these goals for the Indian children enrolled in our schools.

This morning I wanted to just make a few short comments about Public Law 95–561 that was passed in 1978. There are four things that I want to make brief comments on.

First, is that in 1978 the legislation called for the BIA to transfer the administrative functions within the BIA to the Office of Indian Education Programs.

Back in 1999, the National Academy of Public Administration issued a report about administrative functions in the BIA and recommended that the administration that supports Indian education be transferred to the Office of Indian Education Programs. I am pleased to say that that has been initiated this year.

Second, this has to do with the contract education personnel system. Public Law 95–561 called for a new kind of personnel system called the contract educator system in BIA schools. That system has worked very well, we think. It has been in operation for the last 20 years.

The new legislation is proposing that the director in the central office also consult with school boards representing the 185 schools in order to fill any positions within the central office.

We think to do that would be very cumbersome. We have a very small staff in the first place. Then to have to go out and consult with 185 school boards would be very difficult. We are recommending that section of the proposed legislation be deleted.

Third, is about the administrative cost grant funding level. In the legislation there is a proposal to have a base funding level of $200,000. That would be for every grantee. Of course, it becomes a resource issue.

If we were to do that, and if we were to have done it this past year we would have had some problems, because there were a number of schools that received approximately $125,000. If they were to receive $200,000, then within the constrained funds, we would have had to reduce other grantees' level of funding.

We suggest that we take a look at that and work with the committee to examine that in more detail.

Fourth, there is a call in S. 211 to fund schools in two separate payments. We already do two separate payments. What happens is that we provide 50 percent of the funds that schools received in the previous school to grantees.

For BIA-operated schools, we provide 85 percent of what was provided in the previous year. We do that in July. Then, again, in December we make the final payment based on the ISEP student count that we do in the final week of September.

We took a look at what would have happened if we had paid out at 85 percent. That is what is being required in the new legislation. If we had done that, there would have been 25 schools that would have been overpaid.

The problem that we have is that then we would have to go back and recoup that money, bring it back into the central office and then redo a distribution. For schools that are BIA-operated, all we do is go into the financial system and we pull the money out electronically. Then we distribute the money on December 1.

However, when we send it out to a grant school, we would have to go out and ask for them to return it, get it back in and then make another distribution.

What we are recommending is instead of 85 percent, that we look at 75 percent. We think that at 75 percent we could make that work.

Finally, the only other comment I have about Public Law 95–561 is that as the other bills go through Congress, we would ask to work with the committee to make sure that the BIA-funded schools are included in the legislation and that we will be a part of any of that legislation that moves through the Congress BIA funded schools can benefit from those bills.

Under Public Law 100–297, I will make just one comment. That has to do with the requirement currently in existence in S. 211 regarding the procurement of personal property. There is a requirement that grantees would keep personal property and there would be an audit of that.

We think that is a good idea. We are currently doing an audit review of all the personal property in the schools.

The other thing we would ask is that there also be an audit of the education program, not only of the administrative part of it that would be under personal property, but also for the programs so we can see what kind of quality of program is being offered by the schools.

With that, Mr. Chairman, I will conclude my comments.

[Prepared statement of Mr. Mehojah appears in appendix.]

The CHAIRMAN. Thank you. They are good, solid, firm constructive comments. I look forward to working with you on them. Whenever we introduce a bill it often becomes a vehicle for some better ideas. I think that we are off to a good start with the bill. I look forward to working with you.

Let me ask you a couple of questions on the five strategic goals that you mentioned and that the Secretary of the Interior talked about, literacy, math, science, knowledge, and so on. What level of proficiency are the Indian students in those categories now if you were to compare it to the goals you stated?

Mr. MEHOJAH. Right now, for mathematics we are at 52 percent proficient and advanced. For language arts we are at 50 percent proficient and advanced. We believe that we can do better. Our schools, I think our Indian education organizations believe that we can do better. That is the reason we set that goal at 70 percent.

The CHAIRMAN. Have you developed a strategy for improving that score?

Mr. MEHOJAH. Yes; we have. We have been working with the Indian education organizations on that. In fact, we are meeting next week with representatives from all of the schools. School board members, principals, and teachers will be included in the school reform meeting that we are having to talk about various strategies such as what models work for reading and mathematics, and what is working in our schools.

Because we do have some schools that are achieving at very high levels, they are going to be there to talk about how they have done that. So, yes, we have developed some strategies. Our office in Albuquerque, NM is working on that as well.

A lot of what is going to come from President Bush's legislation will, of course, be included in our plan once we know what is it contains.

The CHAIRMAN. Well, I happen to be a big supporter of negotiated rule making. So, I assume that you are taking tribes into consideration when you are doing this.

You mentioned that if we raise the administrative cost grant to $200,000 it will lead to reductions in other grants. Would you elaborate on that a little bit? Why would it reduce other grants?

Mr. MEHOJAH. What happens is that under the formula that is in the law, we collect data from the schools each year. Then our financial execution staff runs that formula. It varies from year to year depending on many factors.

Over the past couple of years, we have had a reduction in some enrollment at some schools. In some schools it has been significant. We have one school in Nevada where one family moved out and, because it is such a rural location, that made a big difference in their population.

Because of those fluctuations in enrollment and because of fluctuations in the amount of funds that schools receive from year to year, the administrative cost grant, when it is finally run in the formula, can change.

Eleven schools this past year would have received less than $200,000. Since we are beginning with a finite amount of funds in Administrative Cost Grants, then whatever we take, say, if $200,000 is the base, then those 11 schools would take away dollars from whatever funding other schools receive. There is no other way to make that work because we are working with a set amount of money.

The CHAIRMAN. Okay. I understand that. The President has pledged to create a tribal school improvement capital fund to eliminate that backlog. Are we on track with that? What is the progress being made to do that?

Mr. MEHOJAH. We have been working on that for some time. We have been looking at various things. One, of course, has been with

the support of the Congress we have been able to receive additional funds for school construction. I hope we continue on that path.

I know that there is some interest, of course, in the bonding program. We are interested in following up on that. I think Mr. Johnson has been involved with that as well.

On this other particular one, we have not really been involved in that capital improvement plan because we have been focusing more on trying to work with Congress to get additional funding for the schools so they can just construct schools outright and provide funding directly to the tribes to do that.

The CHAIRMAN. Thank you, Bill, for appearing this morning. There may be some questions from other committee members that we may send you in writing. Thanks for helping us work on this to improve the bill.

We look forward to your suggestions. If you can get those to us in writing, we would appreciate it.

Mr. MEHOJAH. Okay. Thank you very much, Mr. Chairman.

The CHAIRMAN. I note with interest there are many young Indian students in the back of the room today. I don't know if they are here with the Close Up Foundation or what, but you are certainly welcome to attend this hearing, since we are dealing with education, your education.

We will now go to panel 2. Panel 2 is Roger Bordeaux, executive director of the Association of Community Tribal Schools; Angela Barney Nez, executive director of the Navajo Area School Board Association; Lorena Zah Bahe, executive director of the Association of Navajo Community Controlled School Boards, and John Cheek, executive director, National Indian Education Association.

As with the other people who have testified, your complete written testimony will be included in the record. If you would like to abbreviate, that will be fine.

Why don't we go ahead and start with Dr. Bordeaux.

STATEMENT OF ROGER BORDEAUX, EXECUTIVE DIRECTOR OF THE ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS AND SUPERINTENDENT OF TIOSPA ZINA TRIBAL SCHOOL, AGENCY VILLAGE, SD

Mr. BORDEAUX. Mr. Chairman and members of the committee, thank you for allowing me to come today. My name is Roger Bordeaux. I serve as the superintendent of the Tiospa Zina Tribal School on the Sisseton-Wahpeton and Dakota Nation in North and South Dakota.

I am here representing the Association of Community of Community Tribal Schools and the National Indian School Board Association, which are both national associations that have worked collaboratively in the last couple of years with the other organizations on putting forth some possible amendments to Public Law 95–561 and Public Law 100–297. So, I want to thank you for allowing me to come.

Also, you did notice a lot of students from the Close Up Foundation. Some of the students are from the school where I am at, fortunately. So, we were able to finagle it.

The CHAIRMAN. We are glad to have them here.

Mr. BORDEAUX. I want to thank Close Up for allowing them to come over, too.

First, what I would like to do is respond to a couple of things that the director of the Office of Indian Education, Mr. Mehojah, talked about.

One is the Administrative Cost Grant amount having a base of $200,000. The current funding for the Administrative Cost Grant is less than 80 percent funded right now. So, the additional shortfall, you know, we are short enough already so it is going to make it a little bit worse. It is bad enough already.

Then in relationship to administrative services, two recommendations are in the law. One deals with procurement and property management and an audit for the property management stuff. Under the Single Audit Act, when audits are done by auditors, they look at capital assets and look against current inventory. That is a requirement of audit requirements for either nonprofits or tribal governments anyway.

So, myself, I don't know if it is needed to put in again. It is not going to hurt anything, I don't think.

The other thing is the discussion about auditing educational programs. The current requirements of the Tribally Controlled School Act requires that all the schools follow some sort of standards, either BIA, State or regionally-accredited or tribally-accredited or something like that. In that accreditation requirement, it also requires that the schools be evaluated based on the accreditation that they receive.

So, if they State-accredited once every 3 years or 5 years or whatever the State does, they do an on-site evaluation with their programs. The same thing with regional accreditation, the BIA requires that they both follow BIA standards. I think in the standards section it requires it once every 3 years.

So, I am not sure if there is an additional requirement need for audit requirements for education programs. But, you know, just to respond to what was said earlier this morning.

Just a couple of other things that we wanted to talk about: S. 211, title I, the BIA-operated system, there are some things in there that are real positive that we think will help the schools in general, open it up for the BIA-operated schools to follow other standards than to consider just BIA standards so it allows for State accreditation and regional accreditation and tribal accreditation. I think that is a positive thing.

There is a requirement for the Comptroller General to do a study to do a study on funding of schools. I think what Senator Inouye has said was true; we get about 50 percent of what we need actually to provide educational services.

The attendance boundaries and the standards provide choice, not only for the schools, but also for the parents. The new language which allows tribes to set up their own attendance boundaries and doesn't penalize them if a child goes to a school which is not within a specific attendance area, which allows for parental choice. I know that is one of the things the current administration kind of stresses.

The whole area of facilities that is talked about in here about doing a 40-year plan and some requirements on use of local funds

is something that is positive. Waiving a match for additional Federal dollars what happens is sometimes other Federal agencies require a match and because we are a Federal school you can use Federal dollars to match Federal schools, but we are requesting a waiver. It is in here. I think that is a positive thing and I hope schools generate some additional dollars.

Then under title II, the Tribally Controlled Bills Act, some of the things that we think are positive are allowing tribal school people and tribal college people to serve on some of the accreditation and standards review teams because they have a better insight in what happens on reservations and can provide expertise specifically in Indian education.

The payment up front of 80 percent, I think is reasonable based on what the Bureau authorizes Bureau-operated schools to receive. So, I don't think that is that big of an issue, even though Mr. Mehojah raised it.

Another thing in here is some language similar to the Impact Aid Law which limits the State's ability to use Federal dollars for consideration when State payments are received by any school as much as that happen to be a charter system or some other form where they might get some State funds. So, that limits that.

The legislation does also create a process for the tribal schools for an endowment program, which we think to be very beneficial over time. We may have to go to Appropriations to get some money, but at least the authorization will be there for that.

The last thing I would like to say is following up on some discussion that I have been talking about with the committee staff here. In looking at the reauthorization at the rest of the Elementary and Secondary Education Act, that are some real important things that I think need to happen.

One is oftentimes they forget the 50,000 students that exist in the BIA as much as and the law doesn't allow transfer of funds that would normally go through State education agencies to LEAs. Make sure that in all cases if money goes to the State for local education agencies that the Bureau be considered and that money be transferred.

If local education agencies are eligible for funds directly from the Department of Education, then tribal schools and BIA-operated schools should be considered local education agencies so that we can have access to those funds.

Then the other issue that we need to have some further discussion on before some stuff happens is the whole area of assessment. We think that the way that the President is currently putting forth his language on assessment could be detrimental to what we have been trying to do in working on performance-based assessment.

A lot of the States are currently requiring standardized norm reference assessment tests as their main tool to determine success at schools. A lot of us at the school level feel that performance-based assessment for students and it really tells you what they know and what they are able to do as opposed to standardized tests.

So, however that is drafted in the ESEA, it affects all of us because it is going to be tied to the Title I and a lot of the other supplemental dollars. So, I want to make sure that when that discussion happens that somehow we can try to get involved in doing

something with regard to waivers for BIA schools or something. I don't know what the answer is.

Then, the last thing before I finish is that I would like to thank the committee and the staff. Over the last 2 years, there was another hearing on the reauthorization, I remember last spring. We worked extensively with a lot of your staff. I am thankful that they were able to listen to us. We were not able to convince them of everything that we think should change, but a lot of the stuff we were able to.

Thank you, sir.

[Prepared statement of Mr. Bordeaux appears in appendix.]

The CHAIRMAN. Thank you.

We will continue now. Ms. Barney Nez, please.

STATEMENT OF ANGELA BARNEY NEZ, EXECUTIVE DIRECTOR, NAVAJO AREA SCHOOL BOARD ASSOCIATION.

Ms. BARNEY NEZ. My name is Angela Barney Nez. I am the director for the Navajo Area School Board Association, or NASBA, headquartered in the capital of the Navajo Nation in Window Rock, AZ.

NASBA was established and authorized by the Navajo Nation Council in 1974. We represent interests of all local community school boards on the Navajo Nation. NASBA was very involved with the development of Public Law 95–561 and Public Law 100–297 from the beginning and has been involved for years in its implementation within the Navajo Nation.

First, I would like to acknowledge the hard work of two of the community staff members, Jo Jo Shifflett, would we understand has left the community, and Janet Erickson.

We can appreciate the difficult task of having to hit the ground running to deal with a complex piece of legislation that establishes the framework for a fairly complex education system in the BIA.

The Navajo Nation has adopted legislation that prevents Navajo organizations from taking positions on Federal legislation unless that testimony has been endorsed by the appropriate standing committees and finally approved by the Inter-Governmental Relations Committee of the Navajo Nation Council.

This rule created the backdrop for a considerable effort last year to reach consensus among the various school boards and board organizations serving the Navajo Nation. That effort was successful and resulted in a comprehensive position of the Navajo Nation on which has now become S. 211.

Certain provisions that are added by the committee late in the process have not yet been considered by the Navajo Nation. We have just received a copy of S. 211 and will be working with the Navajo Nation to update the nation's position accordingly.

Mr. Chairman, this meeting with the Navajo officials is happening on Friday, March 16.

We have previously submitted the Navajo Nation testimony for the record and want to focus on four of the most important provisions in this statement.

Section 1121, I wish to make several points on this section dealing with accreditation and standards. S. 211 calls for extensive studies and a lengthy process for revising BIA standards which are

simply no longer in use. We believe this would be a waste of time and effort.

We support the proposed process whereby tribes or school boards can more easily waive standards and establish their own alternative standards, subject only to rejection by the director of the Office of Indian Education Programs for good cause and in writing.

Rejections by the director would be appealable under 25 CFR Part 2. We support the amendment that provides tribes with authority to establish their own standards without that action being reviewable by any State or regional accrediting agency, as it currently is.

We believe that tribes should have the authority to make determinations on which standards should be used. They should also be able to delegate this authority to school boards. Federal statutes should not establish that school boards have the primary authority to make such decisions as the current bill provides at section 21(F)2.

Our position here acknowledges that the inherent rights of tribes to control their educational programs and that a government-to-government relationship exists between the tribes and the United States.

The Navajo Nation proposes a provision related to the certification of staff in BIA-operated schools that applicants can be certified in any State of the Union. This follows the precedent used by the Department of Defense overseas schools.

As the teacher shortage becomes more acute nationwide, it becomes harder and harder to find qualified professional staff.

We ask that your staff again review the detailed version prepared by the Navajo Nation on this matter.

Section 1126(2)(B), the bill makes a major change regarding school board training. The Navajo Nation supports a different change. I want to make the following points. No. 1, the current version of the bill would eliminate the school board training fund, while at the same time establish a training requirement for 40 hours for each new board member.

No. 2, the Navajo Nation would continue the set-aside for school board training, but would provide that the fund be distributed equally among BIA-funded school boards.

The nation's position also provides that a tribe or a group of tribes would elect to authority a contract of the program for their member school boards under Public Law 93–638.

No. 3, the Navajo Nation supports the increase in the minimum amount of funds available for BIA-operated school boards from $5,000 to $8,000. However, if the school board training fund is eliminated as currently proposed, expense funds will need to be increased. We are available to work with the committee staff if this is necessary.

Section 1127, Administrative Cost Grants. S. 211 does not include proposed Navajo Nation language that in situations where one tribe granted more than one school would calculate that Administrative Cost Grant amount based on each school that would be eligible if they are granted individually rather than what the combined contract grant would generate under the formula.

If a tribe is interested in granting a number of schools under a single grant, the loss of administrative costs should not become a factor in that decision.

Section 1139, Tribal Departments of Education. The Navajo Nation strongly supports the amendment that establishes a priority for applications from tribes with more than three BIA-operated and funded schools. Since there are only a handful of tribes that meet this criterion, we believe it would encourage the administration and the Congress to actually fund this long-neglected authority.

On Navajo, I personally believe that the need for a tribal department of education is critical as the Bureau's role continues to decrease and the Navajo Nation's role increases.

Thank you for the opportunity to testify. I would like to concur that the 21st Century Learning Centers, the criteria established under there to establish partnerships and those flow-through funding within the Department of Education and also the Department of the Interior need to be streamlined so that we are eligible to receive those discretionary and grant funding available for Indian children and also Navajo children.

I would also like to thank the committee for your work in the health care amendments. I personally am here as a breast cancer survivor as of December 20. This is as a result of all the services under the Indian Health Service.

I really do appreciate the committee giving us this opportunity. When I say I am glad to be here, I really do mean it.

Thank you.

The CHAIRMAN. Thank you.

[Prepared statement of Ms. Barney Nez appears in appendix.]

The CHAIRMAN. Ms. Zah Bahe, please proceed.

STATEMENT OF LORENA ZAH BAHE, EXECUTIVE DIRECTOR, ASSOCIATION OF NAVAJO COMMUNITY CONTROLLED SCHOOL BOARDS, INC., WINDOW ROCK, AZ

Ms. ZAH BAHE. Good morning, Mr. Chairman and members of the committee. I represent the Association of Navajo Contract and Grant Schools from the Navajo Nation. Out of the 185 schools in the BIA system, 65 are on Navajo. And of the 65, more than one-half are now currently grant schools.

I believe the BIA has two-thirds of all schools are grant schools and there are more to come. I represent the locally controlled, tribally operated schools. As for contract and grant schools, a lot of our decisions that are made by local school boards impact the day to day operation of choices that have to be made down at the grassroots level, at the local school level.

We are the ones that have to make the difficult choice of whether we should use or pull out educational moneys to make up for the transportation dollars that are underfunded. There are a lot of decisions that have to be made at the local school level when we don't have enough money in each of the budget line categories. We are faced with that every day.

No matter how much money that the committee and Congress gives to the BIA school system, we are still underfunded. I want to touch up on some of those issues because this legislation does impact some of the funding issues that our schools have to face.

I don't want to mention some of the issues that have already been mentioned here by Roger and Angie, but I want to make sure that the committee aware that you do play a key role in stabilizing some of the school funding from the authorizing languages of S. 211.

Our schools have nowhere else to turn but to Congress. We are a Federal school system, so we depend a lot on the decisions that are made here at this level.

Some of the recommendations I would like to present to you on behalf of the Navajo Contract and Grant Schools and one of the bigger, major concern and a major issue is that we have a problem with the Administrative Cost Grant because a lot of the schools that converted to Contract or Grant because they saw this additional money, this luxury in the Administrative Cost Grant.

For the past 10 years we have been funded less than 100 percent. Public Law 297, administrator cost formula, does mandate 100 percent funding. We have been going around the country consulting with different organizations. We have a chart that we will explain the shortfall. We did a study to show 10 years of funding of administrative costs. It has been going down. I do agree with Senator Inouye when he said that we are funded at less than 80 percent.

What do we do about that? There is a real big crisis that is facing a lot of the schools that I work with. The Administrative Cost Grant, the shortfalls and the impacts of the Administrative Cost Grants have really affected a lot of our schools.

In my testimony there is a list of stories. There are horror stories that the schools bring up from day to day having to do with putting their administrators on a 9-month employment year because they don't have enough money to last them to the end of the year in the use of administrative costs.

So, we are proposing, in dealing with this crisis two recommendations I would like to propose to the committee. We are proposing two changes to the statute in order to make sure that congressional intent is met with regards to Administrative Cost Grant.

No. 1, is that you help us stabilize the funding for administrative cost grants by deleting the section 2, on lines 24 and 25 of page 63 there is a phrase there that says, "subject to the availability of appropriated funds."

We would like to persuade the committee to remove that language because that language, for the past 3 or 4 years has capped administrative cost funding at less than 100 percent. I think it has been $42.1 million for the past 3 years. There has been no increase, except this past year we did receive a $1 million increase, but I don't know how long that will last because we do have more schools that will be converting to grant schools. I don't have the number of grant schools that would be converting, but in case that happens, $1 million won't stretch very far.

No. 2, is the other proposal that I have is the recommendation to add language to create a separate BIA budget category that would fund the first year of AC grants for those new schools that convert to grant schools.

One of the biggest problems we have had for years is that as more grant schools come into the system, we all share that $42.1 million. So, for that reason our administrative cost grant has been going down. So why not create a separate pot? We do have some suggestions and recommendations on that.

We did have our people who met with the staff to give them that recommendation. For the past several years administrative cost grant funding has really been a problem. So, we are proposing that there be a separate pot created to take care of the new schools that convert. Maybe the second year of appropriations those schools would go into the regular pot with the current existing grant schools.

As part of the testimony we do give you that recommendation. We also provided some language change in the testimony. I won't go through that.

