S. HRG. 108–621

NO CHILD LEFT BEHIND ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON IMPLEMENTATION IN NATIVE AMERICAN COMMUNITIES OF THE NO CHILD LEFT BEHIND ACT

JUNE 16, 2004
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NO CHILD LEFT BEHIND ACT

WEDNESDAY, JUNE 16, 2004

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

The committee met, pursuant to other business, at 10:40 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Conrad, and Inouye.

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

The CHAIRMAN. We are told that we may have a vote any minute, but we are going to go ahead and start with our oversight hearing on the Indian provisions of the No Child Left Behind Act of 2001. This is a law that I authored along with Vice Chairman Inouye.

This law reaffirms the trust relationship and responsibility of the United States to educate Indian children. That responsibility has been put into action by, first, funding increases, most notably as we can see from the draft chart that is on my right, and people in the audience may review it from where you sit. If you are exiting the room, please also do it quietly.

The school construction funding has increased some 400 percent from fiscal 1999 to 2003; that is a huge increase and a very needed increase for our Indian schools, too. Second, President Bush's Executive order on American Indian and Alaska Native Education signed on April 30, 2004, seek to ensure the highest quality education for our Indian children. With the act passed in 2001, Congress established a number of requirements, including standards and accountability, flexibility in funding sources, and GAO studies for funding and facilities.

Today, we will hear how these requirements have been implemented in Indian Country and any recommendations for improvements.

I will submit my formal and complete statement for the record, and tell you that we have gotten unfortunately a lot of mail, that I will discuss, lately and calls, too, concerning how this new law is being implemented. I will deal with that a little bit later during the hearing.

Now, I would like to turn to my Vice Chairman, Senator Inouye, for any opening statement he has.

Senator INOUYE. I would like to ask permission that my opening statement be made part of the record.

The CHAIRMAN. Senator Inouye's complete statement will be included in the record.

Now, we will turn to our first panel. That will be Theresa Rosier, accompanied by Ed Parisian; and Victoria Vasques, accompanied by Darla Marburger.

With that, if you would like to proceed in that order, Ms. Rosier first. You may abbreviate if you like. Your complete testimony will be included in the record.

We are going to keep on going, and Senator Inouye and I will spell each other. He will go vote and then come back and chair it while I run and vote, so we do not have to take a break in the continuity of this meeting. Go ahead and proceed, Ms. Rosier.

STATEMENT OF THERESA ROSIER, COUNSELOR TO THE ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY EDWARD PARISIAN, DIRECTOR, OFFICE OF INDIAN EDUCATION PROGRAMS

Ms. ROSIER. Good morning, Mr. Chairman and Mr. Vice Chairman. My name is Theresa Rosier and I am Counselor to the Assistant Secretary for Indian Affairs. I am happy to be here today to speak on behalf of the Department of the Interior on our implementation of the No Child Left Behind Act in the Bureau of Indian Affairs [BIA] funded school system.

I am accompanied today by Edward Parisian, our director of the Office of Indian Education Programs.

President Bush and Secretary Norton are committed to ensuring that the almost 48,000 students who attend the Bureau-funded school system receive a quality education and the opportunity to achieve. In fact, the President recently signed an Executive order on American Indian and Alaska Native education with the purpose of assisting those students in achieving the academic and challenging standards set forth in the No Child Left Behind Act. The Department is committed to working with the Department of Education on implementing this important Executive order.

Assistant Secretary Dave Anderson, who unfortunately could not be here today, has also made Indian education a top priority. To assist in implementing the No Child Left Behind Act, Mr. Anderson has asked the Office of Indian Education Programs to explore two innovative concepts that he hopes to implement in the Bureau-funded school system.

First, Mr. Anderson would like to create a Success 101 curriculum in the classroom. This curriculum would encourage student achievement, student leadership, business investment, home ownership and personal responsibility. Second, he has asked his staff to develop a pilot program to look at transforming the mission of one of our Bureau-funded schools into a leadership academy. We are currently analyzing how best to implement these two programs with our existing authority and with our existing funding. This summer, OIEP will consult with tribal leaders, educators and community members on these two concepts.

As Senator Campbell discussed, a prerequisite to providing a high-quality education is based in structurally sound schools. With

this in mind, the President has requested and secured historic levels of funding for Indian school construction. Under his Administration he has requested over $1.1 billion for Indian school construction.

The No Child Left Behind Act is the President's commitment that all schools receiving Federal funds will provide students with a high-quality education and Bureau-funded students and parents can expect that our schools will carry forward this vision. Full and successful implementation of the No Child Left Behind Act requires a strong partnership between the Department of Interior, our Bureau-funded schools and the communities with which we serve.

The No Child Left Behind Act required the Department to undertake formal negotiated rulemaking in several areas. We have negotiated eight of the nine area so far. In February of this year, we published the first six draft regulations. These regulations were developed in 5 months with Indian tribal leaders and the Federal negotiating team sitting at a table and negotiating very complex and difficult matters. These proposed regulations were developed through consensus-style decisionmaking, meaning that all members of the Federal and tribal team had to agree on the final negotiated product.

The negotiated rulemaking committee reached consensus on the first six areas, that of defining adequate yearly progress, geographic boundaries, the allotment formula, funding distribution, grants administered under the Tribally Controlled Schools Act, and student civil rights. The public comment for these first six draft regulations ends next week on June 24.

In February of this year, the committee reconvened and negotiated two additional areas, that of school closure and consolidation and the national criteria for home-living standards. Although consensus was reached on home-living standards, which are the standards that govern our boarding schools, we did not reach consensus on school closure or consolidation. The reason that we did not reach consensus is that the Federal and tribal team had differing legal interpretations of section 1121(d). After a lot of thoughtful deliberation, it became obvious that we would not reach consensus on this issue.

We hope to publish the two regulations on dormitory standards and school closure within the next few months. After that, the public will have a 120-day comment period. We strongly encourage all tribal communities who are concerned with the issue of school closure and consolidation to provide comments during this 120-day period. Under the Administrative Procedures Act, we are required to review each and every comment. We have agreed for the first six rules to sit down with the tribes and review the comments together. We expect to have the same type of meetings for school closure and dormitory standards.

The President's budget also supports implementation of No Child Left Behind in the Bureau-funded school system. First, the Bureau-funded school system has received significant increases from the Department of Education in our flow-through funding. Second, the President's 2005 budget reflects a $500,000-increase in the Focus Program. The Focus Program brings targeted assistance to our lowest-performing schools. This program has been very successful. In

the schools where it has been implemented, four out of the five participating schools have improved their student performance.

Finally, the Office of Indian Education Programs was awarded a $30.4 million 6-year grant to focus on reading first in our Kindergarten through third grades.

In conclusion, the No Child Left Behind Act rulemaking process provided both the Department and the tribal communities an opportunity to reassess our education system. The results are a thoughtful work product that addresses incredibly difficult issues and that encourages the BIA, both at the central office and the Bureau-funded school system and individual schools to provide a meaningful educational opportunity to the Indian students that we serve.

That is the conclusion of my testimony and I will be happy to answer any questions.

The CHAIRMAN. Thank you.

Why don't you now proceed, Ms. Vasques.

STATEMENT OF VICTORIA VASQUES, DEPUTY UNDER SECRETARY AND DIRECTOR, OFFICE OF INDIAN EDUCATION, DEPARTMENT OF EDUCATION, ACCOMPANIED BY DARLA MARBURGER, DEPUTY ASSISTANT SECRETARY FOR POLICY, OFFICE ELEMENTARY AND SECONDARY EDUCATION

Ms. VASQUES. Thank you, Mr. Chairman, and members of the committee. On behalf of Secretary Paige, thank you for this opportunity to testify on the implementation of the No Child Left Behind Act for American Indian and Alaska Native Children.

My name is Victoria Vasques. I am the deputy under secretary and director of the Office of Indian Education. I am here with my colleague Darla Marburger, who is the deputy assistant secretary for policy in the Office of Elementary and Secondary Education.

I request that my written statement be entered for the record.

The CHAIRMAN. Without objection, your complete statement will be in the record.

Ms. VASQUES. Thank you.

It was in large part our Nation's long and unfortunate history of too-often ignoring the educational needs of some children that led President Bush to propose his NCLB reforms. Ignoring these students is no longer an option for states, school districts and schools because under NCLB they are responsible for ensuring that Indian and Alaska Native children meet the same challenging academic standards that other children are expected to meet.