Regarding funding, operation and maintenance funding distribution, we do support S. 211 in recommending that schools' operation and maintenance funding be forward funded. We do have a problem that not all our facilities' accounts are forward funded. I think schools are still having a lot of problems. We do support the committee in recommending that that be forward funded.

I want to make note here, too, that whoever drafted this bill deleted some language in the existing law that would authorize forward funding of other school operation accounts. I don't know if that was a mistake, but we ask that you restore that statutory language, making sure to authorize forward funding for facilities operation and maintenance.

We applaud the language in S. 211 that would stop BIA from skimming facility's operation and maintenance funds and diverting them to other administrative costs or other costs. The S. 211 provision requires BIA to distribute to the schools all funds that Congress appropriates for facilities operation and maintenance.

We ask the committee that you add a provision to prohibit BIA from imposing any precondition on a contract or a grant school before the school's O&M funds will be released. This has been done for the past years and some schools have had problems with the agency people releasing all of their operation and maintenance funds. Yet, it has been reprogrammed for something else at the decision of the BIA Office of Indian Education Programs agency personnel or area personnel. We have a problem with it. I think this section will take care of some of that.

Facilities FI&R: We do agree with the GAO study. The negotiated rulemaking part of the provision does not include surveying to identify the fundamental educational programs, functional spaces that do not exist at many of the schools but are needed to complete an educational program such as a library and a gymnasium.

This survey should be added to both the GAO and the negotiated rulemaking parts of S. 1124.

The other important provision I would like to bring up here in disagreement with what Bill Mehojah OIEP director, is that for a long time the OIEP has given BIA schools 75 percent first payment and the bill is recommending that that be increased to 85 percent

first payment to BIA-operated schools. Yet it would allow 80 percent first payment to tribally controlled schools.

There is no justification for the disparity there. Why give 75 percent to tribally-controlled and 85 percent to BIA-operated? The first payment to contract and Grant schools has been at 50 percent for years. So, I think there is a big improvement here but why not just give all schools 85 percent for first payment of their contracting grant?

Then the other one I would like to bring up has to do again with school boundaries. We do endorse the committee's support in giving the tribe the right to establish school boundaries. We support that language. We also want to emphasize here that school board training money that is taken off the top to some organizations. Our schools do support the effort of the committee to give direct funding of school board training to the local school boards. So, we strongly support that. Thank you for putting that in.

The other one is again opposed to what Mr. Mehojah had presented there. We do oppose his recommendation on facility management. We have a central office in Albuquerque, Office of Facility Management and Construction. They are highly specialized personnel. They have specialized architects and specialized engineers in Albuquerque. In dealing with constructions projects, they do work with the Navajo Nation under the Office of Construction Engineering Services and Public Law 638 contracting and some other construction projects.

I think the personnel in Albuquerque should stay at AFMC. They are highly specialized. I don't know if Mr. Mehojah's intent is to transfer the facility management function to OIEP and if that is taking a lot of functions away from the Office of Facility Management and Construction office in Albuquerque.

We would like to recommend that you drop the reference that he made to facility management to make sure that the Office of Construction Management in Albuquerque is not transferred to the Office of Indian Education Programs. I think the Office of Indian Education Programs has enough on their hands having to deal with all these schools and education programs. They don't have the expertise of being engineers or construction expertise in their education office. So, we would disagree with Mr. Mehojah on that.

The CHAIRMAN. If I can interrupt you, we have been notified that we have to go to the floor for three consecutive votes. Rather than hold everybody and have to come back and continue with the testimony, I would like to go on to John Cheek and have the rest of your testimony included in the record that we will study, if that is acceptable to you.

Ms. ZAH-BAHE. Thank you, Mr. Chairman.

[Prepared statement of Ms. Zah-Bahe appears in appendix.]

The CHAIRMAN. John, why don't you go ahead?

STATEMENT OF JOHN CHEEK, EXECUTIVE DIRECTOR, NATIONAL INDIAN EDUCATION ASSOCIATION, ALEXANDRIA, VA

Mr. CHEEK. Good morning, Mr. Chairman and members of the subcommittee. My name is John Cheek and I am a member of the Muscogee Creek Nation. I am executive director for the National Indian Educational Association in Alexandria, VA.

The NIA membership is made up of 3,000 Indian education professionals, students, parents, and tribal leaders. We are honored to provide comment on S. 211, the Native American Education Improvement Act of 2001.

Unlike public schools that receive their funding from State, local, and Federal sources, funding for the BIA and Department of Defense schools is the sole responsibility of the Federal Government.

Ideally, these two schools as much as should be the state of the art when it comes to education policy. The unfortunate fact is that American Indian and Alaskan Native students are achieving at rates lower than the general population, have the highest dropout rate, and are more likely to be diagnosed as learning deficient.

While NIA supports President Bush's "no child left behind" education proposal, we are concerned that the higher accountability standards are not considering the capacity of Indian schools. One generally assumes that in order for all schools to be successful in implementing new standards, they should all be operating at the same level in terms of teacher quality, save learning environments, adequacy of resources, et cetera.

Unless Indian schools and Indian education programs are enhanced to meet the challenge, we fear they will be penalized if they fail to do so. NIA foresees a need for increased professional development of the BIA teaching force and additional resources for ensuring that standards congruent with national policy are developed within the BIA education system.

While this has been an ongoing effort with much progress in recent years, the reform in standards movement will require additional demands on the already limited resources of the BIA education program.

S. 211 amends the two laws that govern how BIA Indian education programs and grant and contract tribal schools operate. NIEA supports S. 211, but ask that the committee continue to consult with the other national organizations represented here in formulating a final version.

In general, NIEA supports a program that benefits the most numbers of Indian children with the least amount of Federal restrictions unless required by law.

S. 211 focuses on amendments that will be incorporated into the reauthorization of the Elementary and Secondary Education Act. NIEA is concerned that the committee seems to be undertaking only the amendments that affect less than 10 percent of the Indian student population and not the greater numbers of students served by the Department of Education's Office of Indian Education.

NIEA would like to request that an additional hearing be held on the proposed changes to the current title IX Indian, Native Hawaiian and Alaskan Native Education which, in the Senate draft, was under title VII.

Any new standards developed could have a profound impact on the current programs of the Office of Indian Education. This may be the only opportunity that we have to ensure our programs and the Indian children meet the challenge.

The Office of Indian Education Programs currently serves over 450,000 Indian children in 1,200 programs in 43 States. NIEA would like to ask the committee's support in seeking a new millen-

nium White House conference on Indian Education. The last one in 1992 brought to light the many problems still facing Indian communities.

Many successes have been made since that historic event, but the 21st century provides new energy and new challenges. We propose a new millennium White House conference to focus on advancements in areas such educational technology, accountability, standards, tribal-State partnerships and Indian education research.

In closing, I thank the committee for the opportunity to present today. I just had one final comment regarding the markup you had this morning on the views and estimates.

NIEA would request a opportunity to provide fiscal year 2002 budget request recommendations for all Indian programs before and after the President submits his official budget.

With that, I will be happy to answer any questions.

The CHAIRMAN. Thank you. We appreciate that, John.

Let me ask a couple of questions, starting with Dr. Bordeaux. You mentioned that the Bureau often withholds funds that should be distributed to tribal schools. Could you elaborate on that? What is the reason often given that they withhold funds?

Mr. BORDEAUX. I think in some specific incidences one of them was dealing with operation and maintenance funds in prior years. They used to periodically take off-the-top appropriations and do some specific tasks which may be necessary, but the assumption that we have is that the money is authorized to the schools and they will keep funds to, let us say, to keep $2 or $3 million to buy firetrucks of $1 million to do this and things like that will happen periodically.

The CHAIRMAN. Lorena, is that what you meant by "skimming of operation funds?"

Ms. ZAH BAHE. Yes.

The CHAIRMAN. Dr. Bordeaux, there are 124 tribally controlled schools. Your group represents roughly 24,000 Indian students. How many schools are represented in your association?

Mr. BORDEAUX. The totals that you have there are total population. We represent about 50 percent of the students.

The CHAIRMAN. About 50 percent of the students?

Mr. BORDEAUX. Yes.

The CHAIRMAN. How many schools does that include?

Mr. BORDEAUX. There are 42, I think, this year of the 124.

The CHAIRMAN. Let me ask you about parental choice. In your experience, how important is parental choice to the parents and the students in your schools and second, how would choice be woven into the BIA system?

Mr. BORDEAUX. I think choice in and of itself, not only for parents, but for stuff that happens inside the school system, is something that is real important and should be a policy thing that exists at all times because if you give families the opportunity to decide where they want to send their children, that already gives you an advantage as an educator because they are giving you support by allowing their child to go to your school.

I see tribal schools on most Indian reservations as parental choice schools because they have opportunities to go to public

schools, whereas in a lot of cases that doesn't exist in any other place.

So, on tribal reservations where there are tribal schools, the tribal schools could be considered, for lack of a better term anyway, charter-type system where the parents choose to send their children there. They could also go to a public school system or a BIA-operated dorm if they wanted to, too, I guess.

The CHAIRMAN. Ms. Barney Nez, your testimony indicated that you thought it would be "a waste of time and effort" to use the BIA studies as a basis for revising school standards.

Do you want to elaborate on that a little bit? Studies they have done, do you consider them a waste of time?

Ms. BARNEY NEZ. In S. 211 it calls for further study and more study. On the Navajo Nation we have virtually all of our schools under the BIA operated system. All of them follow the State standards in which they are in.

So, the Bureau standards are sort of like on to the side because they are not the ones that are actually governing the school. It is an option and the school boards go with the State standards.

The Navajo Nation does have that North Central accreditation system that requires that.

The CHAIRMAN. In the case of the Navajo Nation, you deal with several States.

Ms. BARNEY NEZ. Yes; Navajo Nation deals with New Mexico and Arizona.

The CHAIRMAN. Utah.

Ms. BARNEY NEZ. Utah, yes. The basic reason for that is that the students need to go to an accredited college and they require an accredited secondary school.

The CHAIRMAN. They need those standards to get accredited to be able to transfer to a college.

Ms. BARNEY NEZ. The high school needs to be accredited to be accepted into an accredited college.

The CHAIRMAN. Ms. Zah Bahe, I am glad that Bill Mehojah is still here. I am sure he was interested in your testimony. I saw him back there taking copious notes.

Ms. ZAH BAHE. We wanted to be nice to him.

The CHAIRMAN. Let me ask you, regarding the expanded GAO study on facilities. Why is it important that the GAO study functional spaces and the lack of complementary facilities such as cafeterias, gymnasiums and libraries and not just traditional school buildings?

I happen to agree with it, but I would like your view on it.

Ms. ZAH BAHE. I have some experience in helping the contract and grant schools Public Law 638 the contract construction projects. There are a lot of problems with the standards and having to construct schools and working with libraries and other buildings that are non-education should be included.

There are space guidelines in place from the Office of Facility Management and Construction. There are a lot of standards that we have to comply within a construction project, but there are some things that are not required. We do have a problem with that. There is lack of space guidelines for some other buildings that are non-education related. Grant schools and contract schools deal

with every building, no matter whether it is non-education or education. So, that is why we have supported that study.

The CHAIRMAN. I agree. When I taught school for 10 years in public schools and another few at the college level and I come to the conclusion that all education is not simply in an academic classroom. There is education that goes on in literally every building of a school.

John, the White House Conference on Indian Education in 1992, were you with NIEA at that time?

Mr. CHEEK. I was with the National Advisory Council on Indian Education, which was a member of the task force.

The CHAIRMAN. The conference was held in 1992 when former President George Bush, Sr., was the President. An action plan came out of that conference. What do you feel we have accomplished from that action plan?

Mr. CHEEK. I think it really enhanced the overall approach to Indian education. The report is over an inch thick and there are hundreds of recommendations that came out for every facet of education, including what States could do.

I think the things that occurred later in the 1990's such as the Red Book that came out of Indian country, the Indian nations at risk report, the Indian education executive order in 1998, they all stemmed from that one report. That one report sort of got us over the hump, I think, and led to additional initiatives being implemented. I think a new one would really focus more so on what is needed to get our kids up to the level that they need to be.

The CHAIRMAN. It has been almost 10 years. It is probably time for a new one. Do you agree?

Mr. CHEEK. Yes; actually, it was more of a marketing strategy, I think, since George W. seems to be doing a lot of things his father did.

The CHAIRMAN. The strategic goals that Mr. Mehojah mentioned, did your office work in cooperation with him or did you have any input into those?

Mr. CHEEK. Yes; I attended that meeting. It was the first time I had been at a BIA meeting with the goals that they had set out for themselves to accomplish. So, it was a very informative meeting for myself and for the association.

The CHAIRMAN. I thank you. We are going to have to breakup now. If you have any further comments or suggestions how we can improve S. 211, I would certainly appreciate it. You can get a hold of staff directly for that.

We will keep the record open for 2 weeks if there are any further comments from anybody in the audience. We may have some questions in writing from other members of the committee, too, and would appreciate your responses to them.

We want to thank you for coming here.

With that, the committee is adjourned.

[Whereupon, at 10:35 a.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ANGELA BARNEY NEZ, EXECUTIVE DIRECTOR, NAVAJO AREA SCHOOL BOARD ASSOCIATION

My name is Angela Barney Nez. I serve as the Director of the Navajo Area School Board Association (or NASBA), headquartered in the capitol of the Navajo Nation, Window Rock, AZ. NASBA was established by the authority of the Navajo Nation Council in 1974 to represent the interests of all local Navajo Community School Boards. NASBA was very involved with the development of Public Law 95–561 and Public Law 100–297 from the beginning and has been involved for years in its implementation within the Navajo Nation.

First, I'd like to acknowledge the hard work of two of the committee's staff members, JoJo Schifflett, who we understand has left the committee and Janet Erickson. We can appreciate the difficult task of having to hit the ground running to deal with a complex piece of legislation which establishes the framework for a fairly complex Education System of the Bureau of Indian Affairs.

The Navajo Nation has adopted legislation that prevents Navajo organizations from taking positions on Federal legislation unless that testimony has been endorsed by the appropriate standing committee and finally approved by the Inter-Governmental Affairs Committee. This rule created the backdrop for a considerable effort last year to reach consensus among the various school boards and board organizations serving the Navajo Nation. That effort was successful and resulted in a comprehensive position of the Navajo Nation on what has now become S. 211. Certain provisions that were added by the committee late in the process have not yet been considered by the Navajo Nation. We have just received a copy of S. 211 a few days ago and will be working with the Navajo Nation to update the Nation's position accordingly.

We have previously submitted the Navajo Nation testimony for the record and want to focus on four of the most important provisions in this statement.

Section 1121: I wish to make several points on this section, dealing with accreditation and standards.

No. 1, S. 211 calls for extensive studies and a lengthy process for revising BIA standards, which are simply no longer in use. We believe this would be a waste of time and effort.

No. 2, we support the proposed process whereby tribes or school boards can more easily waive standards and establish their own alternative standards, subject only to rejection by the Director of OIEP for good cause and in writing. Rejections by the Director would be appealable under 25 CFR Part 2.

No. 3, we support the amendment that provides tribes with the authority to establish their own standards without that action being reviewable by any State or regional accrediting agency as it is currently.

No. 4, we believe that tribes should have the authority to make determinations on which standards should be used. They should also be able to delegate this responsibility to school boards. Federal statute should not establish that school boards have the primary authority to make such decisions as the current bill provides at

1121 (f)(2). Our position here acknowledges that the inherent right of tribes to control their educational programs and that a government-to-government relationship exists between the tribes and the United States.

No. 5, the Navajo Nation proposes a provision related to the certification of staff in BIA operated schools that applicants can be certified in any State of the Union. This follows the precedent used by the Department of Defense Overseas schools. As the teacher shortage becomes more acute nationwide, it becomes harder and harder to find qualified professional staff.

We ask that your staff review again the detailed version prepared by the Navajo Nation on this matter.

Section 1126 (2)(B): The bill makes a major change regarding school board training. The Navajo Nation supports a different change. I want to make the following points:

No. 1, the current version of the bill would eliminate the school board training fund while at the same time establish a training requirement of 40 hours for each new board member.

No. 2, the Navajo Nation would continue the set aside for School Board training, but would provide that the fund be distributed equally among BIA funded school boards. The nation's position also provides that a tribe or group of tribes could elect to authorize a contract the program for their member school boards under Public Law 93–638.

No. 3, the Navajo Nation supports the increase in the minimum amount of funds available for BIA operated school boards from $5,000 to $8,000. However, if the school board training fund is eliminated as currently proposed, expense funds will need to be increased. We are available to work with the committee staff on this if necessary.

Section 1127—Administrative Cost Grants: S. 211 does not include proposed Navajo Nation language that, in situations where one tribe granted more than one school, would calculate the Administrative Cost Grant amount based on the amount each school would be eligible for if they were granting individually rather than on what the combined grant/contract would generate under the formula. If a tribe is interested in granting a number of schools under a single grant, the loss of administrative funds should not become a major factor in that decision.

Section 1139—Tribal Departments of Education: The Navajo Nation strongly supports the amendment that establishes a priority for applications from tribes with more than 3 BIA funded schools. Since there are only a handful of tribes that meet this criterion, we believe it would encourage the Administration and the Congress to actually fund his long neglected authority. On Navajo, I personally believe that the need for a Tribal Department of Education is critical as the Bureau's role continues to decrease and the Navajo Nation's role increases.

Conclusion: We thank you for the opportunity to testify and look forward to working with the committee in the weeks ahead.

QUESTIONS WITH RESPONSES FOLLOW

Once again, thank you for the opportunity to provide information and clarification of the position of the Navajo Nation and the Navajo Area School Board Association [NASBA].

Question 1: New or Revised BIA Standards.

Answer: We do believe that it would be a waste of time to conduct studies to establish and revise BIA Education standards. The current BIA standards are found at 25 CFR Section 36. They are quite comprehensive in scope and at the time they were promulgated, equalled or exceeded the educational standards of the various States in which BIA funded schools were located. The current law also requires that the BIA establish alternative standards at times when the BIA standard does not meet or exceed the State standards of the State in which the school is located and provides other accreditation options for schools.

For one reason or another, most if not all schools have opted to follow standards other than those promulgated by the BIA. If amendments are enacted that require the BIA to conduct studies and promulgate new/revised standards, it will largely be wasted effort since few if any schools will use them.

On the other hand, we support the new proposal which permits tribes to establish their own standards. On the Navajo Nation, the Division of Dine Education has served as an authorized arm of the North Central Accreditation Association [NCA] since 1981. We are hoping that, under new language, the Navajo Nation will develop and implement its own comprehensive standards. It would be very useful if the Congress would authorize funding for tribes with several schools in their jurisdictions, that were actively involved with developing and implementing standards.

We envision a future where tribes such as Navajo, in partnership with the BIA-Office of Indian Education Programs, establish Education systems that are comparable to those of the States. While this may not be feasible for more than a handful of tribes that have multiple schools in their jurisdictions, we believe that something specific should be developed to encourage and support this development. We are very interested in working with the Senate committee staff on something along this line.

Question 2: Certification for BIA Staff.

Answer: Currently, applicants for professional jobs in BIA funded schools are required to have certification from the State in which the school is located. For example, a teacher fully certified in the State of New Mexico and teaching in a BIA, funded school in New Mexico, who applies for a comparable teaching job in an Arizona BIA school, would need to go through the process of obtaining certification in Arizona. This would almost certainly include attendance at an Arizona college or university. For administrator positions, the situation is ludicrous. First, the applicant for an administrator position in a BIA funded school must have administrator's certification in the State the school is located, even though the coursework required is of little relevance to the BIA system administrator. [For example, learning how the State of Arizona finances its schools has no relevance for a BIA funded school administrator.] Then, even if the individual has been a BIA school administrator for many years and become expert at BIA school administration, but seeks an administrative position in another BIA funded school, he/she must go back to school to comply with specific requirements from that State, which are just as irrelevant as the requirements he originally had to comply with in the first State.

First, we believe that tribes should be able to establish their own certification requirements when they establish alternative standards. This authority is permitted by the current bill language and we support it.

Second, in situations where tribes do not elect to establish alternative certification requirements, the law should provide that applicants for BIA funded school certificated positions are fully eligible provided they possess appropriate certification from at least one of the 50 states of the Union. This is how the Department of Defense overseas school system does it. It has at least two major benefits:

It would greatly expand the applicant pool for BIA funded school positions.

It would increase mobility for educators and decrease the amount of "redtape" to which they are subjected under current State certification systems.

Again, thanks for the opportunity to elaborate on these points and do not hesitate to ask if other questions come up.

PREPARED STATEMENT OF WILLIAM MEHOJAH, DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman, Vice Chairman and members of the Committee. My name is William Mehojah and I am the Director of the Bureau of Indian Affairs' Office of Indian Education Programs (OIEP) within the Department of the Interior. Thank you for the opportunity to offer the Administration's views on S. 211, the Native American Education Improvement Act of 2001, which sets forth amendments to the Education Amendments of 1978 (Public Law 95–561) and the Tribally Controlled Schools Act of 1988 (Public Law 100–297).

Over the last two decades, both laws have significantly affected the operation of Bureau of Indian Affairs (BIA) schools and their respective education programs. Under the provisions of both statutes, the BIA administers its elementary and secondary school programs through BIA operated schools and provides funding for tribal schools operated under grants or contracts. A total of 185 elementary and secondary schools are funded annually by the BIA and provide a basic education program to approximately 50,000 eligible Indian students.

During February of this year, the BIA OIEP sponsored a meeting of Indian educators, parents, union officials, education line officers and tribal officials, to revise its strategic education goals. Based on the input of the participants, the five major strategic goals for the OIEP through 2005 are:

No. 1, all children shall read independently by the third grade.

No. 2, 70 percent of the students will be proficient/advanced in reading and math.

No. 3, the individual student attendance rates shall be at 90 percent or better.

No. 4, students shall demonstrate knowledge of their tribal language and culture.

No. 5, there will be an increase in the enrollment, retention, placement, and graduation rates for post-secondary students.

As all efforts are focused on achieving these five goals over the next several years, we would hope that any legislation under consideration would serve to help Indian children meet these goals.

Regarding the proposed amendments to Public Law 95–561, section 1125(b)(2) of S. 211 calls for the transfer of all administrative support functions to the Director, OIEP. Since 1978, such support functions have been provided by the BIA to the Office of Indian Education Programs. The same concept of allowing the education program to provide its own support services or functions was also recommended in a 1999 report on the management of the BIA issued by the National Academy of Public Administration (NAPA). I am pleased to report that this transfer of functions has been initiated.

Second, the proposed legislation, under section 1131 (e)(1)(D), would include Central Office positions into the contract educator personnel system and would require the Director, OIEP to consult with "school boards representing all BIA schools" before hiring any personnel in the Central Office. The intent of Public Law 95–561 was to require the BIA to consult with local and agency Indian school boards before hiring local education personnel. This concept of local control over school level personnel has been fully implemented at the local level and has worked well, but to require the Director, OIEP to consult with all 185 BIA school boards before hiring any individual at the national level office would be problematic. In effect, this will hamper the Director, OIEP from assembling an effective management team and will prohibit the OIEP from effectively carrying out its fiduciary responsibilities. We recommend that this section be deleted.

Third, section 1127 (b)(1)(B) proposes to raise the minimum base administrative cost grant funding level to $200,000. Currently, 11 schools receive less than $200,000 in administrative costs grant funding. Increasing the minimum administrative costs grant award will produce reductions in funding for all other grant schools.

Fourth, S. 211 proposes to distribute school operation funds in two separate payments. 85 percent of the schools' previous year's funding would be issued on July 1, with the remaining amount issued on December I of the subject school year. We recommend a 75 percent and 25 percent distribution. An 85 percent distribution on July I would put the OIEP in a position of having to retrieve overpayments made to some schools because of student enrollment fluctuations from one school year to the next. If the 85 percent distribution were in effect for the current school year, would have had to collect overpayment made to 25 schools. Any such initial overpayments will delay the final payments to all schools.

Finally, we would like to have further discussions with the Committee on incorporating the Administration's initiatives for education reform, such as enhancing the professional development of our teachers and upgrading their teaching standards and techniques, improving literacy and reading programs, raising academic standards and achievements, and expanding education flexibility partnerships, at our BIA funded schools.

Regarding the proposed amendments to Public Law 100–297, the Administration supports the new audit requirements regarding the procurement of personal property. Such audits should help.new Tribal Grant Schools manage their procurement programs and activities. Also, we would recommend that Tribal Grant Schools undergo a program audit, as well, to insure that the Tribal schools' education program objectives are being achieved.

This concludes my written testimony. I will be happy to answer any questions you may have.

ROGER BORDEAUX RESPONSES TO QUESTIONS

Question: The process used to Draft S. 211?

Question: What Happens to a Failing School?

Answer: The success of a school should be judged on locally determined criteria including student learning successes as determined by multiple assessments. Paramount to the success of schools and students is the availability of resources. There current is a disparity in resources between BIA funded schools and public schools. I do not think BIA funded schools should be help to the same standards as public schools until there is parity in resources. Therefore, when a school does not meet the standards then there should be extensive and targeted technical assistance provided by contracted experts in the field of teaching and learning Indian Education.

Question: Parental Choice?

Answer: Parental Choice is important in Indian Country because there are many public schools on or near reservations that do not meet the special and unique needs

of Indian children. Parental Choice is also important because of isolation of many of the families in rural communities, housing projects and individual home sites. Tribal schools and BIA operated schools provide parents with an alternative to public schools. These schools are the charter schools of Indian Country.

Question: Block Granting School Funds?

Answer: In the recent past the Bureau of Indian Affair's Office of Facilities Management and Construction has keep operation or maintenance funding at their level to fund specific project including such things as professional development, fire trucks, et cetera. The funding was appropriated for the schools and should be sent to the schools. All funds generated by and for schools should be sent to the schools.

An additional enhancement is that the BIA-OIEP should have it's own support services and control for facilities, personnel, finance, property and supply, and management information. The financial resources given to BIA does not always go to OIEP. The children lose on resources if they stay in BIA and don't get transferred to OIEP.

JOINT TESTIMONY OF
THE ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS
AND
THE NATIONAL INDIAN SCHOOL BOARD ASSOCIATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
MARCH 14, 2001
REGARDING EDUCATION PROGRAMS BENEFITING INDIAN STUDENTS

Mr. Chairman, Honored Members of the Committee, distinguished guests, Staff,

My name is Dr. Roger Bordeaux. My current position is Superintendent of the Tiospa Zina Tribal School in Agency Village, South Dakota. I appear today in my capacity as the Executive Director of the Association of Community Tribal Schools, Inc. and I am here representing a coalition of the two major organizations representing tribally operated and Bureau operated schools serving Indian children.

The Association of Community Tribal Schools (hereinafter ACTS) represents a significant number of the 124 tribally controlled elementary and secondary schools funded by the Bureau of Indian Affairs. There are over 24,000 students in these tribally controlled elementary and secondary programs. The schools are in the States of Maine, Florida, North Carolina, Mississippi, Louisiana, South Dakota, Minnesota, North Dakota, Michigan, Iowa, Wisconsin, Kansas, Wyoming, Oklahoma, Montana, California, Washington, Idaho, Nevada, Arizona, and New Mexico. Our mission is to assist community tribal schools toward their mission of ensuring that when students complete

their experience in our schools, they are prepared for college and lifelong learning and that these students will strengthen and perpetuate traditional tribal societies.

I am also here representing the National Indian School Board Association. Their Executive Director, Carmen Taylor, has asked me to speak on her behalf. The National Indian School Board Association (hereinafter NISBA) was established in 1982 for the purpose of providing training, technical assistance, advocacy, and networking opportunities for all schools funded through the Bureau of Indian Affairs. NISBA has 100 member schools - contract and grant schools operated by tribes, as well as BIA-operated schools. Their current President is Ted Lonefight, from the Mandaree school located on the Fort Berthold Reservation in North Dakota. Their office is located on the campus of Salish Kootenai College, a tribally controlled college on the Flathead Reservation in western Montana.

While I do not represent them today, before I begin our presentation, I want to recognize the work put into the reauthorization effort by the third partner of our ongoing coalition. The Native American Grant Schools Association (hereinafter NAGSA) includes grant and charter schools on Indian lands of 5 of the largest tribes in Arizona and New Mexico. Most of their member schools are located on the Navajo Reservation, which encompasses land in the States of Arizona, New Mexico and Utah.

I am here today to express our support for S 211, The Native American Education Improvement Act of 2001. This bill, introduced by Chairman Campbell and Ranking Minority Member Inouye, contains vital amendments to P.L. 95-561 and P.L. 100-297, the statutes governing the provision of elementary and secondary education services under Federal programs for the benefit of federally recognized tribes. It is the culmination of literally years of work on the part of our schools, the Members and staff of the Senate Committee on Indian Affairs and citizens concerned with the education of Indian children from around the country. The three organizations named above began work on a package to improvements for Bureau of Indian Affairs funded and operated

programs in March of 1998. Over six drafts of proposals to revise and extend the basic provisions governing BIA funded programs were done, with dozens of meetings involving literally every tribe and school served by such programs. Compromises on all sides were reached. Your own staff then took our work, and produced their own series of drafts for circulation and comment. All sides were heard and considered, and a concerted effort at consensus was made.

The final bill does not contain all of our original suggestions. For example, my own organization felt strongly about the need for a general authority to allow local tribes and schools to tailor their BIA Area and Agency education offices to meet their needs and desires for services and structure. This "designer" Area and Agency legislative language led to the less inclusive language in the current draft which allows contracting by tribes of Area and Agency functions which do not have the status of being inherently Federal functions. My point is that this package of amendments, is carefully crafted, and at this point, to our knowledge, has the support of all players. It is something we are proud to support.

Crucial to these negotiations have been the role of your staff, and we would like to recognize and salute them for their efforts. They have been unflagging in their efforts on behalf of Indian tribes, schools, parents and children and you should be very proud of them.

This package contains a wealth of improvements for Indian education programs. Some of the most notable, but by no means all of them are :

AMENDMENTS PERTAINING TO ALL BUREAU SCHOOLS

- The establishment of a Findings section for the law, which once and for all, recognizes the trust responsibility for the provision of Indian education.

- a rewritten standards section which, while retaining the right of the Bureau to establish standards, says that all schools which receive Bureau funding shall, within two

years, be accredited by a State, regional or (in some cases) tribal organization, the specific set of standards to be used to be chosen by the school.

- a provision allowing schools to expand their grades or student body, as long as such expansions are paid for through nonBureau funds, and establishing a means to share administrative costs between Federal and nonFederal programs.

-a study by the Comptroller General on the adequacy of funding for Bureau schools and the formula for distributing Bureau money for operation of academic programs. This will help us get a hand on the issue of funding level for Bureau funded schools, and is critical.

- a provision which clarifies and recognizes the right of tribal governing bodies to establish school attendance boundaries. Also, it authorizes the tribe to establish, by resolution, parental choice. Finally, it allows off reservation schools to establish special emphasis programs and have children placed according to need for these.

- three critical provisions to alleviate the crucial facilities/maintenance backlog and crumbling state of our facilities. First, you have required a study of the current state of Bureau funded facilities, with a negotiated rulemaking to develop a formula for more equitable distribution of maintenance and facilities funds. For the second, you required the Bureau establish a new construction list for the replacement of all BIA and tribal education facilities inventory on a 40 year time frame. Finally, you put in a requirement that all funds appropriated for facilities maintenance and roads be distributed to the schools or be distributed pursuant to a written agreement with a school (the Bureau had been in the habit of withholding amounts at agency or Area level).

- You amended the education functions section to have the Bureau education office assume control over its own contracting, procurement, and finance personnel. These are currently controlled by other Bureau entities. You also established the aforesaid authority for tribes to contract most of the functions at the local Area and Agency office.

- did away with the reservation at the Central Office level for school board training, and gave an increased amount to each school board, for them to use to meet locally determined needs.

-put in a provision waiving matching funds for participation in Federal programs.

-set a floor on the Administrative Cost grants of $200,000

- put in a section on regional meetings and negotiated rulemaking.

AMENDMENTS TO TRIBAL GRANTS SCHOOL AUTHORITY

- put in language recognizing that tribes are not guarantors of school grants.

- added three provisions encouraging personnel from tribally controlled schools and tribally controlled community colleges to act on standards review teams, requiring a report on procurement and requiring the school to send directly (not through the Bureau) to the tribal council its evaluation report.

- perhaps the greatest change for grants and tribally controlled schools. Changed the first payment from the Bureau to a contract and grant school to 80% of what the formula determined it should receive. We had requested a change to achieve full parity with the payments received by BIA operated schools of 85%, but the Bureau resisted this change. This is, however, a great improvement from the current initial payment of 50%.

-put in language similar to that in Impact Aid limiting a State's ability to take Bureau funds into consideration and reduce any State payments (important to tribally controlled charter school)

- Finally, and very importantly, created a new endowment program for tribal schools.

As you can see, this package is a major one, and it will have a major positive effect on Bureau and tribal programs. We can only recommend minor changes to the package, which are mainly ministerial. We have appended those to our testimony.

One final point is to register, again, our support for tribal departments of education. As tribes become more sophisticated and more involved in the education of their students, a logical progression of the concept of sovereignty is to develop tribal departments of education. They can serve in training, policy and development support capacities with respect to educators, parents, communities and tribal officials. It is time to give them our support.

NONINDIAN SPECIFIC PROVISION OF REAUTHORIZATION

Mr. Chairman, while we are supportive of S 211 and the work this Committee has done on legislation dealing with the Bureau of Indian Affairs funded programs, we do want to bring to your attention a serious concern we have with the work of the Health, Education, Labor and Pension Committee regarding the overall reauthorization of Federal education programs. We are concerned about the Committee's actions regarding testing and continued eligibility for Title 1 funds.

As you know, the Department of Interior receives a setaside under the Title 1 program. All Bureau funded schools, including BIA operated and contract or grant schools under tribal authority, receive part of this money from the Bureau under a formula distribution system. These funds have become critical to the success of our schools. Due to severe funding shortfalls within the funds appropriated to the Bureau, these funds are often the only monies we have for remedial and school-wide reform programs to augment the basic academic curriculum. These supposedly "supplemental" funds are really very basic for a Bureau funded school, to a far greater extent than in regular public schools. In the average public educational agency, Federal funds do not constitute more than 8% of the total funds available for academic programs. In our schools, the Department of Education "supplemental" funding (largely Title 1) constitutes about 25% of the money we have for our students.

Under the Committee's proposal, as we understand it, the schools receiving Federal Title 1 assistance would be required to annually test their students. Continued

eligibility for Federal funds (not only Title 1 funds but all Federal funding from the Department of Education) would be premised on the student's showing successful performance on the test. Poor student performance would cause State intervention and possible school reorganization or closure, as well as immediate loss of Title 1 funds Based on our interpretation of the bill, these provisions would seem to be applicable to the Bureau funded schools.

Senator Campbell, we want our children to perform. We have high expectations for them and are proud of our communities and our schools. However, we recognize as a fact that our students do not always perform well on standardized tests, due to cultural biases inherent in the tests. The provisions in the HELP Committee bill, as adopted last week, are not written with our students in mind. First of all, involvement by a State is not applicable to our schools, which are under Federal or tribal jurisdiction and with which the State is not involved. Do these provisions mean intervention by the Bureau of Indian Affairs Central Education Office? With all respect to this group, they are hardly equipped to do this, and the resulting chaos and ill-will (not to mention the damage to Federal/tribal relations) would be extremely damaging to local school programs. Also, closure and/or reorganization within our isolated tribal communities is just not a viable option. Simply withholding funds from the Bureau is punitive, and does not solve the needs of our children. Loss of these funds would be devastating.

We hope you can work with your colleagues in the Senate to craft an amendment to the HELP Committee proposal which would exempt Bureau schools from these provisions, as they are written. We know how important accountability is for this reauthorization. However, a provision could be crafted using other criteria to gauge the success of our students and their program. Alternatively, have it apply only where the Bureau has requested additional funds to address academic shortfalls and then only after such remedial provisions have had time to take effect. Perhaps it would be best to condition the application of the testing and accountability provisions to fiscal years in

which the Congress appropriates an amount for Indian schools which is equal to the amount spent on a per pupil basis as the average per pupil expenditure in United States public schools. This may have the positive dual effect of equity (in that we do not have a condition placed on us until we have an equal chance to meet standards) and the encouragement of increased funding by Congress.

At the least, if the testing provisions are applicable, we hope that we may receive a setaside from the funds which the new legislation is proposing for creation and modification of testing instruments. We do not think this is the solution to all of our concerns, since each test would have to be considered on a tribal or regional basis. Also, we do not want the Bureau Office of Indian Education handling such modifications without tribal and school involvement. However, we need some relief from the potential problems this provision may unintentionally cause Indian controlled schools.

With respect to the other provisions of the HELP Committee reauthorization package, there are two points. First, we want to ask you to be sure that for any programs authorized in the package, participation of our schools is allowed. To give an instance in which this has not been done, we cite the Federal program on Character education. In programs which go through the State, we suggest a setaside using the Bureau as the flow-through mechanism, under the theory of the Bureau as a 51st State. Where benefits flow directly from the Department of Education to the local educational agencies, we need to be sure our schools are qualified. Second, we wish to express our support for reauthorization of all programs in the Indian Education Act. Since its inception in 1972, the Indian Education Act programs have served as trailblazers for Indian people. Many of the tribally controlled schools got their start with funds from this program, and literally hundreds of Indian students have gone to college with Indian Education Act scholarships and fellowships. We fully support the action of the Senate on this Act.

It only remains to say ACTS and NISBA are very pleased with S 211, and we hope you are as well. I will be happy to answer any questions.

ATTACHMENT TO TESTIMONY BEFORE SENATE COMMITTEE ON INDIAN AFFAIRS
TESTIMONY OF ACTS AND NISBA
MARCH 14, 2001

ALL REFERENCES ARE TO LINE AND PAGE ON S 211 OF 107TH CONGRESS, AS PRINTED

1) Section 1121(e)(2), Page 9, lines 8, 12, and 13 - the Term "Secretary" was changed to "Director". This concerns the person who should receive and pass on the standards proposed by a tribe, if it waives Bureau standards. This was originally put with the Secretary in law, to make sure someone high on the chain of command was making a decision on what a sovereign tribe is proposing. This takes it down a peg. Was in the last draft done for the 106th Congress, but we asked why it was changed and never received an explanation. Why it was changed? Who recommended this?

2) Section 1121(i)(6) , Page 21, line 16 - the provision starts, "Nothing in this section shall be construed to preclude..." We are not sure that the Bureau has based its interpretation that expansions are prohibited on this section. Perhaps would be best to start with this, "Any other provision of law notwithstanding..."? This is what is done in other places.

3) Section 1121(j), page 21, lines 21 et seq- this does not read very well. Change to :

"Bureau funded schools which receive funds from non-Federal sources for the purpose of providing part of their education program or related services shall apportion joint administrative, transportation, and program costs between funds received from the Bureau of Indian Affairs for education activities or related services, and the funds received from non-Federal sources, funds so apportioned to remain at the local level"

This would seem to be clear and still meet the situation.

4) No section, Page 25 - between lines 16 and 17 - This version removes the current language which codifies certain BIA education regulations and defines the term regulation so as to cover a broad range of actions. We discussed last year doing away with part of the provision as no longer necessary, but we thought we were going to retain the codification of the general regs on Education policy and the definition. We thought they would be moved to the section on regulations, but we do not find them there. Why was the whole thing deleted? Can we put back the part on Education policy and the definition of regulation?

5) Section 1124(a)(4) - Page 30, line 18 - shouldn't we add in the House Committee on Education and the Workforce, since this is the House Committee on jurisdiction? Maybe instead of Resources??

6) Section 1124(a)(5)(i)(I) - Page 31, line 8 - Shouldn't this read "useful life of structures and major systems"?

7) Section 1124(e)(1)(F) - Page 38, Line 14 - Shouldn't this have a new title.? This was rewritten from the earlier drafts. However, while the substance was changed, the title remained the same.

8) Section 1124(e)(2) Starting on Page 39, line 24 - We thought that one of the major concerns of the Navajo Area School Board Association, which proposed this language, was keeping staff housing open while repairs were done, so they would not lose staff. While a lot has been done on this section, nothing on Staff housing.

9) Section 1124(e)(4) Page 41, starting with line 8 - says a school may use "school operation funds" for repairs. Should we stipulate these are Section 1126 and other BIA funds? How about Title or IDEA money from Dept of Ed? Will we get in problems with them?

10) Section 1125(c) page 44, lines 9 et seq. - relating to contracting of local BIA activities. We believe we should reference the definition of "inherently federal function"? Also, we ask you to consider putting in our recommended sentence asking that the Secretary consolidate tasks, wherever possible, to allow for the most contracting.

11) Section 1126(d)(4) Page 56, Line 21 - this has a provision with a closing parenthesis. However, we can not find where the parenthetic clause starts. Should this parenthesis be deleted?

!2) Section 1127 - thank you for putting in the floor. Can we also reconsider the idea of making these an entitlement, by deleting the term "Subject to appropriations", and the language dealing on percentage distribution. Do we need to have OK from Leadership or Appropriations?

13) Section 1129(a)(2) - changes all of the current language in the statute relating to timing of making payments. We were not aware of a problem with this provision, nor were we aware that anyone was proposing to change it. Is this change a mistake? If so, it was carried over from the last draft. If not, why was it made? How would the reworked provision work? Does this mean there is a new timeline for payments? If so, what is it? While we question the rewrite, we support the forward funding of operations and maintenance. The first step is putting that in the authorizing language, so we can take it to appropriations.

14) Section 1129(h)(2)(B) - Page 82, line 22 - shouldn't this be the entity who makes the grant not the entity receiving a grant. In other words, doesn't it make more sense to

have "making" instead of "receiving"? We are talking about the agency which makes the grants.

15) Section 1131(h) Page 98, line 16 - removed the term "or annual compensation" from the language. What is the impact of this change?

16) Upon reflection, we may not need section 1133 anymore. This was put in in 1978 because non-education activities in the Bureau were treating education activities in different Areas differently. This was to have those shops come up with one set of rules for all education functions, wherever located. This is not a problem any longer.

17)Section 1137 Page 115, starting at line 20 - relating to regulations. Same concern as earlier about definition of regulation and codification of Education policies.

Also, does this provision on negotiated rulemaking apply to Section 1121, standards? 1121 has a two year timeline. Also, while this section is specifically mentioned as applying to other sections (see those on Dorm standards and formula) Section 1121 does not reference it.

TRIBALLY CONTROLLED SCHOOLS ACT OF 1988

18) Section 5204(a)(4) - page 138, starts at line 18 - this provision came from the Bureau (at least, we know that we did not request it). Every time we read it, we have a different interpretation on what it does. We asked in this past May for an explanation on what this does and when it would be effective, but we did not get one. Are the authors sure this does what they want it to do?

19) Section 5204(c)(1)(A), Page 140, line 4 - given the changes made in the preceding amendments, shouldn't "1127" be "1126"?

20) Section 5205(a)(2) Page 143, line 16 - I think that given our other changes, "1125(d)" should be either 1125(e) or even 1124(f). We know this isn't right. See similar problem in Section 5205(b)(2), Page 145, line 7.

21) Section 5207(b)(1)(B) and (C) - page 161, line 9 and 12 et seq. - first, for both provisions, Webster defines biannual as twice a year. We don't think this is what the author's intended. Should is be biennial (every two years)? Should it be annual? As for the second provision, can someone provide us with an explanation of what "written procurement standards that are developed by the local school board" means?

22) Section 5207 (c)(1)(B), Page 166, line 6 - shouldn't "1121(e)" be "1121(f)"?

23) Section 5208(a)(1)(B) - Shouldn't the last sentence distribute any recovered funds pursuant to the formula? This would have equal payments going to all Bureau funded schools, regardless of the formula?