We also know, however, that there are implementation challenges. As you have heard often, Secretary Paige recognizes a one-size-fits-all approach will not work. There are challenges in areas such as providing school choice for children who live in remote and rural areas, assisting schools in meeting requirements that they employ highly qualified teachers, and determining how Native language immersion programs for kids in grades K–three affect assessment requirements that begin in third grade.

However, we are committed to working in consultation with all local, State and tribal governments to provide flexibility where possible, while ensuring that these and future generations of Indian students are not left behind.

Working with each of you on this committee and with our tribal leaders and our Indian organizations, the Department wants to build upon the special relationship between the Federal Government and our American Indians, and our shared commitment to educational excellence and opportunity.

As you have previously heard from my colleague, the President recognized the unique cultural and educational needs of these children in his April 30 Executive order on American Indian and Alaska Native Education. In particular, the EO emphasizes the importance of helping American Indian and Alaska Native students meet the challenging academic standards of NCLB. I quote, "in a manner that is consistent with tribal traditions, languages and cultures." We believe in fact that the NCLB Act which combines greater accountability for results with flexibility for local school districts and more choices for parents provides an excellent framework for meeting the goals of the EO for the nearly 500,000 American Indian and Alaska Native students that attend our public schools.

Another important event occurring on that same day was the swearing-in of the National Advisory Council on Indian Education. These council members were appointed by the President and will advise Secretary Paige on the funding and administration of all departmental programs that benefit our Indian children and our adults.

According to the most recent data from the NAEP scores, only 16 percent of American Indian and Alaska Native fourth graders score at or above the proficient level in reading, compared to 41 percent of our white students and 31 percent of all students. It gets no better by the time they get to eighth grade. Only 15 percent are proficient in math and only 17 percent are proficient in reading. After falling so far behind in our early years, it is not surprising that Indian students scored 100 points below white students and 60 points below the general population on the 2001 SAT.

Under NCLB, States must ensure that all students, including our Indian students, are proficient in reading and math as measured against state standards by the 2013–14 school year. We know this will not happen overnight, so the law requires each State, as well as the BIA, to develop accountability standards for reaching this goal. The plans are based on academic standards for those core subjects, as well as annual assessments based on those standards for all students in grades three–eight, and once again in high school. They also include annual objectives from improving student performance on those assessments, part of the concept that you know as the adequate yearly progress.

A key advance in the new law is the incorporation of sub-group accountability into AYP standards. This means that the performance of schools and school districts is based not just on overall student achievement, which can mask significant gaps between groups of students, but also on the progress of major racial and ethnic subgroups. The result is a system that will hold the BIA, the States, school districts and schools specifically accountable for improving the academic achievement of American Indian and Alaska Native students.

All 50 States, Puerto Rico and DC have developed and are currently implementing NCLB accountability plans, which include

both a system of rewards for schools that perform well and a system of interventions for schools and districts that are not meeting their goals. These accountability plans are critical to improving the education of our Indian students because more than 90 percent of these students are enrolled in our public schools, which are operated by our public school districts and are held accountable by the States in which they are located.

We are confident that the new sub-group accountability requirements, coupled with significant increases in funding for programs under NCLB, will help close the achievement gap. We have no doubt that American Indian students will benefit considerably from the $3.6 billion or 41 percent increase in the title I grants to LEAs funding since the passage of NCLB in 2002.

In addition to the Title I program, the Department of Education provides other significant assistance to States and school districts that support improved achievement for American Indian and Alaska Native students. As Theresa mentioned earlier, Secretary Paige announced a 6-year, $30.4 million Reading First grant to the Bureau of Indian Affairs [BIA]. This major initiative seeks to improve reading achievement using scientifically proven instructional methods for Indian children in kindergarten through third grade.

Putting a highly qualified teacher in every classroom is also a critical concern for our Indian students. Assistance is provided through such programs as our improving Teacher Quality State Grants, which is funded at $2.9 billion and includes a set-aside of $14.6 million for BIA schools in fiscal year 2004. My office will award approximately $10 million to support the training of high-quality Indian education personnel through our Teacher Corps and our Administrator Corps programs.