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STATEMENT OF THE
NATIONAL INDIAN EDUCATION ASSOCIATION
SUBMITTED TO
THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S.211, THE NATIVE AMERICAN
EDUCATION IMPROVEMENT ACT OF 2001

March 14, 2001

Submitted by:
John W. Cheek ***(Muscogee Creek)***
Executive Director

The National Indian Education Association (NIEA), the largest national organization representing the education concerns of over 3,000 American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, parents, and students is pleased to submit this statement on S.211, the Native American Education Improvement Act of 2001. On behalf of our president, Carole Anne Heart and Board of Directors we thank you for the opportunity to present testimony today. We would like to thank Chairman Campbell, Vice-Chairman Inouye and members of the committee for holding this important hearing.

Unlike public schools, which receive their funding from state and federal sources, funding for Bureau of Indian Affairs (BIA) and Department of Defense (DOD) schools is the sole responsibility of the Federal Government. Ideally, these two school systems should be the 'state of the art' when it comes to education policy. The unfortunate fact is that American Indian and Alaska Native students are achieving at rates lower than the general population, have the highest dropout rate, and are more likely to be diagnosed as learning deficient. The majority of the school buildings our children learn in are in need of repairs or need to be replaced entirely. For example, it would take nearly $1 billion to complete the current backlog in new school construction, repair and renovation projects in the BIA education system. This does not include those schools that would come 'on-line' each year as additional schools reach the top of the funding list. We are encouraged, however, to see President Bush take a stand on behalf of school construction as a major priority in Indian Country.

The Bush administration has also proposed new education strategies guaranteeing that "no child left behind" will drive education policy. While NIEA supports many of the President's education goals, initiatives such as higher accountability standards need to be carefully

considered in terms of the capacity of Indian schools. One would generally assume that in order for all schools to be successful in implementing new standards that they should all be operating at the same level in terms of teacher quality, safe learning environments, adequacy of resources, etc. We are extremely concerned that Indian schools will be faced with the same requirements as public schools and be penalized should they fail to meet them within the prescribed timeframe. An equal playing field is necessary if we expect all schools, including Indian schools, to meet these high standards. We ask the committee's support in ensuring that our Indian children are not faced with unrealistic policy decisions that could have the effect of doing more harm than good.

NIEA foresees a need for increased professional development of the BIA teaching force and additional resources for ensuring that standards congruent with national policy are developed with the BIA education system. While this has been an ongoing effort with much progress in recent years, the reform and standards movement will require additional demands on the already limited resources of the BIA education program.

According to the 1990 Census, there are 600,000 American Indian and Alaska Native children attending K-12 public and BIA schools nationally. Of this number 50,000, or less than ten percent of all Indian students, attend BIA schools. S.211 amends existing laws which govern how BIA schools, tribal grant and contract schools administer their programs to these students. NIEA supports the proposed amendments as they have been negotiated in consultation with other national Indian organizations. Our comments in relation to S.211 are reflective generally of the membership of NIEA. Both of these laws are complex and NIEA has utilized the expertise of today's invited speakers to formulate our position on amendments to these laws. The following is a brief summary of these laws:

Public Law 95-561: The Education Amendments of 1978, Public Law 95-561, as amended. Provides broad statutory guidance to schools that are operated or funded by the Bureau of Indian Affairs. Provides for Indian school boards in BIA operated schools. Requires the BIA to actively consult with tribes in all matters that relate to Bureau schools. Allows the Secretary of the Interior to implement cooperative agreements between tribes, school boards of Bureau schools, and state public school districts. Establishes formula-based funding for all BIA operated schools and BIA funded tribal schools. Requires that such schools be accredited or meet standards that are equal to or exceed those accreditation requirements. Allows tribes to set academic standards for BIA operated or funded schools that take into account the specific needs of Indian children.

Public Law 100-297: The Indian Education Act of 1988, Public Law 100-297, as amended. Allows tribes to operate BIA funded schools as grant schools rather than as contract schools. Grant school funding allows tribal schools to receive funding on a more timely basis, to invest those funds under certain restrictions, and to use the interest gained for further educational costs in their schools. This Act also authorizes federal funding for tribal early childhood programs and tribal departments of education. To date no money has been appropriated for tribal departments of education.

The BIA currently operates 185 tribal schools as authorized under Title XI of the Education Amendments of 1978 (Public law 95-561). Several of these schools are home-living schools that serve students with exceptional needs. The Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638, authorized the BIA to transfer school management authority to tribal agencies via contracts. The majority of BIA funding supports the Indian School Equalization Program (ISEP) grants to BIA-operated and contract schools as well as providing administrative cost grants to assist in the operation of contract schools. The ISEP formula considers the unique needs and grades served by each school to determine the proportion of available funds that each school receives. In addition, BIA supports an Early Childhood Development Program and the establishment of Tribal Departments of Education as authorized under Title XI. Authorization for these last two programs expired in 1999 and General Education Provisions Act (GEPA) extensions do not apply to programs under the Department of the Interior. All other BIA programs are permanently authorized under the Snyder Act of 1921 (Public Law 65-95).

The following are general comments we have regarding certain sections of the proposed amendments to P.L.95-561. This is not a complete listing and should be considered with comments from the other presenters.

- Indirect Cost Issue - In March of 2000, NIEA became of a situation at certain school(s) where Facilities Operations and Maintenance (O&M) funds were being reduced from 3% to 16%. Then Assistant Secretary Kevin Gover was unaware of the disparities in the amounts withheld and seemed to be unclear as to why there even needed to be a reduction, and if there was a need, why it was over 4%. Without knowing the full details of this issue, NIEA would recommend that if any reduction needs to be made that it be at the lowest level possible and administered equitably.

- Negotiated Rule Making - NIEA understands that Sec. 1137 provides for negotiated rulemaking with the BIA developing the initial proposed regulations. NIEA recommends that to the extent possible, the process of negotiated rulemaking be fairly conducted and that representatives from the associations represented here today and tribal representatives from all regions of Indian Country be included in the process. The process of "negotiations" indicates that two differing entities or opinions sit at the same table to work our differences. By having the draft regulations developed "in house" before being reviewed by stakeholders, an uneven playing field is established from the outset. Public Law 93-638 regulations were developed with a similar process involving tribes and federal officials and met with some success. We recommend a similar approach.

- Forward Funding - The current law provides a mechanism for forward funding of certain BIA education functions such as the Indian School Equalization Formula and transportation. The idea of moving all school related functions into a forward funded cycle would require a double appropriation to start the process for such areas as Facilities O&M. If the appropriation committees could be convinced such a tactic would relieve some of the funding issues with O&M dollars, NIEA would support the effort.

P.L. 100-297:

- First Grant Payment - Under P.L.100-297, the House version (H.R.2) recommends that the first grant payment be made on July 15 and that the amount be 85% of the school's prior year allocation. The current Indian Affairs Committee draft recommends 80%. NIEA recommends that the percentage to be paid on the required July 15 date be 85%. Part of the issue may be due to the possible decrease in the number of students in the current year as compared with the previous year. In any case, we recommend that any overage to the school, simply be reimbursed as referred to further on in section 5208. Contract and Grants get 50%.

Tribal Education Departments

NIEA fully supports Tribal Departments of Education (TED), both within the Department of Education Indian education authorization and within the BIA education structure. Two separate provisions authorize tribal education department funding. The Improving America's Schools Act of 1994, Public Law 103-382 (20 U.S.C. § 7835), establishes authority for the Department of Education to fund tribal education departments. No appropriations have ever been made under this provision, which the Administration now proposes to eliminate. The School Improvement Amendments of 1988, Public Law 100-297 (codified at 25 U.S.C. § 2024), establish authority for the BIA to fund tribal education departments. No appropriations have ever been made under this provision, either.

This is a serious failure on the part of the federal government. At present, about one in six tribes (almost one hundred of the over 550 tribes) has an education department. These departments serve hundreds of thousands of tribal students. They administer scholarships, supervise programs, and develop curricula and teacher training programs. They provide leadership and advocacy for schools, educators, and parents. They foster working cooperative agreements among tribal, federal, and state agencies, schools, and programs. Most importantly, tribal education departments are successfully addressing core problems in Indian education such as disproportionately high absenteeism and low educational attainment levels. The Carnegie Corporation of New York recently funded the first external evaluation of a tribal education department. The evaluation found that in the last ten years the drop out rates for tribal secondary students on the Rosebud Sioux Indian Reservation in South Dakota have decreased by thirty per cent, and graduation rates have increased by fifty percent. The evaluation credits the Truancy Intervention Program administered by the Rosebud Sioux Tribal Education Department with this substantial progress. This progress is unprecedented; we know of no federal or state program that shows comparable results. The P.L.100-297 legislation also allows tribal education departments to be treated as local education agencies for the purpose of applying for bilingual education grants.

Indian education occurs in a complex environment of services provided by tribal, federal, and state governments. The tribal education departments are rapidly rising to the challenge of being in the best overall position to track and report on tribal students, to identify and coordinate resources, and to provide technical assistance and accountability. In short, tribal education departments are effectuating the many good recommendations about how to improve Indian education that have been made over the years but never implemented.

Administrative Cost Grants.
The purpose of Administrative Cost Grants is to pay the administrative and indirect costs incurred by tribally-operated schools without reducing direct program services, and to enable them to carry out the necessary support functions that would otherwise be provided by the BIA from resources other than direct program funds. The Administrative Cost grant mechanism was created by Congress in 1988 to more precisely identify the amount of funding needed for indirect and administrative costs of tribes and tribal organizations who operate BIA-funded elementary and secondary schools for Indian children. Prior to the 1988 law, tribally-operated school programs received indirect costs through traditional Indian Self-Determination and Education Assistance Act (ISDEAA) method for supplying "contract support" funds to tribes either through a negotiated indirect cost rate or a negotiated lump sum payment.

Congress changed the system in 1988 by adding the Administrative Cost (AC) Grant provision to the basic education law. The amount of each tribally-operated schools AC Grant is calculated under a formula set out in the law, but funding for AC Grants is subject to appropriation. By having this function dependent upon annual appropriations as it currently is, instructional dollars are being sacrificed when insufficient administrative costs are available. NIEA supports full funding of Administrative Cost Grants for the fiscal year in which they are required. Given the administration's move to focus on higher accountability standards, it will be necessary to ensure that local tribes have the resources available to ensure their administrative functions meet the challenge.

Reauthorization of the Elementary and Secondary Education Act
S.211 focuses on amendments that will be incorporated into the reauthorization of the Elementary and Secondary Education Act (ESEA). NIEA is concerned that the committee is undertaking only the amendments previously mentioned and not the entire breadth of Indian education programs in the Department of Education as well. NIEA would like to request that an additional hearing be held on the proposed changes to the current Title IX, Indian, Native Hawaiian and Alaska Native Education (Title VII of Senate draft). We are uncertain of the accountability measures and their impact on the largest Indian education program as administered by the Office of Indian Education within the Department of Education. The proposed changes could affect the program which currently serves over 450,000 Indian children in 1,200 programs in 43 states.

The Elementary and Secondary Education Act (ESEA) of 1965 was last reauthorized in 1994. NIEA has previously developed recommendations for consideration by the authorizing committee(s), the Department of Education and Indian Country. Several tribes, including the Affiliated Tribes of Northwest Indians and the National Congress of American Indians (NCAI) have endorsed NIEA's recommendations as they apply to the current ESEA, as amended by the Improving America's Schools Act (IASA).

During the 106th Congress, at least five major proposals were introduced for the reauthorization of ESEA. These include: S.1180 and H.R.1960, the 'Educational Excellence for All Children Act of 1999' (Administration's proposals); H.R.2, the 'Student Results Act of 1999' (House-

passed version, which includes Title I and other authorizations including Indian education); H.R.4141 'Education Opportunities To Protect and Invest In Our Nation's Students (Education OPTIONS) Act' which reauthorizes the remaining sections not covered under H.R.2; and S.2, the 'Educational Opportunities Act.' The only version which NIEA supported in relation to Indian education programs within the Department of Education was S.2. S.2 maintained all programs under the Office of Indian Education while the other legislative versions eliminated authorizations for Gifted and Talented, Adult Education, Indian Fellowships, and Tribal Education Departments. NIEA strongly opposes the elimination of these programs and further requests that these programs be funded at the levels we will be recommending to Indian Affairs Committee. NIEA appreciates the committee's support of our position for keeping in these authorizations and for maintaining the integrity of Indian education programs within the current Title IX law.

New Millennium White House Conference on Indian Education

NIEA would like to ask the committee's support for conducting a New Millennium White House Conference on Indian Education. The last one in 1992 occurred during the former Bush Administration, however, the President was unable to attend. The first White House Conference on Indian Education brought national attention to the myriad of educational problems still facing Indian people. The first conference set the stage for many major education advancements on behalf of Indian people during the close of the 20th century. The new century provides new energy and challenges and a new conference could set the stage for further advancements in such areas as educational technology, educational accountability and research on Indian education. Additionally, the last White House Conference on Indian Education authorization was included in the 1988 reauthorization of ESEA and could easily be included in this year's version.

Crosscutting Issues Affecting American Indian and Alaska Native Education

Below we have identified the major areas that have the potential to impact the education of American Indian, Alaska Native and Native Hawaiian people. The broad categories should be considered by the committee in the event a broader look is taken on the reauthorization of ESEA or as other legislative proposals get introduced this session of congress.

1. **Sustaining basic operational, facility, and student service needs of schools and Tribal colleges funded through federal agencies such as the Departments of Interior, Education, Health and Human Services, and Agriculture.**

   Programs that are permanently authorized such as Snyder Act programs in the BIA and programs authorized periodically through statutory law changes such as the Department of Education's Office of Indian Education, are mainstays for Indian communities and students. These programs need adequate annual funding increases in an effort to stay current with inflation.

2. **Increased funding for school repair and renovation for public and Bureau of Indian Affairs schools serving American Indian students.**

In 1997, the General Accounting Office (GAO) identified a backlog in BIA repair and renovation needs exceeding $800 million. During the same year, the appropriation for repair/renovation for BIA schools was $60 million. In FY2001, the appropriation was $293 million.

3. **Ensuring that the Executive Order on American Indian and Alaska Native Education and the Tribal College Executive Orders both remain in force throughout the term of the next administration.**

The Executive Order on American Indian Education was signed in 1998 and provides a vehicle for ensuring that federal agencies coordinate efforts in the delivery of educational resources to Indian communities. The executive order requires a comprehensive federal Indian education policy statement to be developed. The former administration was proposing to finalize one by the end of 2000 which never occurred.

The 1996 Executive Order on Tribal Colleges and Universities will still be active as they develop and/or implement their five year plans as submitted by participating agencies. Both executive orders must be sufficiently funded and supported by the agencies where they are located and through administrative support via appropriations.

4. **Development of a National Blueprint on Indian Education. Prioritizing attention for early childhood, adult learning, and cultural education programs with holistic teaching approaches that address concurrent needs for employment, physical and mental well-being, Tribal economic development, substance abuse education, and Tribal land resource utilization.**

Since 1993, the National Indian Education Association (NIEA) has been engaged in a comprehensive strategy looking at the total Indian community. Indian communities, whether they are located on a reservation or in an urban setting, rely not only on education, but other services such as social programs, law enforcement and economic development in an effort to meet the needs of the Indian community. Indians that reside within tribal land jurisdiction are often more reliant on federal education and social services programs to meet their immediate needs than they are on state programs. Often these adjoining issues come into play when problems arise with a student such as legal problems, child and family issues and so on. The need to look at education as only one facet of the entire "Indian" community must be acknowledged, understood, and facilitated to the point where these individual components compliment one another. NIEA supports the blueprint ideals and realizes that expertise from other professionals need to be incorporated if the blueprint strategy is to work.

5. **Exploring new education strategies based on coordinated analyses of the Indian Nations At Risk, White House Conference on Indian Education reports and the impact of the 1998 Executive Order on American Indian and Alaska Native Education.**

The decade of the nineties represented a renaissance in the federal approach to dealing with long-standing educational issues facing Indian people. Key events such as the release of the Indian Nations at Risk Report, the White House Conference on Indian Education and an Indian education summit all played a part in defining the problems inherent in Indian education and the need for positive long range solutions. The Indian Education Executive Order provided a solution to some of these long-standing concerns and was additionally supported by increased federal appropriations targeted at the most critical need areas such as teacher training.

6. **Elevating the Director, Office of Indian Education within the U.S. Department of Education to Assistant Secretary.**

The enactment of the Department of Education on October 17, 1979, changed the organizational placement and status of Indian Education Programs authorized by Public Law 92-318, Title IV, the Indian Education Act of 1972. Prior to the establishment of the Department, all then Title IV Indian Education Programs were located in a distinct and separate organizational entity within the Office of Indian Education (OIE) at the Department of Health, Education and Welfare (HEW). The top Indian administrator of OIE, Dr. William Demmert, was the first Deputy Commissioner to be appointed on January 30, 1975. During this initial phase of the Act, the Deputy Commissioner reported directly to the Commissioner of Education.

Although all Title IV Indian Education Programs remained intact after establishment of the United States Department of Education, the Secretary of Education authorized a change in the organizational placement of Indian Education Programs to their present location with the Office of Elementary and Secondary Education (OESE). The status and identity of Title IV programs were changed from a separate Office of Indian Education to Indian Education Programs and the title of the top Indian administrator was changed from the Deputy Commissioner for Indian Education to a Deputy Assistant Secretary for Indian Education. This position formally changed in 1981 to "Director of Indian Education Programs" who now reports to the Assistant Secretary for OESE, rather than the Secretary of Education, a significant change in status.

While the directorship for Indian education has worked satisfactorily over the years, the location of the director within the Department of Education administrative hierarchy adds another layer of bureaucracy between the OIE director and the Secretary. The National Advisory Council on Indian Education could assist in the fulfilling the advisory role on behalf of Indian education, but since it is not adequately funded, this option is not viable.

7. **Strengthening national oversight of American Indian/Alaskan Native education by reestablishing the office of the National Advisory Council on Indian Education (NACIE) within the U.S. Department of Education.**

The National Advisory Council on Indian Education (NACIE) is a fifteen member board whose members are appointed by the President. NACIE was established at the same time

as the Indian Education Act was first enacted into law in 1972. NACIE's mission is to provide recommendations to the Congress on ways to improve educational opportunities for American Indians and Alaska Natives. Since 1996, the National Advisory Council on Indian Education (NACIE) has been without a physical office within the Department of Education. By not reestablishing this office, the likelihood that Indian education concerns will be further addressed are greatly reduced.

8. **Examining Federal-State-Tribal partnerships to better coordinate educational programs for native students in both reservations and urban settings, and to support Indian-controlled schools.**

The majority of American Indian and Alaska Native students (90%) attend public schools as opposed to Bureau of Indian Affairs or tribal schools. Current funding mechanisms within the Department of Education allow for certain set-asides to be used for direct funding to Indian schools. Generally, these set-aside funds go to Bureau of Indian Affairs (BIA) Schools. The majority of Indian students in public schools are eligible for services through many Department of Education K-12 programs. The extent to which these programs serve Indian students in public schools is varied and difficult to assess given the relatively low number of Indian students compared to the general population (generally less than one percent).

The need for tribal and state partnerships is increasing as the population of Indian students increases. What was once considered to be a federal responsibility only is now a shared responsibility among state and tribal stakeholders. These partnerships needs to be encouraged as vehicles for broader access to federal and state education programs.

NIEA also sees the need for continued advocacy with Capitol Hill and among federal agencies that set policy in matters affecting Indian education. There is an urgent need to build coalitions among all national Indian organizations in an effort to meet the increasing demands in educating Native people. In October, 2000 NIEA initiated such an effort when a memorandum of agreement was signed with the American Indian Higher Education Consortium, the National Indian School Board Association, and the National Congress of American Indians. Partnerships with our Indian and non-Indian counterparts are critical if we are to gain the support needed for positive change.

9. **Block Grant and Ed-Flex funding proposals are being considered by the Congress as methods of moving federal education dollars directly to the states. In theory, this would eliminate the need for a myriad of federal agency programs to administer program dollars from Washington by having them administered locally.**

Recurring congressional proposals for block granting federal education dollars to states may have a negative impact on American Indian students. Programs such as Office of Indian Education programs are already direct funded to local education agencies and bypass state education agencies altogether. Should block granting become federal policy, the level of funding would likely decrease for Indian students. In addition, there would

be no guarantee that these dollars would actually find their way to Indian students. NIEA recommends that certain federal education dollars not be block granted. These would include Indian Education Act dollars, Impact Aid, and other federal support which already contain a set-aside funding mechanism.

10. Bureau of Indian Affairs Schools

Funding for Bureau of Indian Affairs (BIA) schools and Department of Defense schools is the sole responsibility of the Federal Government while public education is a combination of state and federal resources. Local Education Agencies (LEAs) and their surrounding communities have the ability to pass bonds in order to build or repair local school buildings. Tribal and BIA schools, on the other hand, must rely on the federal government to ensure their academic and construction needs are met. The area of school construction and repair remains problematic as recent annual appropriations have historically targeted less than ten percent of the total need requirement. Over one half of all schools qualify for ranking on annual construction repair and maintenance waiting lists. Typically less than ten schools can be assisted in a given budget year.

Aside from infrastructure needs of BIA schools, funding gaps exist in every functional category from early childhood to adult education though postsecondary education for Indian students. While improvements have been made in recent years, the breadth of these changes tend to be reliant on levels of funding. Other factors which prevent consistent improvement in BIA schools include high teacher turnover rates, remoteness of schools, and student transfer rates.

In 2000, a new Education Foundation bill was signed into law, allowing the BIA to accept donations of real and personal property. Funding will need to be secured for its implementation. Additionally, the Congress funded a new pilot program called the Therapeutic Residential Treatment Programs (TRTP) at three BIA boarding schools and dormitories. According to the Centers for Disease Control (CDC), American Indian students attending BIA schools are at higher risk for sever problems associated with substance abuse, depression, poverty, neglect, homelessness, and physical abuse. This initiative will make appropriate professionals available at each pilot site to provide intervention treatments for students. This program and the early childhood FACE program need to be expanded in the FY2002 budget.

11. Native Hawaiian Issues

In 1999, NIEA was the first national American Indian and Alaska Native organization to allow Native Hawaiians voting privileges equal to American Indian members. This unprecedented move creates a national education voice on behalf of all aboriginal citizens of the United States. The Association of Hawaiian Civic Clubs recently held their 41st annual convention and passed a resolution to develop Ka Haka 'Ula O Ke'elikolani College within the University of Hawaii at Hilo including facilities and programs of the college. This college is the only Native Hawaiian college and is unique

in the United States in its focus on Native language medium education from preschool through graduate school. Besides standard university undergraduate and graduate programs, it has a teacher licensing program, a preschool-grade 12 laboratory school program, a telecommunications education program and a curriculum development/research center. It also has outreach to other Native Americans in this area as well as to Native Hawaiians outside Hawaii.

The college has never received direct federal support and lacks a building for its programs. They currently maintain a consortium agreement with the 'Aha Punana Leo School' in conducting many of its programs. NIEA urges increased financial and policy support to their efforts.

12. Native Language Issues

Native language issues are a critical aspect of indigenous populations. For hundreds of years, beginning with the arrival of European settlers on America's shores, the native peoples of America have had to fight for the survival of their cultures. History has shown that the ability to maintain and preserve the culture and traditions of a people is directly tied to the perpetuation of native languages. Like others, the traditional languages of Native American people are an integral part of their culture and identity. They provide the means for passing down to each new generation the stories, customs, religion, history and traditional ways of life. To lose the diversity and vibrant history of many Indian nations, is to lose a vital part of the history of this country. We recommend funding native language revitalization programs including the reintroduction of amendments to the Native Languages Act of 1992 that were introduced in 2000. Additionally, efforts at instituting "English Only" legislation, is in our view, counterproductive to the vitality of indigenous populations.

Conclusion

In closing, the National Indian Education Association would like to commend the committee and staff for taking on such an enormous task this session by working with Indian organizations, tribes and communities in reauthorizing the various pieces of legislation affecting the education of Indian people. We also acknowledge the expertise of the organizations assembled here today and ask that the committee and the BIA work with these associations in the completion of final legislative language. Where applicable, we encourage a cooperative working arrangement between the various stakeholders in finalizing and eventual implementation of new authorizing language for BIA, grant and contract schools including the development of appropriate regulations. NIEA would be willing to recommend members of our association to assist in this effort as well. Thank you for the opportunity to present today.

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TESTIMONY OF THE MISSISSIPPI BAND OF CHOCTAW INDIANS
PHILADELPHIA, MISSISSIPPI
REGARDING
S. 211, THE NATIVE AMERICAN EDUCATION IMPROVEMENT ACT OF 2001

SUBMITTED TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
FOR INCLUSION IN THE RECORD OF THE HEARING HELD ON MARCH 14, 2001

Chairman Campbell and Vice Chairman Inouye:

The Mississippi Band of Choctaw Indians (MBCI) hereby submits a statement for the record of the Committee's March 14, 2001 hearing on S. 211 which proposes revisions to two BIA education statutes -- P.L. 95-561 (Title XI of the Education Amendments of 1978), and P.L. 100-297 (Tribally Controlled Schools Act), and asks that the views herein be seriously considered by the Committee and that this statement be included in the hearing record.

Introduction

MBCI centrally operates eight BIA-funded schools on our reservation in east-central Mississippi through a single Tribally Controlled Schools Act Grant issued to the Tribe. More than 1800 Choctaw students in grades K-12 are enrolled in the Choctaw schools. General administration of the elementary and secondary and other tribal education programs is performed by the Tribal Department of Education under the direction of the MBCI Tribal Council.

The Tribe is grateful for the support we receive from this Committee in the demanding task of assuring the day-to-day success and well-being of the Choctaw students who attend our eight tribally-controlled schools. We look forward to working with your Committee to take advantage of this unique moment of focus on education in general and the BIA-funded school system in particular to ensure that we support what is working well about this system and find creative, positive solutions to the problems that remain.

We offer comment on several issues in S. 211 and with regard to the Elementary and Secondary Education Act (ESEA) reauthorization now being considered by the Congress.

Administrative Cost Grants (Sec. 1127).

Tribally-operated BIA schools are facing a crisis in their administrative budgets, operating at less than 80% of the funding necessary for prudent management of a school. The Administrative Cost Grant formula was created by Congress to calculate the amount of funding needed to address the administrative and indirect cost expenses incurred in the operation of BIA school programs. It was designed as a compromise, that is, a minimum calculation of the resources required to comply with financial management standards, internal controls, executive direction and policy-making, and other leadership responsibilities performed by a tribe or tribal organization that has taken over operation of one or more BIA-funded schools.

For the past several years, AC Grant funding has been frozen at or very near the same inadequate level. But since new schools have converted to tribal operation during that time, the level of need supplied to all schools has declined each year. The AC Grant system was not designed to function on less than the amount prescribed by the formula -- much less on a shortfall of more than 20 percent. If this shortfall continues, it will become increasingly difficult to successfully manage tribally-operated schools and to comply with the prudent management standards that Congress expects of us.

In order to assure that congressional intent is met with regard to administrative cost funding, we ask the committee to consider changing the authorizing statute to delete the "Subject to the availability of appropriated funds" language that appears on lines 24-25 of page 63 of S. 211. We also ask that you work with the appropriations committees to discontinue the legislative language that for the past several years has "capped" AC Grant funding at less than 100% of the formula-directed amount.

• *Technical clarification in TCSA regarding administrative costs of Grant Schools.* MBCI supports the request of other tribal school representative for a technical clarification to Sec. 5204(b)(3) of the Tribally Controlled Schools Act regarding the amount of Grant funds that may be expended for administrative costs. Suggested language follows:

> "Funds made available through any grant provided under this part may not be expended for administrative costs (as defined in section 1127(a) of the Education Amendments of 1978) in excess of the amount generated for such costs under the formula established in section 1127 of such Act."

Proposed Expansion of OIEP Director Authority.

We note that S. 211 would enlarge the responsibilities of the Director of the Office of Indian Education Programs. Specifically, the proposed revision to Sec. 1125(b)(1) would give the Director supervisory authority over personnel in the areas of *"facilities management, contracting, procurement, and finance"*. We respectfully request that the Committee re-consider transferring "facilities management" personnel supervision to OIEP, especially if this reference includes the BIA's Office of Facilities Management and Construction (OFMC).

MBCI has had considerable experience working with personnel in OFMC through the several BIA-funded construction and facilities improvement and repair (FI&R) projects we have performed. The OFMC staff -- architects, engineers, building inspectors, safety officers, etc.-- provide vital technical assistance to us and other tribal organizations who elect to perform facilities projects themselves under contracts or grants. OFMC expertise is unique and specialized; it requires education and training in construction disciplines in order to build, or assist tribes in building, structurally sound, safe and well-designed facilities.

By contrast, the OIEP Director and his staff are *educators* charged with overseeing *education program* operations; they are not trained in the disciplines needed for successful construction project management. Just as architects and engineers should not supervise education programs, educators should not be charged with supervising building projects.

Nor, in our view, would transferring OFMC personnel to OIEP be beneficial from a Bureau-wide efficiency perspective. OFMC is responsible for all BIA construction activities -- jails, detention centers, administrative facilities, maintenance buildings, and schools. Transferring part of this Office to OIEP would unnecessarily separate the existing system that makes architectural, engineering and building safety expertise available to the entire Bureau and the tribes it serves.

Last year, OIEP included a similar proposal to take over supervision of OFMC personnel in its consultation booklet sent to tribes and tribal organizations who perform education programs. Our Tribe submitted detailed comments objecting to any transfer of OFMC personnel to OIEP. Those comments were filed in September, 2000. To date, we have received no response from the OIEP Director. Nor did the Director mention the comments he received from last year's consultation when he testified before your Committee on March 14 in support of the proposed expansion of his authority. Frankly, we believe a summary of those tribal comments would have been helpful to the Committee in discharging its policy-making role.

For these reasons, we respectfully request that the Committee delete "facilities management" from the responsibilities proposed to be transferred to the OIEP Director in Sec. 1125(b)(1).

School Facilities Issues

We have been strongly committed to ensuring that new school facilities constructed at Choctaw in recent years will remain sound for as long as possible to serve our students in a safe environment. Adequate formula funding for everyday upkeep of schools is critical to this effort. Yet for the past decade, Facilities Operations and Maintenance funding has been so insufficient that most of the O&M funds received have gone toward paying basic utility bills, leaving little or no funds for basic maintenance. We support the following aspects of S. 211 that seek to mitigate the impacts of these shortfalls:

• Forward Funding of O&M. We strongly support language in S. 211 intended to authorize "forward funding" the school Operations and Maintenance accounts. We

note, however, that in adding this language, the bill drafters have inadvertently deleted language in the existing law that authorizes forward funding of other school operations accounts. We believe the deletion of existing law was a mistake. We ask the Committee to restore the existing statutory language with a revision to expressly authorize forward funding of facilities O&M funds.

• Halting Use of O&M Funds for OIEP Personnel Costs. We heartily support the language in Sec. 1124(f)(2) of S. 211 that would stop the BIA practice of diverting scarce facilities O&M program funds to pay for the salaries of OIEP management personnel that should be supported by other parts of the BIA budget. Sec. 1124(f) would require BIA to distribute to the schools all the funds Congress appropriates for facilities O&M unless a school expressly authorizes any part of its allotment to be withheld by the BIA.

This provision is in accord with a directive issued to BIA by the Senate Appropriations Committee in its report on the Fiscal Year 1996 Interior Appropriations Act. There, the Committee ordered BIA to cease using education O&M program funds to pay for BIA personnel costs. Since OIEP has nonetheless continued to divert O&M funds for personnel salaries, it is necessary to now expressly prohibit this practice with statutory language.

• National Survey of Facilities Conditions. The proposed addition to Sec. 1124, through which the General Accounting Office would survey the conditions of all schools, is a very constructive first step toward developing a long-needed data base of education facilities deficiencies for the BIA school system. The Choctaw Tribe has worked unceasingly to identify our facility deficiencies and to replace the old, unsafe schools on our reservation.

We would encourage the Committee to consider adding to this survey an element that would identify fundamental educational program functional spaces that do not exist at many schools but are needed for a complete educational program, such as a library, gymnasium, etc. With this addition, the resulting data-base would be complete from a structural/safety perspective as well as from an educational program perspective.

Increase amount of first payment to Grant schools.

We understand that the Committee has received considerable input from tribal school boards and OIEP as to the size of the first annual payment to Grant schools under Sec. 5208 of the TCSA. At present, grant schools receive an initial payment of 50% of the prior year's grant amount, while BIA-operated schools receive 85% as their first payment. We are aware of no rational reason for this disparity.

We support the tribal school boards who ask that these payment rates be equalized so that all schools receive as their first payment 85% of the amount provided in the prior year. This will aid in budget planning, and will also enable grant schools to earn additional interest on the first payment funds until they are needed to meet current operational expenses. This interest earning potential can help our schools make up -- in even a small way -- for the chronic funding shortfalls we experience in ISEF, transportation and Administrative Cost Grant programs.

OIEP apparently objects to an 85% first payment for grantees, as it believes a few schools could be overpaid at that rate if they experience a dramatic drop in enrollment or in transportation mileage from one year to the next. S. 211 has taken care of that possibility by requiring that any overpayment be returned to OIEP for redistribution throughout the system.

The Committee should consider placing a rational threshold limit on the payback requirement, however. If the amount of the overpayment is small, it would not be cost-effective for OIEP to obtain a refund for redistribution to all schools. The value of the administrative time spent on such an effort could be staggeringly out of line with the amount refunded. *For example, if a school is overpaid by $5,000 for ISEF, the amount to be re-distributed to all schools would amount to* ***less than 6¢*** *per Weighted Student Unit (WSU)* ! We believe that even OIEP would agree that this would not be a worthwhile effort.

School Board Training.

S. 211 calls for each new school board member of a "local school board" to receive 40 hours of training within the first 12 months of assuming a position on the school board. If this provision is intended to apply to new board members of tribally-operated schools, we request an amendment to exempt from the training requirement the members of a tribal governing body where the governing body acts in the capacity of a school board.

On our reservation the Tribal Council provides executive direction and policy-making for all Tribal affairs, including the Choctaw schools. On some other reservations, by contrast, tribes have authorized one or more local community school boards to contract or grant directly with BIA for school operations and that board is the school's governing body.

The MBCI Tribal Council has far more duties than school operations that demand the time and attention of its members. It would be a hardship to require newly-elected Councilpeople to attend training courses on school operations matters, particularly if time away to attend training would interfere with their other governmental responsibilities.

Furthermore, we believe it is inappropriate for a federal law to require the elected members of a governmental legislature to obtain training on specific topics. We are aware of no other federal law which would impose such a requirement on elected members of a tribal governing body or on a legislative body such as a State Legislature.

The MBCI Tribal Council has created and funds a Tribal Department of Education, staffed by experienced professionals in the field of education administration, to operate the education programs offered on our reservation. While this Department is under the overall supervision of the Tribal Council, the day-to-day operational affairs for the eight Choctaw elementary and secondary schools funded by the BIA are conducted by officials of this Department. Thus, our Tribe has developed its own

unique system to assure compliance with P.L. 95-561, P.L. 100-297, the Single Audit Act and other laws applicable to tribally-operated BIA-funded schools.

We respectfully request that the following sentence be added at the end of Sec. 1126(c)(2)(B) of S. 211:

"This training requirement shall not apply to a tribal governing body that serves in the capacity of a school board."

Performance Accountability.

ESEA reauthorization proposals under consideration by the Committee on Health, Education, Labor and Pensions (HELP) and soon to be debated by the Senate would require periodic testing of students in order to measure the performance of their schools. While MBCI does not object in principle to student testing, we are concerned about the test instruments that may be used to measure the performance of our children. Specifically, those instruments must be must be relevant to the environment in which our students live in order for achievement to be fairly evaluated.

Most mainstream standardized testing devices are not capable of measuring the achievement levels of Indian children from culturally-diverse environments. When inappropriate tests are administered, our students appear to be under-achievers and our educational programs appear deficient. Neither of these apparent conclusions is accurate.

We, therefore, ask the Members of this Committee -- who are most familiar with the cultural diversity that exists throughout Indian Country -- to assure that Indian students and schools are not victimized by inappropriate testing devices and are not penalized with loss of federal support for not "measuring up." Our school system already suffers from inadequate funding; we can ill afford to lose the supplemental dollars that flow to our schools through the Title I compensatory education program. It would be both unfair and counter-productive to place those funds at risk by the imposition of an inappropriate performance measure.

If the testing requirement is made applicable to the BIA system schools, please insist that adequate funds are provided to develop test instruments appropriate for the culturally-diverse Indian children we educate. Such test instruments must be developed by educators knowledgeable about tribal cultures and lifestyles. One test device for all Indian children will not suffice, of course, as BIA schools serve students from more than 70 culturally and linguistically diverse tribes.

The Mississippi Band of Choctaw Indians thanks you for your ongoing commitment to high-quality, tribally-controlled Indian education, and respectfully requests your consideration of these views on the pending legislation.

Association of Navajo Community Controlled School Boards, Inc.

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TESTIMONY OF LORENA ZAH BAHE, EXECUTIVE DIRECTOR
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PRESENTED TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING
S. 211, THE NATIVE AMERICAN EDUCATION IMPROVEMENT ACT OF 2001

MARCH 14, 2001

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Richard T. Begay
Laraine A. Lee
Marie Brady

Chairman Campbell and Members of the Committee,

I am very grateful for this opportunity to appear before you on behalf of the Association of Navajo Community Controlled School Boards (ANCCSB) to discuss our views on S. 211, the Native American Education Improvement Act of 2001. As an association of 16 contract and grant schools located on the Navajo Reservation, ANCCSB brings to this process the unique perspective of local school boards that are responsible for providing all elementary and secondary educational services to Indian children on the largest reservation in the country. BIA-funded schools are a vital part of the education system on the Navajo Reservation -- 65 of the 185 schools in the BIA-funded school system are at Navajo. 36 of these schools are locally operated grant schools and 29 are BIA operated.

As the boards charged with operating BIA contract and grant schools, we are the ones who see the day-to-day impacts of national legislative choices on our children's direct quality of education. We are the ones who must make the difficult, dollar-by-dollar choices to cut into education program funding when our transportation dollars are inadequate to keep our school buses fueled and running, or our administrative dollars are insufficient to support required fiscal controls. We are the ones who--despite these difficulties--gladly give our time and energy to serve on tribally operated school boards because we believe in our kids, we believe in our tribe, and we believe strongly that local control of school programs is a critical opportunity to ensure the well being of both.

We are very grateful for the support we receive from this Committee in our efforts to maintain effective tribally controlled education programs for our kids. We look forward to working with you to ensure that what works well within the BIA-funded school system is supported and expanded in this reauthorization process, and that what is not working in this system is addressed thoughtfully and thoroughly in the best interests of Indian children.

1. Codifying the education trust responsibility

One of the key characteristics of the BIA school system is that it gives Indian tribes the opportunity to have direct, hands-on involvement in the education of their children. The Indian Self-Determination Act, passed in 1975, and the Tribally Controlled Schools Act, passed in 1988, have made this possible. Today, approximately two-thirds of all BIA-funded schools are operated by tribal school boards through contracts and grants.

But Public Law 95-561, enacted in 1978 to set out directives to the BIA regarding school operations, has never had a statement of congressional findings or purposes. S. 211 would cure this omission. We strongly support the bill language that recognizes "the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people includes the education of Indian children" and states the legislation's goal of meeting "the unique educational and cultural needs of these children."

2. Authorizing language regarding funding issues

In considering what our member school boards need most in order to provide the kind of creative, comprehensive education necessary to ensure that our kids flourish, we come back time and again to the issue of funding. *All of us in this room understand that even the most fool-proof curriculum is of little value if you cannot afford to pay qualified teachers to present it, and even the most creative and inspiring teachers are helpless to impact a child who cannot get to class because the school bus is not running.*

While we recognize that the annual funding decisions that directly impact our schools are made by appropriations committees, we believe that your Committee can play a key role in stabilizing school funding through language in authorizing measures such as S. 211, as well as by making it your practice to urge greater attention for BIA education programs in the annual appropriations process. Our schools have nowhere else to turn for this funding but to Congress. Ours is a FEDERAL school system. Perhaps you are tired of hearing us repeat our funding requests year after year. Certainly we wish we did not have to continually ask for your help. S. 211 presents an opportunity for us all to work together to cure some of the system's chronic problems. To this end we offer the following comments:

GAO Study on Adequacy of Funds and Formulas (Sec. 1121(k)). We are very pleased that S. 211 would require the General Accounting Office to study the adequacy of funds supplied to BIA-funded schools, requiring that circumstances such as "isolation, limited English proficiency of Indian students, the costs of educating disabled Indian students in isolated settings, and other factors that may disproportionately increase per-pupil costs" be taken into account. There has never been an easy "apples to apples" way to compare BIA funding with school funding in public schools and the Department of Defense school system, as these systems are all funded in different ways and function under very different circumstances. We hope that this study will give Congress the information they need to do right by BIA-funded schools in the annual appropriations process.

Administrative Cost Grants (Sec. 1127). Tribally-operated BIA schools are facing a crisis in their administrative budgets, operating at *less than 80%* of the funding necessary for prudent management of a school. These schools receive their administrative funding through Administrative Cost Grants, a formula-based method created by Congress to calculate the amount of funds that should be provided for the administrative and indirect cost expenses incurred in the operation of BIA school programs -- similar to "contract support" costs provided to non-school contractors. The Administrative Cost Grant formula was designed as a compromise, a minimum calculation of the administrative costs necessary for prudent management of tribally operated schools. When 100 percent of these costs are not funded, our schools are set up for failure.

The impacts of these shortfalls are far from abstract. Insufficient AC Grant funding jeopardizes the ability of tribally-operated schools to maintain the internal controls needed for prudent fiscal management. If this trend continues, we fear that there will be a sharp increase in fiscal failure among tribally-operated schools, with many having no choice but to revert back to federal control. This undermines the fundamental principle of tribal self-determination in an area where we can least afford to give up local control.

Our member schools have been forced to make reductions-in-force that cost them vital, well-trained administrative staff, forcing the schools to carry out 100% of their administrative tasks with far less than 100% of the personnel and resources needed to perform them. Not surprisingly, many schools have been unable to find experienced staff willing to come to work in their remote locations at reduced salaries. Some schools have had to convert their administrative staff to a 10-month employment year, leaving them ill-prepared to close out the administrative work of the previous school year and to prepare for the coming school year and annual audit.

To defuse this mounting crisis, we propose two changes to the authorizing statute in order to assure that congressional intent is met with regard to administrative cost funding:

1) Stabilize funding for Administrative Cost Grants by deleting the "Subject to the availability of appropriated funds" language that appears on lines 24-25 of page 63 of S. 211, and by persuading the appropriations committees to remove the language that for the past several years has "capped" AC Grant funding at less than 100% of the formula-directed amount.

2) Add language to create a separate BIA budget category to fund the first year of AC Grants for schools who newly convert to tribal operation, and direct that the AC Grant funds for these new conversions automatically roll into the "regular" AC Grant appropriation in the following year. For the past several years AC Grant funding has been frozen at or very near the same inadequate level. Thus when new schools convert, their AC Grant funding eligibility effectively reduces the funding available to the existing tribal schools.

Technical clarification in TCSA regarding administrative costs of Grant Schools. We ask you to make a technical correction in the TCSA portion of the bill regarding the amount which a Grant school may spend for administrative costs. Our

requested clarification is intended to specify that the amount produced by the formula in Sec. 1127 is the amount a Grant school may spend for its administrative costs. Suggested language follows:

> "Funds made available through any grant provided under this part may not be expended for administrative costs (as defined in section 1127(a) of the Education Amendments of 1978) in excess of the amount generated for such costs under **the formula established in** section 1127 of such Act."