These funds will be used to support the American Indian Teacher Corps, which trains Indian individuals at the bachelor's degree level or higher to meet full State certification or license requirements. These funds will also be used to support the American Indian Administrator Corps program to train Indian individuals at the master's degree level to become new school administrators with full state certification. Together, these programs have already trained more than 1,000 teachers and administrators to date.

In conclusion, the No Child Left Behind Act demands accountability for improving the achievement of all children, including our American Indian and Alaska Native students. We recognize that the NCLB Act sets high standards, and that finding the right mix of accountability and flexibility can be a challenge. However, I am sure that the members of this committee would agree that few have more to gain from a concerted good-faith effort than our American Indian and Alaska Native students as we continue to implement NCLB for their benefit and the benefit of all of our students.

In closing, I ask you the same question the President asked when he signed the Executive order on April 30 for American Indian and Alaska Native Education: How can we work together to raise the standards and expect the best?

Thank you and I will be happy to answer any questions you have.

[Prepared statement of Ms. Vasques appears in appendix.]

The CHAIRMAN. Thank you to both of you for those statements.

I have to tell you, knowing my own childhood, the difficulty of our young Indian people getting a proper education. It is the most important thing in the world, I will tell you that.

I have a number of questions. I am going to run and vote. Senator Inouye will ask his first, and I will come back and offer some more. Before I go, I need to tell you that with every agency reorganization, there is a lot of movement and some consternation at reorganization. I have personally gotten a number of complaints, not about the Department of Education, but really about the OIEP. Some of those complaints were over the phone, some have been in writing, and some of them deal with everything you can think of, unfair labor practices, forced retirements, targeted "RIFs," hostile work environment, nepotism, cronyism, ethics violations, civil rights violations, mismanagement of funds and on and on and on.

I know that what we have been doing in the past has not been very good in educating our youngsters or we would not have such a high dropout rate. I understand that and I know that we have to make some changes. This committee is certainly not looking to pick a fight or do a witch hunt or so on, but some of the things that have been brought to my attention, I, in turn, called Deputy Assistant Secretary Aurene Martin and discussed them with her. She assured me that she would look into it, but we are still getting complaints.

In fact, one of the complaints was a letter from a gentleman who accused the OIEP of a callous process that contributed to the death of his mother when she was fired. Another was a letter from an Indian school board that encouraged the committee to investigate the reorganization policy or lack of it, because in their words, the injustices were affecting the children and families living on Indian reservations.

Now, we have no way of knowing if these accusations have any merit or not, and maybe they do not. Maybe some are just disgruntled employees, but I do not take them lightly. So I did discuss this with Senator Inouye, and I think that anything that hurts our Indian children and prevents them from being in a safe and healthy educational environment is a great distress to both of us.

So this morning, I did direct staff to ask for a GAO investigation of how this process is going, whether it is objective, fair and impartial, because of the complaints we are getting. I just wanted you to know that up front, Ms. Vasques and Mr. Parisian, so it would not blind-side you.

With that, I am going to run and vote. Senator Inouye, if I could ask you to chair for a few minutes. I do have questions I really want to ask, though, so I will be back in a moment.

Senator INOUYE. Thank you very much.

I have a question. I was not here for the prior questioning so I may be repeating something. I hope not. Last April, the President signed an Executive order on American Indian and Alaska Native Education. What steps have you taken to begin consultation and implementation of this Executive order?

Ms. VASQUES. I am happy to answer that. Vickie Vasques from the Department of Education.

We are charged in that Executive order to implement an interagency Federal working group that will work in consultation with our tribal leaders and Indian organizations. We have just sent letters from Secretary Paige to the respective Cabinet members that are listed to designate their particular representative. They must be a GS–15 or above.

In parallel with that so we do not hold up the process, we have a staff person on my staff that is already reaching out trying to get this group formulated so that we can hopefully by the end of this month, our tentative date is June 30, meet with the Federal interagency working group and include members of our Indian organizations and tribal representatives that can join us.

The President appointed the NACIE board members weeks before that, but on that same day they were sworn in by Secretary Paige. We are hoping to get them included in that process as well, because we are hoping to have the first board meeting July 1 and 2.