Operations and Maintenance (O&M) Funding Distributions. Adequate formula funding for everyday upkeep of schools is a critical element in assuring that schools will last longer and remain safe for students. Yet for the past decade, Facilities Operations and Maintenance funding has been so insufficient that most of our funds go toward paying basic utility bills, leaving us little or no funds for basic maintenance. We support the following aspects of S. 211 that seek to mitigate the impacts of these shortfalls.

Forward Funding of O&M. We strongly support language included in S. 211 that would "forward fund" the school Operations and Maintenance accounts. We note, however, that in adding this language, the bill drafters have inadvertently deleted language in the existing law that authorizes forward funding of other school operations accounts. We believe the deletion of existing law was a mistake. *We ask you to restore the existing statutory language, with a revision to expressly authorize forward funding of facilities O&M money.*

BIA "Skimming" Prohibition. We applaud language contained in S. 211 that would stop the BIA practice of "skimming" scarce facilities O&M funds and diverting them to bureaucratic administrative or other costs that should be covered by other parts of the BIA budget. The S. 211 provision would require BIA to distribute to the schools all the funds Congress appropriates for facilities O&M unless a school expressly authorizes any part of its allotment of O&M funds to be withheld by BIA. *We also ask that your committee add a provision to generally prohibit BIA from imposing any pre-condition on a contract or grant school before the school's O&M funds will be released.*

Facilities Improvement and Repair (FI&R) and Construction Survey. We are pleased that the Committee bill directs a survey of all school facilities in the BIA system as a first step toward considering alternative methods for distributing funds appropriated for school replacement construction and school improvement and repair projects. This is a very timely directive that will go hand in hand with the new Administration's efforts to increase funding to address the dismal condition of many BIA-funded schools.

We note one needed change to this provision, however. Both the GAO and Negotiated Rulemaking parts of the provision are directed at cataloguing the condition of existing facilities and renovation/replacement needs, only. The provision does not include surveying to identify fundamental educational program functional spaces that do not exist at many schools but are needed for a complete educational program, such as a library, gymnasium, etc. *This survey objective should be added to both the GAO and Negotiated Rulemaking parts of Section 1124(a).*

Reconcile two provisions which direct the percentage of funds supplied to BIA-operated schools and tribally-operated schools. S. 211 would continue to allow BIA to make an 85% first payment to *BIA-operated* schools each year (Sec. 1129 of the P.L. 95-561 provisions of the bill), but would allow *tribally-operated* schools to receive only an 80% first payment (Sec. 5208 of Tribally Controlled Schools Act provisions). There is no justification for this disparity. *We ask that the first payment to Grant schools be changed to 85 percent of the school's previous year funding to match the percentage supplied to the BIA's own schools*.

Applicability of Prompt Payment Act to TCSA Grant Payments. In 1994, Congress made the Prompt Payment Act applicable to payments to tribes under the Indian Self-Determination Act and to the annual payments to Grant schools under the TCSA. This was needed to help abate the "slow pay" habits of the BIA and IHS which caused great cash flow problems for tribes and tribal organizations. We ask that the TCSA be revised to assure that the PPA applies to all payments to be made under a TCSA grant, including construction grant payments (as is the case with ISDA contracts). To accomplish this, revise as follows:

> "The provisions of chapter 39 of title 31, United States Code, shall apply to the payments required to be made under ~~paragraphs (1), (2), and (3)~~ a grant issued pursuant to this part."

3. Other Improvements to the BIA Education System

Negotiated Rulemaking. We strongly support language in S. 211 that would require that BIA elementary and secondary education regulations be prepared by a Negotiated Rulemaking Committee comprised of BIA, tribal, and tribal school board officials using a consensus-based process. The S. 211 provision is modeled on a similar provision crafted by this Committee in 1994 for development of Indian Self-Determination Act regulations. The product produced by the ISDA Negotiated Rulemaking Committee has been a stunning success.

The bill's Negotiated Rulemaking provision allows only 18 months for completion of the regulations. This provides inadequate time to complete all the steps required by the provision, and is inconsistent with Sec. 1121 which allows the BIA 24 months to revise its academic standards regulations. *We recommend increasing the time frame for negotiated rulemaking to 24 months to ensure consistent, realistic timelines within the bill.*

School Boundaries. We support Sec. 1123 of S. 211 that endorses a tribe's right to establish school attendance boundaries for its own reservation. We also support the language that would prohibit the BIA from denying funding to any school for an eligible Indian student who may live outside of that school's attendance area.

Contracting of Area/Agency Education positions. We support the S. 211 provision that would expressly allow ISDA contracting of Area or Agency education functions "unless determined by the Secretary to be inherently Federal functions." The measure includes a definition of "inherently federal functions." *We urge you to*

expressly reference this definition of "inherently federal functions" in the contracting provision.

School Board Training. We support the bill sponsors' decision to delete the current law's cumbersome language regarding distribution of school board training funds. The approach of S. 211 is to provide training funds to the school boards and allow them to select the training most appropriate for their members, especially new members, who under this provision would be required to obtain 40 hours of training within the first year after assuming a board seat. This approach will give school boards the flexibility to tailor the training sessions to fit their needs, and to form consortia for the economical purchase of training services.

Delete "Facilities Management" From Expanded OIEP Director Duties. The amendments the bill would make to P.L. 95-561 would expand the responsibilities of the Director of the Office of Indian Education Programs in Sec. 1125(b) (1) to include "*facilities management, contracting, procurement, and finance personnel*". *We recommend dropping the reference to "facilities management" personnel to ensure that the Office of Facilities Management and Construction (OFMC) is not transferred to OIEP.*

OFMC, staffed by architects, engineers, construction managers, safety inspectors, etc., either directly performs construction projects for the entire Bureau, or works with tribes who perform these projects under contract or grant. Their work is not limited to school facilities projects.

The job of OFMC is to identify and cure building health and safety problems and to repair and construct facilities, a job that should be done by architects, engineers and personnel specially trained in construction disciplines. Education program personnel do not possess expertise in architecture or civil engineering, and are not trained to supervise personnel in those disciplines. OFMC is a centralized source for construction expertise for the whole BIA -- for both education and non-education construction. It does not make sense nor would it be cost-effective or efficient to move part of this Office to OIEP (which, frankly, has its hands full with education program matters).

School Closings. We support the provision contained in S. 211 which would allow a school whose facility is closed because of a health/safety hazard to continue to receive its regular program funding and authorize the use of that funding to abate the hazard. We also support the language requiring that a BIA health and safety officer and an individual designated by the tribe must find that an immediate health and safety hazard exists before shutting down a school.

Annual Audit Reports. *We recommend that Sec. 5207 of the Tribally Controlled Schools Act section of S. 211 be revised to require an annual (rather than biannual) financial audit.* This is the frequency required by the Single Audit Act to which all TCSA grant schools are subject.

We are also concerned about the part of Sec. 5707 that requires TCSA grant schools to conduct a "*biannual audit of procurement of personal property*". The meaning and intent of this provision is unclear as it gives no indication of what kind of

report the grantee is expected to produce. Plus, its reach is far too broad. As written, it would require the so-called "procurement audit" to cover all purchases a school might make – including the purchase of pencils and paper. We suggest the Committee consult with the BIA officials who suggested this provision to explain its purpose. *If the provision cannot be made more descriptive and rational in scope, it should be dropped.*

4. Related Concerns Contained in the ESEA Reauthorization Measure

The Senate Committee on Health, Education, Labor and Pensions (HELP) is considering amendments to the non-BIA titles of the Elementary and Secondary Education Act. Many provisions of this larger bill provide significant funding sources to the BIA school system. Thus, we seek the SCIA's advocacy with your colleagues on the HELP Committee to assure that the Indian students in our school system are eligible for all programs authorized by that larger bill and for the funding appropriated pursuant to it.

We itemize below several specific requests:

- ***Title I allocation***. Please ensure that the 1% allocation of ESEA Title I funds provided to the Secretary of the Interior is preserved.

- ***Education Technology***. Establish an express allocation for Education Technology for the BIA school system. Under current law, the amount of Ed Tech funding provided to the BIA is so small that only about a dozen grants can be distributed in our school system each year. Unlike public schools, the BIA system schools receive no Ed Tech funding from the states; we must rely exclusively on federal funds for this purpose. Technology is no longer an option in schools; it is a necessity. We understand that four years ago, experts estimated that $500-$600 per student per year was needed to supply schools' ed tech needs for hardware, software, training, technology maintenance, and transmission costs.

  Please advocate for an express Education Technology allocation at this funding level for the federal government's BIA school system.

- ***Testing for Accountability***. President Bush has proposed that students be tested on a regular basis as part of his education accountability objective. Schools who do not measure up risk losing their ESEA funds. The HELP Committee is working on a testing provision for its bill, and is expected to authorize some $400 million to help states cover the costs of test development, with testing to begin in 4 years.

  If these accountability requirements will apply to the BIA-funded school system, we are fearful that our schools will risk losing their Title I funds if they are found not to "measure up". One of our chronic problems has been that standardized testing devices are not culturally-, socially- and linguistically-appropriate for Indian children from diverse tribal cultures. The challenge of developing testing devices for children from these diverse cultures is even greater than the significant challenges that states will face in addressing these

testing requirements. Furthermore, the BIA system's schools are among the most underfunded schools in the United States, which of course makes it difficult for these schools to recruit and retain experienced educators.

We need your help to ensure that any accountability triggers applicable to the BIA school system DO NOT result in draconian outcomes such as losing Title I funding -- especially where the testing devices used are not appropriate to the students being tested, and the funding at issue is so vital to our ability to hire qualified staff.

To the extent testing devices are to be created, those administered to BIA system students must be rational and relevant to the society in which they live so that learning is adequately and fairly tested. Please assure that a reasonable amount of funding is supplied to the Secretary of the Interior for development of appropriate evaluation devices for our Indian schools *which serve over 70 distinct tribal cultures*. In this area "one size does not fit all" children, and does not fit all *Indian* children. If we are to be held accountable for our educational performance, *please assure that the method for evaluating our performance is fair and appropriate for the tribal children being tested, and does not further punish these children by drastically cutting their education dollars if progress does not meet the prescribed goals*.

5. Conclusion

We applaud the Committee for your excellent efforts to address the needs of tribally operated schools in the scope of this bill. We hope you will consider our comments as you move forward in this process.

We want to commend your staff for the outreach efforts they have made to obtain input from tribal schools over the past two years to produce a constructive and workable BIA education amendments bill. At your staff's invitation, our attorney provided several substantive and technical suggestions for overall improvement of S. 211. We hope the Committee will seriously consider these suggestions. We have a joint responsibility to make S. 211 a bill you can be proud to sponsor!

We sincerely thank each member of this Committee for your commitment to enhancing educational opportunities for the 50,000 Indian children in the BIA-funded school system.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Support for funding in FY 2002 Federal Appropriations for increased Indian School Equalization Program and Facilities funding for BIA schools serving the Tohono O'odham Nation)

RESOLUTION NO. 01-082

WHEREAS, there is a continuing lack of funds to accomplish preventive maintenance at schools; and

WHEREAS, improvements needed at school facilities are related to health and safety, security, and increased educational opportunities ; and

WHEREAS, the schools experience belated funding and unfunded needs for maintenance and repair of quarters at school locations; and

WHEREAS, curriculum alignment to meet State standards within the Bureau operated schools and with the local public schools will require a large outlay of money to provide appropriate textbooks and supporting materials; and

WHEREAS, key positions needed at each school to provide quality educational programs have not been filled because the Indian School Equalization Program (ISEP) does not provide enough funds to pay the salary costs; and

WHEREAS, the Bureau of Indian Affairs Office of Indian Education Programs on the Tohono O'odham Nation has identified funding needs totaling $13,775,000 for facilities upgrading and maintenance, and $2,345,200 for improving education services in the Bureau operated schools.

NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it hereby calls upon Congress and the Administration to set funding for Facility Management and Indian School Equalization Programs on the Tohono O'odham Nation at a level that includes funding for items described in the supporting documents; and that it provide quarters collections in a timely manner to Education programs.

BE IT FURTHER RESOLVED that the Appropriations Committee is hereby authorized and directed to bring this request to the appropriate Agencies, Members and Committees of Congress.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 28TH, Day of FEBRUARY, 2001 at a meeting at which a quorum was present with a vote of 1,999.6 FOR; -0- AGAINST; -0- NOT VOTING; and 165.9 [03] ABSENT, pursuant to the powers vested in the Council by Section 1 (l) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

RESOLUTION NO. 01-082
(Support for funding in FY 2002 Federal Appropriations for increased Indian School Equalization Program and Facilities funding for BIA schools serving the Tohono O'odham Nation)
Page 2 of 3

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

1st day of March, 20 01

ATTEST:

Julianna Saraficio, Acting Legislative Secretary

28th day of February, 20 01.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 1st day of March, 20 01 at 2:08 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

[X] **APPROVED** **on the 1 day of March, 20 01**

[ ] **DISAPPROVED** **at 3:17 o'clock, P.M.**

EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

RESOLUTION NO. 01-082
(Support for funding in FY 2002 Federal Appropriations for increased Indian School Equalization Program and Facilities funding for BIA schools serving the Tohono O'odham Nation)
Page 2 of 3

TOHONO O'ODHAM LEGISLATIVE COUNCIL

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Julianna Saraficio, Acting Legislative Secretary

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TOHONO O'ODHAM NATION

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(Support for funding in FY 2002 Federal Appropriations for increased Indian School Equalization Program and Facilities funding for BIA schools serving the Tohono O'odham Nation)
Page 3 of 3

Returned to the Legislative Secretary on the 1st **day of** March, **20** 01, **at** 3:44 **o'clock,** P **.M.**

Julianna Saraficio, Acting Legislative Secretary

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Papago Indian Agency
Office of Indian Education Programs
Sells, Arizona 85634

IN REPLY REFER TO:

BIA, OIEP, Papago Agency
HC01 Box 8600
Sells, AZ 85634

February 20, 2001

Memorandum

TO: Appropriations Committee, Tohono O'odham Nation

FROM: Acting Superintendent for Education

SUBJECT: NEEDS AT BIA SCHOOLS ON TOHONO O'ODHAM NATION

Items listed below are needs of the Bureau of Indian Affairs schools on the Tohono O'odham Nation. These are underfunded, or unfunded, by the Indian School Equalization Program (ISEP) through the Office of Indian Education Programs and/or the Facilities Management Program of the Bureau of Indian Affairs. These were proposed by the Principals at the schools.

As facilities maintenance and repairs needs continue to be unmet, the condition of our schools deteriorates. This directly affects the quality of education provided our students, and sometimes affects their health and safety.

When ISEP funding is insufficient to meet the needs of the basic education program, supplemental program money must be used to fund positions. This means that enrichment programs are curtailed and/or positions are not filled. It also means that administrative duties are added to what are already full time positions.

AREA OF NEED	ESTIMATED COST
Facilities	**12,275,000**

--Quarters Funding generated by rental units at school locations continues to be channeled to the Indian Education Programs at the Papago Agency instead of directly to the Superintendent for the Agency Office of Indian Education Programs. This creates serious delays in accessing the funds for quarters maintenance and repair at the school locations. It also results in inexact distribution of those funds.

--Maintenance Costs need to be funded at 100% of the need. We currently are receiving approximately 78% of the identified need. Because of this, maintenance staff is inadequate and routine preventive maintenance has been seriously neglected. Estimate an additional **$500,000 yearly**.

AREA OF NEED	ESTIMATED COST
--Funding for Minor Improvement and Repair Projects, and Facilities Improvement and Repair Projects without waiting five to ten years for a project to be funded ("backlog"). Current items in this list are estimated to cost **$11,411,871**. Many of those items are included in the list below. That does not include items from the Safety Inspection last summer which identified many additional needs. --Painting inside classrooms at all 4 schools and the outside of the school buildings --Fencing for Playground areas to enhance security and safety --Security Systems for the Buildings. This has become necessary because of break-ins and vandalism. --Replace existing fire alarm panels, wiring, and horns at San Simon School as alarm does not sound in several building. -- Redo the finish on all building roofs at Tohono O'odham High School to keep leaks from floors and equipment. -- San Simon School also has one building needing roof repairs. --Seal walls of classroom building at Tohono O'odham High School. They absorb water and leak through into the classrooms damaging the electrical wiring and the interior walls. --Remove earth berms against buildings at San Simon School; install insulation and stucco, and repaint the walls. --Repair curbs on entry road at Tohono O'odham High School. They washed out during a flood two years ago and have not been replaced. --Resolve the status of the old dormitory building at Santa Rosa Boarding School that has been on the "excess" list for several years. It is unattractive and unsafe. --Air conditioning for all buildings will provide surroundings that promote health and safety in the hot summer months and increased opportunities for summer and year-round schooling activities. (Estimated at $50,000 for Santa Rosa Ranch School, $125,000 at San Simon, $125,000 at Tohono O'odham High) --Bus yard and building for routine bus maintenance to be located at the Tohono O'odham High School.	
Dorm/Cottages at Tohono O'odham High School	**1,500,000**
Diesel Tank at Santa Rosa Boarding School	**50,000**
Playground equipment for lower elementary grades at Santa Rosa Ranch School and San Simon School --Equipment @ $7100; Playground surface and installation @$50,000; Ramada and Shade area @ $58,000 X 2 schools	**230,200**
Textbooks for curriculum alignment at all 4 schools --$40 per text X 4 Elem. Subjects = $160 x1300 (1 clsrm + 1 stdnt text per subject)=$208,000 --Elem supporting materials @ $600 X 4 subjects X 8 grades X 3	**487,000**

AREA OF NEED	ESTIMATED COST
schools = $64,800 --High School $40 per text X 4 math, 4 Eng, 4 Soc Stdy, 3 Sci., 1 technology, 1 fine art = $680 X 300 stdnts = $204,000 --H.S. supporting materials @ $600 X 17 subject levels = $10,200.	
Positions not fully funded in current ISEP budgets --Counselors (2) = $180,000 --Librarians (3) = $150,000 --Reading Teachers (4) = $180,000 --Substance Abuse Counselors (2) = $88,000 --Education Aides (28) = $420,000 --Assistant Principals (2) = $210,000 --Assistant Superintendent (1) = $80,000 --H.S. O'odham Language/Culture Teacher (1) = $45,000 --School Nurses (3) = $195,000 + Supplies at $20,000	**$1,578,000**
TOTAL	**$ 16,120,200**

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Papago Indian Agency
Office of Indian Education Programs
Sells, Arizona 85634

IN REPLY REFER TO:

Agency Superintendent for Education
BIA, OIEP, Papago Agency
H C 01 Box 8600
Sells, AZ 85634

Telephone: (520) 361-3510
FAX: (520) 361-3514

December 14, 2000

Memorandum

To: HRDC Committee, Tohono Oódham Nation

From: Superintendent for Education, Papago Agency

Subject: Facilities Management Progress Report

OIEP-Papago Agency Facilities Management Program:

The Office of Indian Education Programs – Papago Agency manages the Facilities Management Program from the Santa Rosa Boarding School campus with work stations at Tohono Oódham High School, Santa Rosa Boarding School, Santa Rosa Ranch School, and San Simon Elementary School. The principals at each work station are in charge of the Facilities Management Programs at their respective schools.

Education's Facilities Management programs include Operations, Maintenance, Quarters,100-297 Construction Grants, and P.L. 93-638 Construction. MI&R, FI&R, and other Facilities Management programs are coordinated with the Office of Indian Education Programs – Central Office West, Office of Facilities Management and Construction, Albuquerque; Western Region Facilities Management Office, Phoenix; and Papago Agency.

Operations :

- Program Administration
- Leave
- Utilities (Electrical, heating, water and sewer)
- Communications
- GSA Vehicle Rental
- Grounds Scheduled Maintenance (Lawn mowing, flower bed care, trimming)
- Guard Services
- Pest Control

- Refuse Disposal
- Work Supervision
- Expendable Equipment

Maintenance:

- Preventive Maintenance
- Unscheduled Maintenance
- Emergency Maintenance

Budget:

FY-2001 Education's Facilities Management Operations and Maintenance allocation for the four schools and agency is $1,572,764.00. Quarters reimbursement for the three schools is estimated for FY-2001 to be $100,000.00.

Staff:

Total Facilities Management staff: 25 employees

Highlights in FY-2000

- New fire alarm system installed at Santa Rosa Ranch School.
- Repaired damaged cafeteria roof at Santa Rosa Ranch School.
- New fire alarm system installed at Tohono Oódham High School.
- New fire alarm system installed at Santa Rosa Boarding School Dormitory.
- New fire exit doors installed at Santa Rosa Boarding School.
- Santa Rosa Boarding School Dormitory refurbished.
- New carpet installed at Santa Rosa Boarding School.
- Boys restroom at Santa Rosa Boarding School repaired.
- Sprinkler system and grass planted on football, baseball, and softball fields at Tohono Oódham High School.
- Library facility opened at Santa Rosa Ranch School.
- Playground equipment painted at San Simon School, Santa Rosa Boarding School, and ~~Santa Rosa Ranch School~~ by Tech Prep Class from Tohono Oódham High School.
- New OIEP-Papago Agency offices at Santa Rosa Boarding School created and painted by Tech Prep Class and Facilities Management.
- Quarters refurbished at Tohono Oódham High School by Tech Prep Class.
- Alternative Education classroom established at Santa Rosa Boarding School.
- New carpet installed at San Simon School.

- Safety flood lights installed at San Simon School.
- Interior of classrooms and administration building repainted at San Simon School.
- Broken cafeteria doors at San Simon School replaced.
- Interior walls repaired and repainted in quarters at schools.
- Cabinets replaced in quarters at schools.
- Constructed new Jr/Sr. High School at Pyramid Lake Piaute Tribe (P.L. 100-297).

Projects In Progress in FY-2001

- Reroofing gymnasium at San Simon Elementary School.
- Reroofing Facilities Management building at San Simon Elementary School.
- Reroofing Facilities Management building at Santa Rosa Boarding School
- Removing asbestos from dormitory at Santa Rosa Boarding School.
- Removal of burm at San Simon School gymnasium and replacing area with stucco
- Requested funding to repair roof at Tohono Oódham High School. Roof on cafeteria to be repaired.
- Requested funding to install air conditioning system at Tohono Oódham High School, San Simon School and Santa Rosa Ranch School.
- Reorganized Facilities Management Program at Santa Rosa Ranch School.
- Refurbishing another wing at Santa Rosa Boarding School Dormitory.
- Establishing Facilities Management Information System Hub site at OIEP-Papago Agency and stations at the four schools.
- Providing training in Facilities Management programs for principals and facilities management staff
- Developed tentative budgets, Annual Work Plans, Building History Files and Preventive Maintenance Schedule.
- Established partnership with environmental agencies to build an energy efficient environmental laboratory building for the science department at Tohono O'odham High School.

Concerns:

- Funding for the Facilities Management Program is 67% of the total allocation generated by the schools.
- Increased utility costs. Additional Facilities Management funding requested for utility costs.
- Quarters Reimbursement funds needs to be transferred from Papago Agency to OIEP-Papago Agency to provide better services for employees in quarters.
- MI&R, FI&R and related Facilities Management Programs should be transferred from Papago Agency to OIEP-Papago Agency to improve services at the schools.
- Funding for Tech Prep class was not approved this school year. Funding for the Tech Program is being requested from other federal grants.

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The following information shows the funding for ISEP and Transportation for the last several years:

YEAR	ISEP WSU DOLLARS	MILEAGE $ PER MILE
1996-1997	$2,904	$1.60
1997-1998	$3,067	$1.8979
1998-1999	$3,190	$2.10
1999-2000	$3,390	$2.26
2000-2001	$3,531	$2.30

School Enrollment at ISEP Count during September:

YEAR	SANTA ROSA RANCH SCHOOL	SANTA ROSA BOARDING SCHOOL	SAN SIMON SCHOOL	TOHONO O'ODHAM HIGH SCHOOL
1997-1998	94	326	283	158
1998-1999	76	327	271	167
1999-2000	75	317	247	152
2000-2001	61	291	243	136

The lists on these pages were submitted by Karen Dawson to the Western Region Facility Management Office in December, 2000.

PAPAGO AGENCY - EDUCATION
MINOR IMPROVEMENT AND REPAIR PROJECT REQUESTS FOR 2000-2001 School Year (FY2001) **December, 2000**

These are listed by school location. Each school asked for many things; some are on the backlog, others are current safety issues.

SANTA ROSA RANCH SCHOOL H54E11

BLDG #	ITEM #	RANKING	PROJECT DESCRIPTION	ESTIMATED COST
201	#185 Safety Inspection 6/21/00	S1	Modify corridor between building to prevent birds roosting above the corridor. Construct ceiling over corridor and close off end of building.	$8,000.00
X01	#1 Backlog	S002-1	Replace chain link fence and missing fencing around playground equipment.	$3,000.00
205A & 205B	#207, 208, 209 #213, 214 Safety Inspection 6/21/00 Also Backlog	S1, S2, S1 S1, S1	Repair flooring and install classroom carpet and bathroom linoleum.	$10,854.00
202 201	#6 Backlog	M010-3	Replace electrical service and distribution system throughout building 202 Rewire cafeteria to accommodate multiple items plugged in at same time.	$5,000.00
All Buildings	Bldg 201 Line 6 Bldg 201A Line 2 In Backlog	M013-3 M007-3	Convert all buildings to Air Conditioning	$25,000.00
			SANTA ROSA RANCH SCHOOL -- TOTAL	$51,854.00

SANTA ROSA BOARDING SCHOOL H54E21

BLDG #	ITEM #	RANKING	PROJECT DESCRIPTION	ESTIMATED COST
			Complete repair or replacement of HVAC units at SRBS. Supplies & materials cost estimated at:	$16,000.00
459			Replace emergency exit door in Girls' West wing	$1,850.00
418			Replace entry doors and frames.	$42,000.00
418			Replace classroom sinks and base cabinets	$8,700.00
			SANTA ROSA BOARDING SCHOOL – TOTAL	$68,550.00

SAN SIMON SCHOOL H54E22

BLDG #	ITEM #	RANKING	PROJECT DESCRIPTION	ESTIMATED COST
624			Replace roof on these buildings. Leakage causes problems with lighting fixtures and walls.	$47,000.00
625				$8,600.00
626				$48,000.00
W01	#1, Backlog	S001-1	Install water treatment facilities at various locations throughout this site	$38,501.00
612			Replace Existing Fire Alarm Panel & Wiring and properly connect it with other building.	$62,000.00
613			Existing fire alarm does not sound in these buildings.	$7,300.00
622				$5,600.00
623				$5,800.00
624				$5,600.00
627				$7,680.00
611	Line #1, Backlog	E001-3	Remove Earth Berm, Install insulation and stucco and paint walls	$2,200.00
622	Line #1, Backlog	E001-3		12,081.00
			SAN SIMON SCHOOL – TOTAL	$250,362.00

TOHONO O'ODHAM HIGH SCHOOL H54E25

BLDG #	ITEM #	RANKING	PROJECT DESCRIPTION	ESTIMATED COST
801			Repair Cafeteria Roof and Install Air Conditioning Units	$80,000.00
800			Install Air Conditioning Units for all classrooms	$80,000.00
800			Replace Air Conditioning Unit over Library and Administrative Offices	$16,000.00
802			Repair Roof in entire building.	$55,000.00
800 801 803			Replace panic bars on all exit doors	$17,000.00
800			Replace carpet throughout builiding	$18,500.00
800			Water damage has caused the following needs: Seal south wall and repaint it Replace conduit & electrical boxes on south wall in all rooms Replace sheetrock in rooms after replace electrical conduit and boxes Replace window frames at end of 3 corridors on South wall of building	 $4,650.00 $2,800.00 $4,000.00 $6,900.00
803			Repair roof over stage (leaks)	$8,500.00
803			Seal South wall in gym (leaks)	$1,800.00
803			Replace curtains in gym	$16,000.00
803			Replace fluorescent lights in gym (36)	$4,680.00
801			Repair Dishwasher in School Kitchen	$3,200.00
801			Replace Ice Machine in School Kitchen	$2,800.00
803			Repair Refrigerator/Freezer in Concession Stand	$3,000.00
802			Repair Dust Collector in shops	$12,000.00
802			Ventilate and Install Firewall in Welding Cylinder room	$3,000.00
800 & 801 All Buildings			Paint interior walls (16 rooms, hallway and cafeteria) Paint all outside overhangs & beams	$10,200.00 $8,000.00
Grounds			Repair block walls Repair sprinkler and tree watering system (replace valve and plugged pipes)	$2,400.00 $4,000.00
800			Replace 15 classroom doors	$4,500.00
803			Replace shower heads in locker rooms	$4,800.00
803			Repair heater in Gym lobby area.	$1,200.00
803			Rewire/Repair emergency generator	$2,500.00
			TOHONO O'ODHAM HIGH SCHOOL – TOTAL	$377,430.00

BIA Papago Agency Schools Facilities

Responsibility for the Facilities Management Program at BIA Papago Agency schools was transferred to Papago Agency Office of Indian Education Programs in October, 1999. Papago Agency OIEP manages the program from the Santa Rosa Boarding School campus with work stations at Tohono O'odham High School, Santa Rosa Boarding School, Santa Rosa Ranch School, and San Simon Elementary School. The principals at each work station are in charge of the Facilities Management Programs at their respective schools.

Programs include:

- Operations and Maintenance, with funds provided to the Education Line Officer, and
- Quarters, with funds still apportioned through the Agency Superintendent and Facilities in Sells.
- Minor Improvement and Repair projects (from $1,000 to $100,000) and Facilities Improvement and Repair projects (over $100,000) are coordinated with the Office of Indian Education Programs—Central Office West, Office of Facilities Management and Construction in Albuquerque and the Western Region Facilities Management Office in Phoenix.

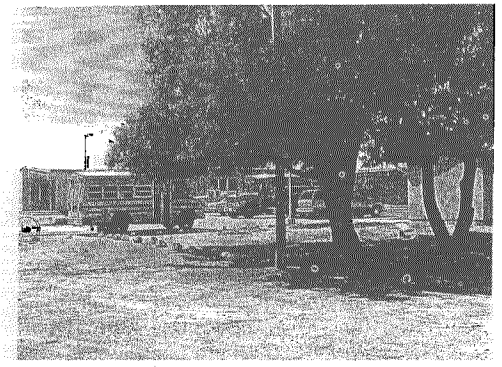
February, 2001

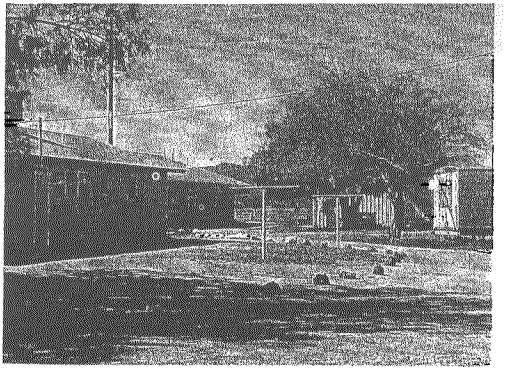
SANTA ROSA RANCH SCHOOL

Most repair work this year was accomplished by assigning the projects to facilities workers and using money from the Facilities Maintenance and Operations budget.

Unattractive area around school office was cleaned and organized to encourage parking in appropriate areas.

Painted rocks direct traffic and indicate areas where vehicle parking is permitted

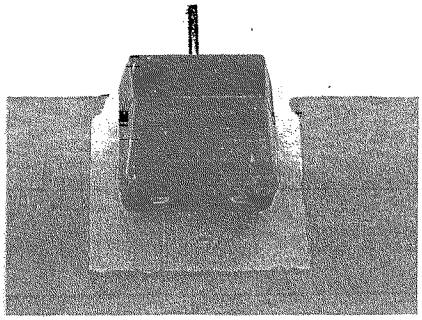


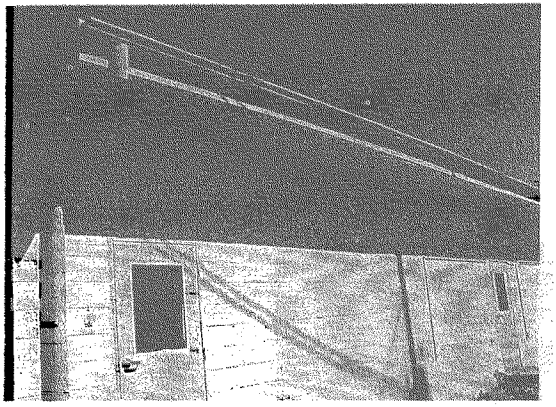


An additional project completed at Santa Rosa Ranch School was the opening of a library in what was previously the dormitory.

SANTA ROSA RANCH SCHOOL

Replaced missing light covers on outside of buildings.

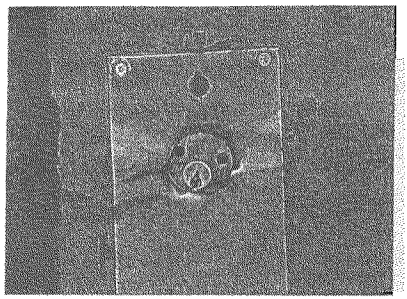




A damaged eave on the outside of the classroom building which has needed repair for several years was scheduled and completed during the first year after the Facilities transfer. This was funded as a Minor Improvement and Repair project.

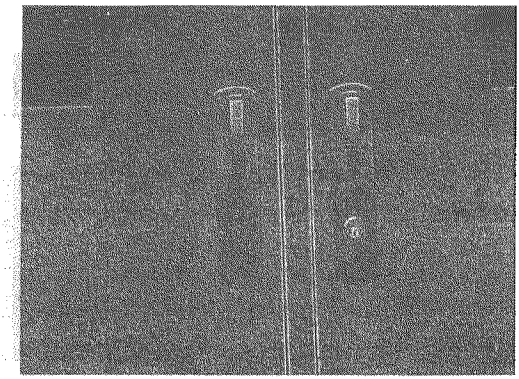
SANTA ROSA BOARDING SCHOOL

Improvements during the last fiscal year included replacing damaged outer doors on the middle school building with new doors with functional panic hardware and locks. This was accomplished using education funds since it was not funded by Facilities money but was considered a serious Health and Safety issue.



Additional projects completed at Santa Rosa Boarding School include:

- New carpet was installed in the Elementary building.
- Boys restroom in the Middle School building was repaired.
- Cabinets were replaced in some quarters; some garage doors were replaced.
- An Alternative Education Classroom was established.
- New OIEP-Papago Agency offices were created and painted by the Tech Prep Class and Facilities Management.



SANTA ROSA BOARDING SCHOOL

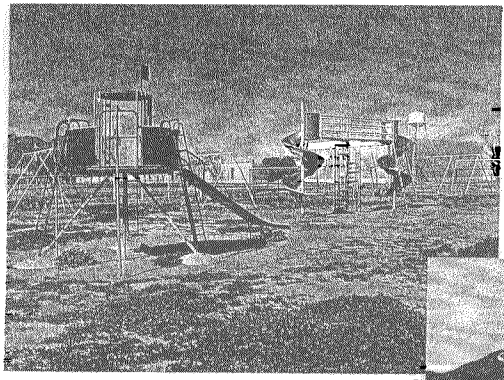
One of the goals when requesting that responsibility for Facilities at schools be turned over to BIA Education was to address areas of need at schools related to maintaining a safe and attractive environment for students and staff.

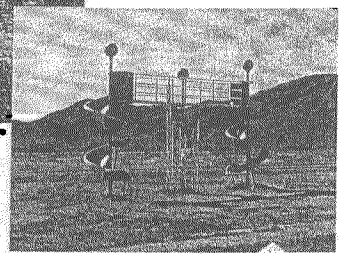
Removing tree stumps, replanting new desert dwelling trees, and spreading gravel over dusty areas around the classroom building are some of the first steps in this project.

Flowers were planted, and picnic tables, benches, and a barbeque were placed in the area between the dormitory wings.

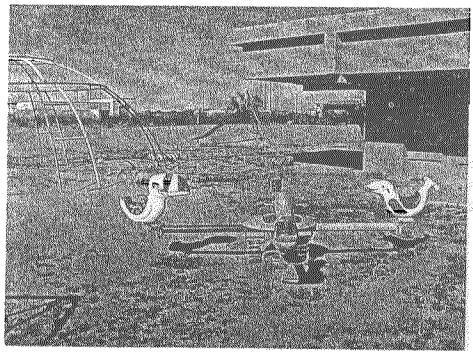
SANTA ROSA BOARDING SCHOOL
and SAN SIMON SCHOOL

Playground equipment painted by Tech Prep Class from Tohono O'odham High School.





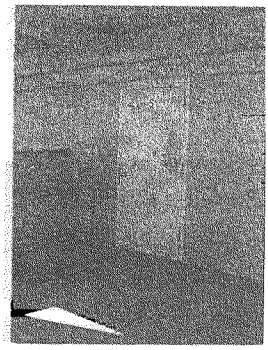
Santa Rosa Boarding School



San Simon School playground equipment that was dingy and unattractive was cleaned and repainted in bright colors.

SAN SIMON SCHOOL

Classroom doors were painted in colors coordinated with the building paint. This covered graffiti and long-term wear damage.

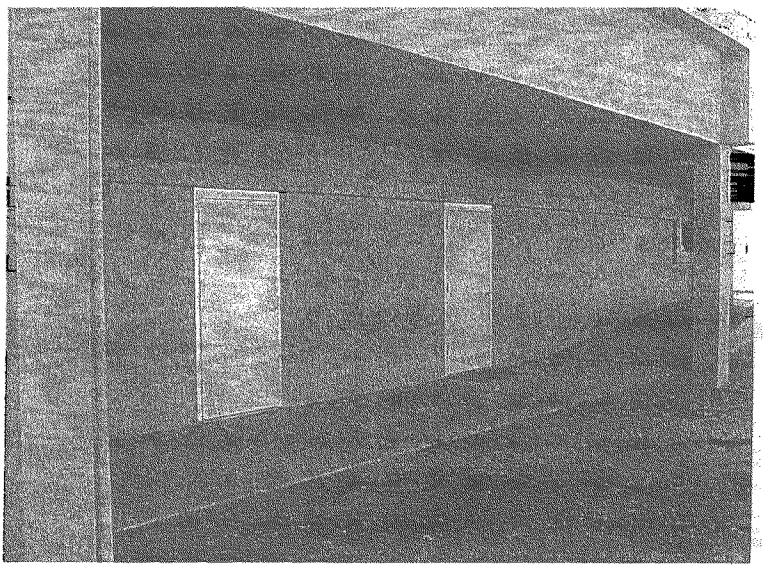


Before

Additional projects at San Simon School included:

- Installation of new carpet in several classrooms,
- Installing safety flood lights,
- Repainting the interior of the administration building and several classrooms,
- Broken cafeteria doors were replaced,
- Repairing interior walls and repainting in quarters

After

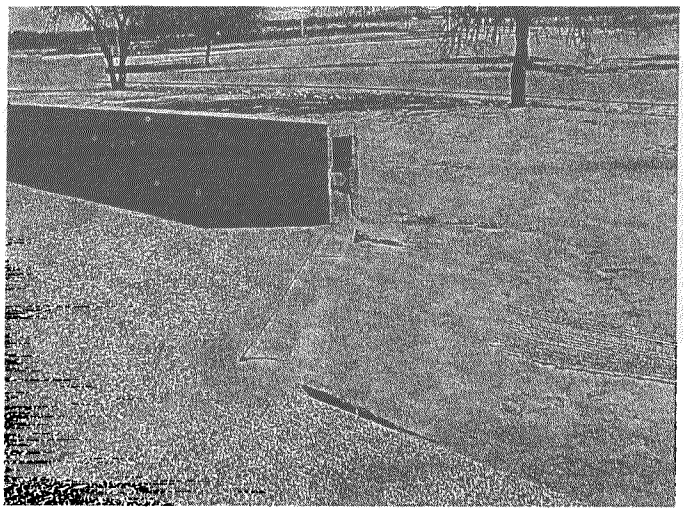


TOHONO O'ODHAM HIGH SCHOOL

Projects which could be accomplished with Operations and Maintenance funds were scheduled. Several improved both the safety and attractiveness of the campus.

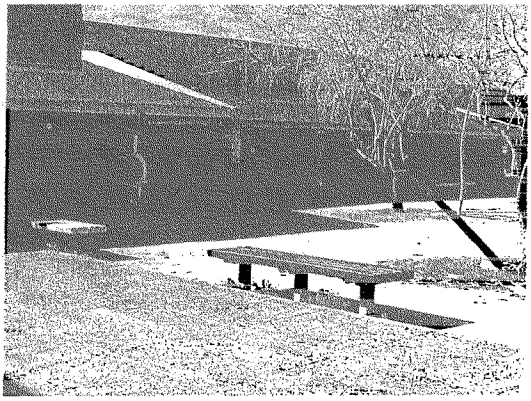
Projects not shown in these pictures included:

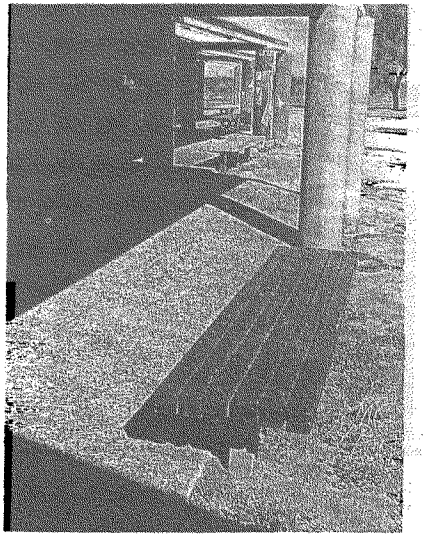
- Filling many holes which had appeared on the campus with dirt and packing it so the holes did not reappear.
- Replacing ceiling tiles with water damage in the hallways and classrooms.
- Installing a new fire alarm system for all the classrooms.
- Installing a sprinkler system on the football, baseball, and softball fields, and planting grass on the baseball and softball fields.
- One set of quarters was refurbished by the Tech Prep Class.



Part of the damaged concrete wall was removed and a dirt ramp built to provide a safer entry to the gymnasium porch.

TOHONO O'ODHAM HIGH SCHOOL





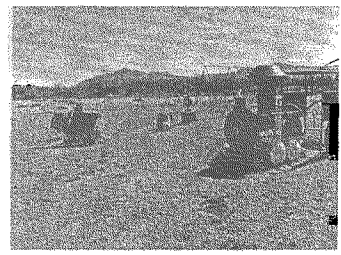
Benches around the campus had become worn and splintered. Tech Prep students removed the bench tops, refinished them, and painted them in school colors.

MAJOR REPAIR NEEDS CONTINUE TO EXIST.
These projects are usually funded individually through Minor Improvement and Repair funds, Facilities Improvement and Repair funds or Quarters Improvement and Repair funds.

Many of these needs are listed in the Facilities Backlog of Health and Safety items, but have not been funded. Some of these items have existed for three to eight years and still not been funded.

SANTA ROSA RANCH SCHOOL

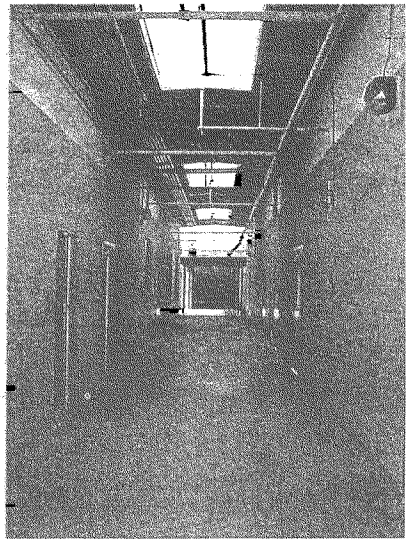
Imaginative and attractive playground equipment and playing areas are important for physical development, especially for primary children.
Old playground equipment needs to be replaced. This cannot be done with facilities funds as it is considered an education program need. Since Santa Rosa Ranch School has such a small enrollment, education program funds always in short supply. Funds for this will have to be found from other sources.