The EO also asked for a national conference to be held. We would like to discuss that first with the interagency working group and the tribal representatives, but we would love to see something take place on a national scope and maybe have some roundtables or regional sessions throughout Indian Country so that all can be included in the process.

Senator INOUYE. I have not heard of any representation from the Indian groups.

Ms. VASQUES. They will be actively included in this process and we will work in consultation with them. I personally have worked hand-in-hand with NIEA, NCAI, AIHEC, AISES and I cannot remember the acronym for the Impact Aid School Board, and then the Indian School Board as well. It is part of inclusion. If we are forgetting anyone, please keep me on my toes.

Senator INOUYE. Do you have any representative from the BIA?

Ms. VASQUES. Absolutely. I am sorry, my colleague is sitting right next to me. We have worked very closely meeting with Ed Parisian from the Office of Indian Education Programs monthly, and his staff and my staff, in order to better communicate, better collaborate, and hopefully provide better technical assistance out in the field and work on implementing this Executive order jointly to better serve our Indian students.

Senator INOUYE. I am certain you have read the report from the National Assessment of Educational Progress.

Ms. VASQUES. Yes.

Senator INOUYE. Are those numbers correct?

Ms. VASQUES. I cannot recall.

Senator INOUYE. It says that only 16 percent of American Indians and Alaska Native fourth-graders score at or above the proficiency level in reading compared to 41 percent of white students and 31 percent of all students.

Ms. VASQUES. Sir, I use a lot of those scores when I go out and speak publicly. We know personally as Indian people that we do not have a high graduation rate; that we do have a very high dropout rate. The NAEP scores that I quote quite often are correct, 83 percent of fourth-graders are not proficient in reading; 86 percent of fourth-graders are not proficient in math. As I said in my testi-

mony, it does not get better when they get on into the higher grades. It is even higher in some cases; 90 percent in math. So for right now, the NAEP scores are the best source that we have.

One of the other areas I would like to share with you that we are looking at is to go out and do an evaluation and analytical study so that we can find out first-hand from the Indian people where our successes, where our strengths, and where our weaknesses are.

Senator INOUYE. Have you had studies in the past with which you can compare this newer data?

Ms. VASQUES. There have been studies funded under the National Activities Program in the Department. To be honest with you, I am not familiar with the outcome of some of those studies. They have been done sort of in an independent manner. What we have done now is just funded again through the National Activities and through a consultative process with our tribal folks. It is called the National Indian Education Study. It is working in collaboration with our Institute of Education Sciences. It will hopefully evaluate and collect data so that we can further improve education of our Indian students.

It is a sampling right now of baseline data on academic achievement and retention of our American Indian and Alaska Native students. It has a committee that, I cannot use the word "advise," but they are working hand-in-hand with us to make sure that we are including the right schools, the right geographic areas in this sampling for this study. There are some studies that are in process right now that have not come to fruition yet, like the Early Childhood Study does not come to fruition I think until 2007.

But honestly, this 2004 fiscal year we are just ready to announce two RFPs to go out and help me with evaluation, analytical studies, and the BIA, and to help us go out there and provide technical assistance where it is desperately needed. We are in the middle of our contract process as we speak. I am at their door every morning, saying where is it? Where is it? I anticipate those competitions being announced in the next week or two. We will go through a competition and we hope that American Indian-owned businesses will apply for those two contracts.

Senator INOUYE. Thank you very much.

I would like to ask a question of Ms. Rosier. You have discussed the Department's accomplishments in detail, but you have not mentioned the feasibility of establishing a tribal accreditation agency, which is required by the law. What is the status of this feasibility study?

Ms. ROSIER. I would have to get back to you on that. At this time, I do not know the answer to that.

Senator INOUYE. There are other reports that are required by the No Child Left Behind Act, such as the annual report on unaccredited schools. What is the status of these other reports?

Mr. PARISIAN. Good morning Mr. Chairman, Mr. Vice Chairman. On our accreditation report that we have submitted, we have 180 schools out of the 184 schools; 4 schools that are not accredited at this time. They are in the process of accreditation and we submit those numbers within that report.

Senator INOUYE. The rest are all accredited?

Mr. PARISIAN. The rest are all accredited.

Senator INOUYE. There are many other reports that are required by the No Child Left Behind Act, such as the annual report on unaccredited institutions. Have you made those reports, too?

Mr. PARISIAN. The accreditation reports cover both accredited and unaccredited; those schools that are in the process of working with us to receive accreditation.

Senator INOUYE. I have a question for Director Vasques. You mentioned that Secretary Paige announced a $30.4-million Reading First grant to the BIA. How much has the Bureau received from Reading First prior to the grant?

Ms. VASQUES. The total dollars? It is broken out over a 6-year period. I will ask a budget person for the Reading First amount for fiscal year 2004.

Senator INOUYE. How much did they receive prior to this grant?

Ms. VASQUES. This was their first grant award. This is their first Reading First grant with funds awarded last year and in 2004. The total over 6 years will be $30.4 million.

Ms. ROSIER. We awarded 22 schools this year. It was in March of this year, 22 schools were given Reading First grants.

Ms. VASQUES. $5.1 million went for 2004.

Senator INOUYE. Are these grants being used to improve proficiency in English or in Native languages?

Ms. ROSIER. It is in English. These grants are for promoting reading proficiency in English.

Senator INOUYE. In what?

Ms. ROSIER. In English. These grants are for promoting reading proficiency and it is in English. It is not in Native languages.

Senator INOUYE. Not in Native languages?

Ms. ROSIER. That is not the purpose of the Reading First grants.

Senator INOUYE. What provision does the Department have for reconciling the English language requirements of the No Child Left Behind Act and the Native American Languages Act?

Ms. ROSIER. Recently in our No Child Left Behind Act rulemaking on the funding section, we looked at the current bilingual program that the BIA had and we wanted to provide more flexibility to schools in our system who would like to provide Native languages and cultural development. So that awaited comment that we would put in our regulations, which are not final yet, but we negotiated with the tribes. All the Department asked first is that limited English-proficient students were identified and serviced, but after that, the weighted unit would be used to provide for Native culture and Native languages. It provides a lot more flexibility to the school.

With respect to our current system in the bilingual program, I think tribes have to offer Native languages and they may not be fully up front. We want them to be able to do this and do it proudly. That is why we have flexibility in the proposed regulations.

Senator INOUYE. Being more direct, are Native language immersion schools given any waiver of the requirement of standardized testing in the English language?

Ms. MARBURGER. No, sir; they are not. It is important that with these students as well as all students we are able to have an accurate measure of their achievement of standards and that we have

that measure annually. So that if a student is not learning what they are expected to at each grade level, appropriate interventions can be applied so that student does not fall behind.

However, there are several approaches that can be taken in assessing these students that are taught in their Native language. One of those includes using Native language assessments, as well as accommodations in assessing those students to help them with taking the tests in a language that may not be the Native language, if the state or the school chooses to use an assessment that is not written in the Native language, as well as alternate assessments that can be developed that are given in a more simple manner for those students.

Senator INOUYE. In other words, you do not have any examination that is conduct, in Native languages?

Ms. MARBURGER. It is up to each SEA to develop assessments and there is actually a specific budget item that is given to the states for assessment development. The SEAs then determine how they use those funds to develop assessments in order to meet the requirements of No Child Left Behind. So they can choose to develop Native language assessments. We have several states who have chosen to do that.

Senator INOUYE. But it is not standard?

Ms. MARBURGER. Once again, it is up to the discretion of the state. They can choose.

Senator INOUYE. So the determination that some of the Indian children are not doing well may depend upon taking English tests when their first language is a Native language.

Ms. MARBURGER. Certainly that may be a possibility, but we do not have data to indicate that.

Senator INOUYE. Do you believe that it is happening?

Ms. MARBURGER. I do not know.

Senator INOUYE. Do you give any special consideration to Native language teachers as to their qualifications for teaching? Many of them may not be graduates of teacher colleges.

Ms. MARBURGER. I am sorry. I did not understand your question. Can you repeat it please?

Senator INOUYE. Many of the Native language teachers do not have degrees or certificates from universities and colleges. Do you give them special consideration to permit them to teach?