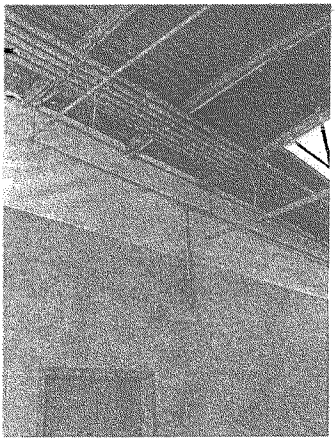
Playgrounds at Santa Rosa Ranch School are unfenced allowing cattle and horses to enter the campus.
A fenced area is needed to keep animal droppings off the play area.
A covered playing area/ramada would be a beneficial addition in the hot days of Spring and Fall.

SANTA ROSA RANCH SCHOOL

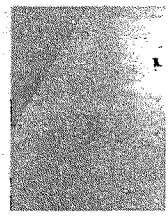
This breezeway between two sets of classrooms needs to be modified to eliminate the birds that roost on the pipes above the sidewalk.
This is a sanitation problem, as the bird droppings are on the sidewalk and tracked into the classrooms and cafeteria.



Birds nest and roost on the pipes above this corridor.



Bird droppings litter the sidewalk, students walk in them and track them into classrooms.

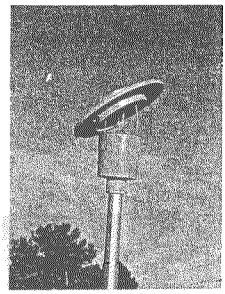


Needs at Santa Rosa Ranch School which are not illustrated include:

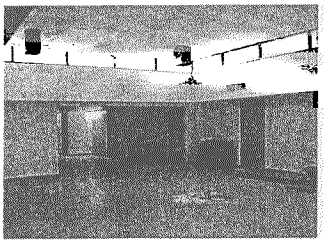
- Repair flooring and install classroom carpet and bathroom floor tile in two buildings.
- Replace electrical service and distribution system throughout two buildings, one of which is the cafeteria.
- Convert all buildings to air conditioning.
- Replace furnaces in two buildings.

SANTA ROSA BOARDING SCHOOL

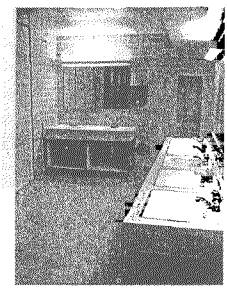
Replace and/or repair security lights and street lights around the buildings and walkways of the campus. The dark areas at night make it hazardous to walk from the dorm to the cafeteria or one of the other buildings.

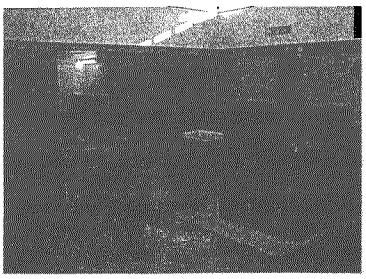


Replacing the emergency exit door in the Girls' dormitory west wing and refurbishing another wing of the dormitory.
When refurbished, the wing has ceilings repaired, doors painted and door hardware replaced, walls painted, pictures and designs on the walls, as well as furniture and carpeted community areas. The restrooms are renovated with new sinks and mirrors installed.

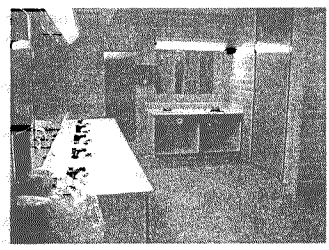


Wing before refurbishing.

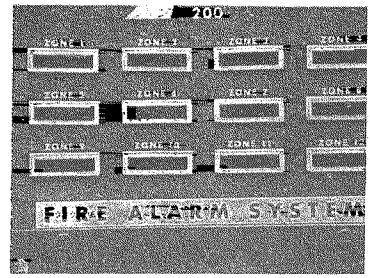


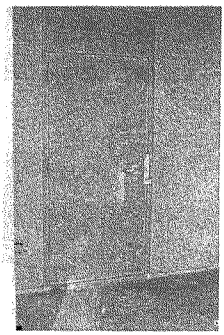


Wing after refurbishing.

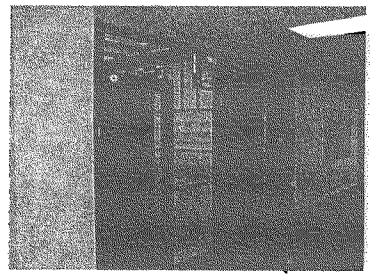


Existing fire alarm panels and wiring in the classroom buildings is obsolete and needs to be replaced and/ or updated to meet safety codes.





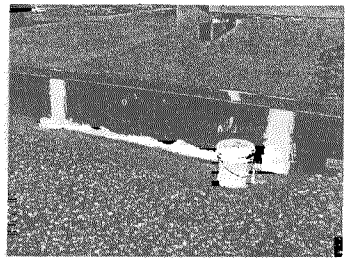
Classroom doors and frames in the Middle School Building need to be replaced. Outside doors are warped, causing them to stick; and parts are missing from inside doors.
Exit doors in the Elementary Building gymnasium need to have panic hardware replaced so the doors will lock securely but still allow emergency exit.



Projects not pictured but needed at Santa Rosa Boarding School include:

- Replace air conditioning units on classroom building. They are old enough that repairs are not cost-effective.
- Repair pavement on the campus. It has had no maintenance and has seriously deteriorated over the years.
- Acquire and install playground equipment and surfaces that meet current educational standards.
- Install a sprinkler system on the playing fields (football and baseball) and seed the fields.
- Paint the outside of the quarters buildings.
- Renovate the inside of several quarters.

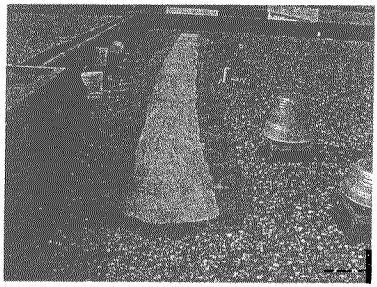
SAN SIMON SCHOOL



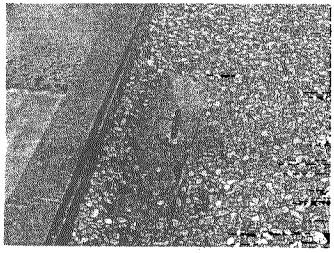
Roof repairs are a major need at San Simon School.

Roofs have been patched many times and still leak causing interior damage to the classrooms and damage to the exterior walls when water seeps down under the stucco.

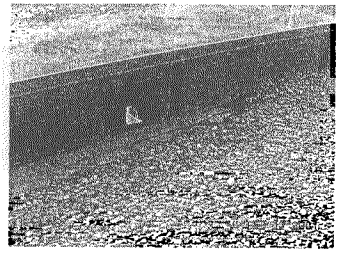
Building 624 (above and to the right) has many unsealed patches which allow continued leaking.



Building 625 also has holes in the roof which allow water in when it rains.

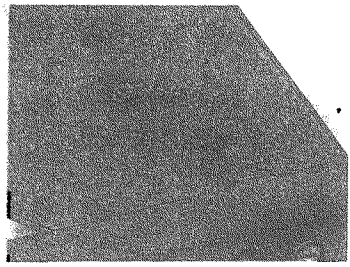


Building 626 has an open vent or drain also allowing water to reach the interior of the building.

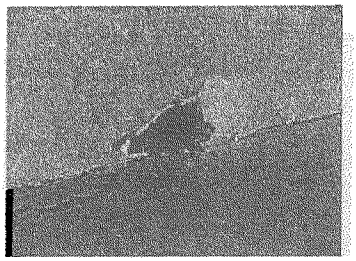


SAN SIMON SCHOOL

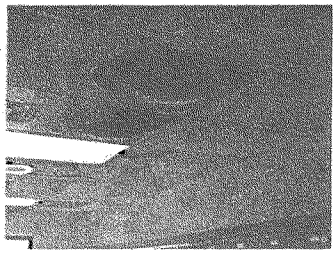
Examples of the water damage that are found in all buildings at San Simon School.



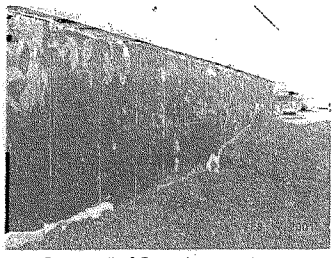
Water stained ceiling tile in Room 13 of Building 624.



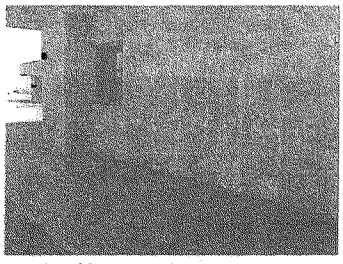
Hole in wall of Building 624 walkway resulting from water seeping down from roof under the stucco.



Ceiling tile damaged in hall corridor of Building 626. Note that water has also leaked into light fixtures.



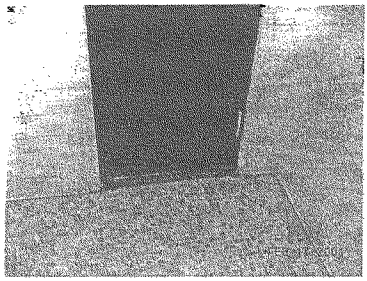
Outer wall of Gym shows water stains where water has leached through the wall surface.



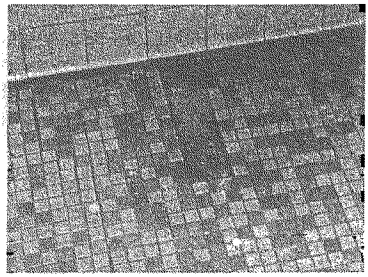
Wall of Building 626 shows damages caused by water. The light areas are where patches have been made.

SAN SIMON SCHOOL

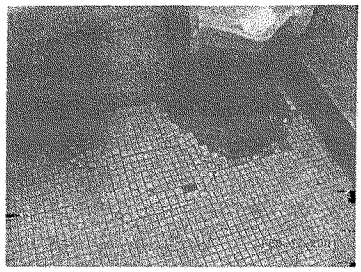
Restrooms need repair in all classroom buildings.
Since many types of repairs are needed one overall project that includes renovation of all restrooms may be a necessary option.



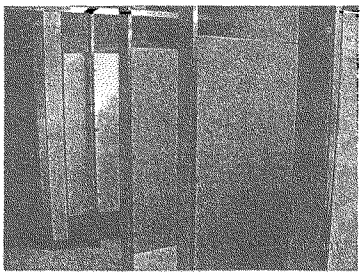
Steel fire door in boy's locker room in the Gym has rusted out at the bottom from water damage. It is no longer fire resistant.

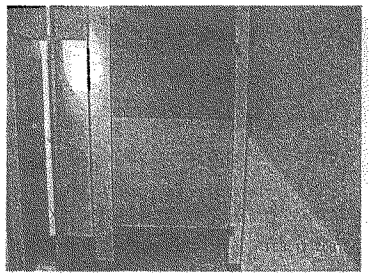


Tile needs replacing in several restrooms including these in Buildings 626 and 627



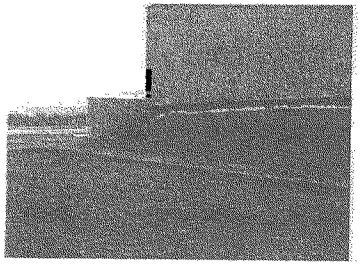
Restroom stall doors are missing in both the boys and girls restrooms in Building 613, and 627



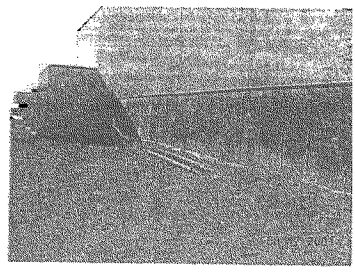


SAN SIMON SCHOOL

Earth berms were placed against all buildings during construction. Over the years they have washed down over the sidewalks and blown away. Removal of the berms began several years ago, but was only partially completed. **The remaining earth berms need to be removed, stucco applied to the walls, and the building repainted.**

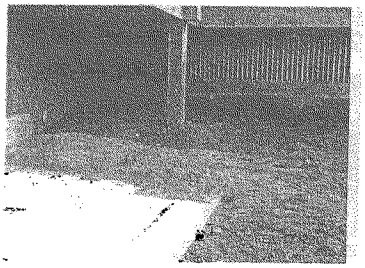


Earth berm at gym shows where dirt height has reduced over the years, exposing the unfinished wall of the gym

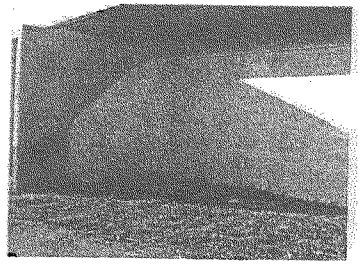


Earth berm has been removed from this side of the Gym, but wall remains unfinished.

Earth berm has been partially removed from West side of Building 612 and 613, but remains unfinished and unsafe.

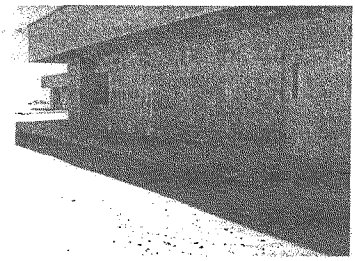


Earth berm has been removed from the Library and wall has been stuccoed, but it still needs repainting.



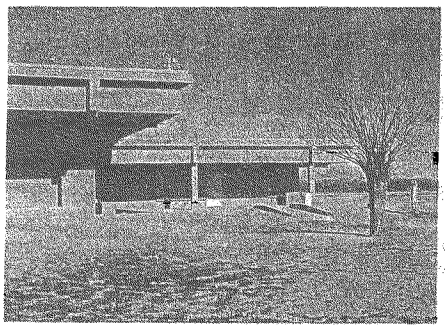
SAN SIMON SCHOOL

Two of five buildings at San Simon School were repainted on the outside two years ago. The remaining three buildings need to be painted.



Before Painting

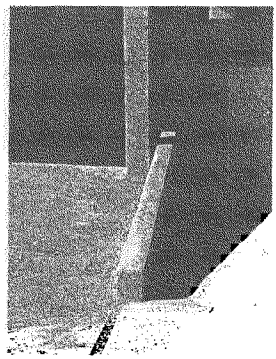
After Painting



Removal of the berms around the building will assist with improving safety for students. Younger students often use the berm to climb on the walls beside the classroom doors. There have been several instances of students falling from the wall and hurting themselves.

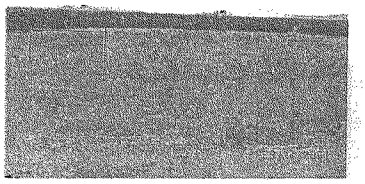
Other needs at San Simon School that are not pictured here include:

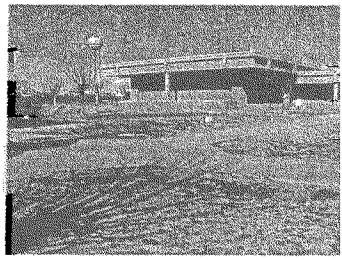
- Replace existing fire alarm panel and wiring and properly connect it with other buildings. Existing alarm does not sound in other buildings.
- Replace carpeting in remaining classrooms.
- Install water treatment facilities at various locations to reduce the damage to pipes and equipment.
- Walls have cracks along the blocks caused by settling. These need to be caulked, and the walls need to be refinished and painted.



SAN SIMON SCHOOL

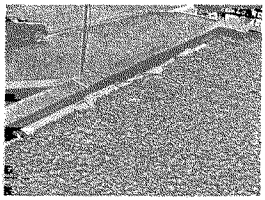
There is no grass on the playgrounds, baseball/softball field, football field, or landscaped areas around the classroom buildings. There was originally a sprinkler system near the classroom building, but it is not operating and the grass has died. There has never been grass on the playing fields.

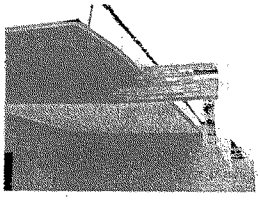


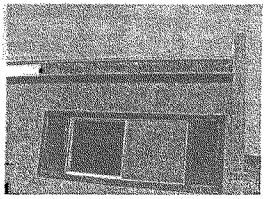


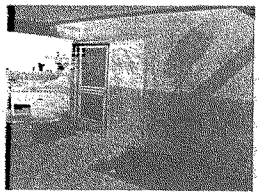
SAN SIMON SCHOOL — QUARTERS

Quarters are in need of re-roofing, refinishing of walls, miscellaneous repairs on outside of buildings, and painting.



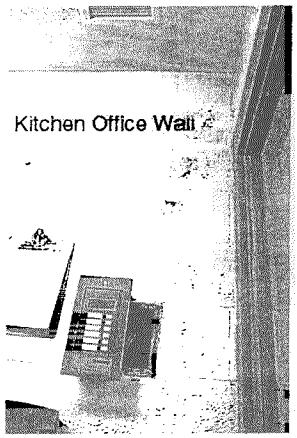






TOHONO O'ODHAM HIGH SCHOOL

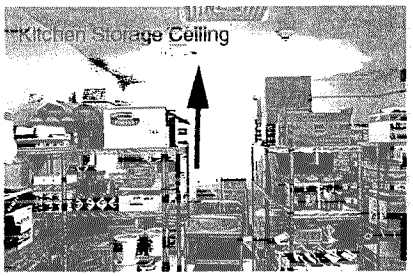
Water damage over the last 13 years has caused major needs at T.O.H.S. in a variety of areas. Some of those are illustrated here.



Damage in the cafeteria and kitchen ceilings has been caused by water when the roof allowed rain water and water from a leaking cooler to seep into the ceiling.

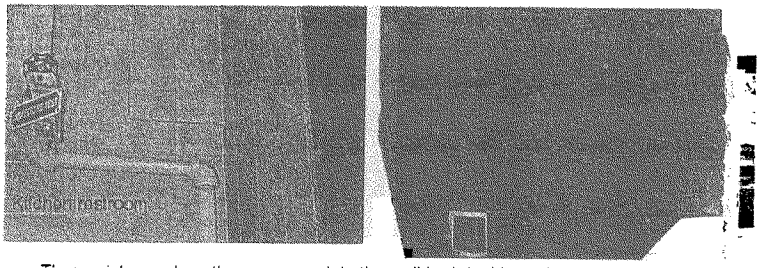
The staining on the office wall is mildew from water absorbing through and into the cement block wall of the building.

Buildings need to be re-roofed and then the interior damage needs to be repaired.



TOHONO O'ODHAM HIGH SCHOOL

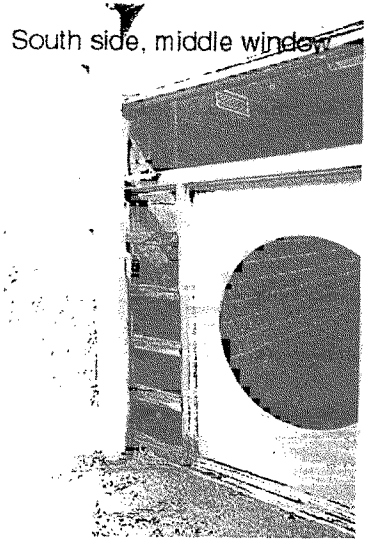
Cracks have appeared in all campus buildings, apparently caused by settling. The extent of the damage needs to be assessed by a qualified engineer; and if there are unsafe conditions they need to be corrected. Repairs need to be made to caulk and refinish the walls.



These pictures show the same crack in the wall both inside and outside the kitchen.

Extensive damage has been caused to outside window walls at the end of three corridors in Building 800 when water runs down the wall over the window framing each time it rains.
The metal framing has rusted through and caused weakening of the frame itself. The sections will have to be completely replaced. They were part of the original construction and are an architectural design item requiring custom redesign prior to replacement.

The entire south wall of Building 800 needs to be sealed to stop water absorption through the walls. This has caused damage to interior walls and electrical outlets in classrooms along the South side of the building.



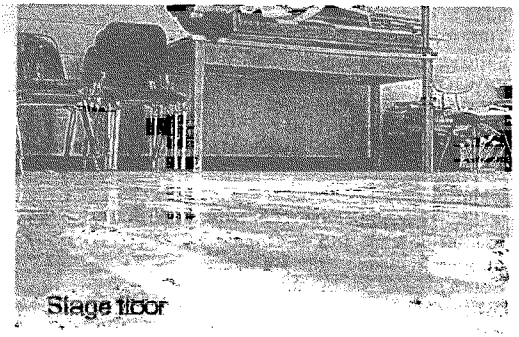
TOHONO O'ODHAM HIGH SCHOOL

Water enters all buildings at T.O.H.S. through a variety of openings whenever it rains. This has caused unsafe conditions in some classrooms and damage to floors, walls, and electrical connections in others.

Metal Shop

Metal Shop Floor

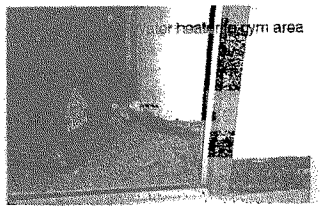
Water on welding shop floor (left and above) and dripping onto hardwood stage floor (below) on recent rainy day.


Stage floor

TOHONO O'ODHAM HIGH SCHOOL

Equipment needing replacement as part of the Facilities Management Minor Improvement and Repair Program.

Carpet in Building 800. Tears and split areas in the seams have been taped to prevent accidents.



Water heater in gym.

Rusted ice machine in school kitchen.

Other areas of need at Tohono O'odham High School not shown here include:

- Repair/replace dust collector in shops,
- Paint interior walls of Building 800 and 801,
- Paint exterior overhangs and beams.
- Repair dishwasher in school kitchen.