Ms. MARBURGER. If they are teaching in core content areas, they are required to meet the highly qualified teacher requirements by the 2005–06 school year. We are working directly with our state educational authorities to provide technical assistance to them in meeting those requirements. We acknowledge that a lot of schools that serve our American Indian and Alaska Native students are located in remote areas, and recognize the need to use technology to provide distance learning to such programs, to help get very specific and important training to our professionals that are out in those remote areas.

Senator INOUYE. Do you give any special consideration for Native language teachers as to their qualifications for teaching? I gather that some do not have any college degrees.

Ms. VASQUES. If they are teaching a Native language or they are teaching a cultural program or they are teaching a subject possibly

through one of the OIE fundings, which would be a supplemental service, they are not excluded from doing so. If they are teaching one of the core subjects, then by the year 2005–06 they must be highly qualified to teach that particular core subject.

Senator INOUYE. So you do give waivers?

Ms. VASQUES. Pardon me?

Senator INOUYE. You do give waivers?

Ms. MARBURGER. No; the requirement does not apply to teachers who are not teaching in a core academic area, for example in biology or a teacher that may be teaching algebra. The requirement only applies to teachers who are teaching in those core areas. As Vickie stated, if they are teaching a Native language, then they are not required to meet the highly qualified teacher requirement. Or if they are teaching in another one of the cultural areas, then they would not be required.

Senator INOUYE. Mr. Chairman.

The CHAIRMAN. Just perhaps let me ask one additional thing, too. As I understand Senator Inouye's questions and your answers, core subjects would be something like math, physics or science.

Ms. MARBURGER. Exactly.

The CHAIRMAN. And they will need to have these requirements, which would be some academic institution certifying them as a teacher or the Department of Education issuing some certificate in lieu of that. But those people who are teaching perhaps shop, art, music, physical education or something else, they would not necessarily have to be certified by an academic institution. They could teach language, for instance, their Native language under some agreement or caveat with the school district? How would that work?

Ms. VASQUES. It is set by the State standards.

The CHAIRMAN. By the State standards.

Ms. MARBURGER. It does not even require a caveat or a waiver because the statute...

The CHAIRMAN. The school could just hire them?

Ms. MARBURGER. That is right. The statute does not require those highly qualified teacher requirements for teachers who are teaching in those other areas.

The CHAIRMAN. Okay. Good, thank you.

Ms. Rosier, on May 4, I requested that Secretary Norton meet with tribal cochairs of the Negotiated Rulemaking Committee of the No Child Left Behind. You alluded to that on the negotiated rulemaking. I understand the meeting has not taken place and that the tribal caucus was referred, of all things, to the Assistant Secretary of Fish, Wildlife and Parks. Do you know anything about that? What was the reason for that referral?

Ms. ROSIER. The reason for that referral was probably just an oversight. It is an oversight. There is no reason why tribal cochairs would be referred. They were most likely supposed to be referred to the Assistant Secretary for Indian Affairs.

The CHAIRMAN. Is that being corrected? Are they talking to the right people now?

Ms. ROSIER. I did not know that they were referred to the Assistant Secretary for Fish and Wildlife.

The CHAIRMAN. Okay. I just mentioned that, because we are talking about children, not fish. I think it is really important.

Ms. ROSIER. I apologize for that. I was unaware of that, but that is completely an oversight.

The CHAIRMAN. Would you look into that for me, for the committee?

Ms. ROSIER. I will.

The CHAIRMAN. Thank you.

On school construction, school construction funding has increased, certainly not enough for some of us, including Senator Conrad I am sure. We still have a lot of dilapidated schools our there that our Indian children are trying to learn in. What steps have you taken to avoid delays in construction? Could you tell the committee that? Do you have a way of monitoring the system for construction, too?

Ms. ROSIER. We do have a way of monitoring. Before the 2001 budget, the BIA was building about two schools a year. Under the last year of the past Administration and this Administration, our school construction program has absorbed much more money and more funding. We are in a position where we do not necessarily have a lot of schools lined up who have started their planning or have started moving forward. Right now, we have 25 projects that were funded between 2001 and 2004. Four of those have been completed. We have 21 projects that are ongoing and 7 projects we hope will be completed. I know there are always construction delays, but we hope 7 more will be completed by December of this year.

What we have done is we have been able to realize that we needed the staff to help the tribes be able to plan ahead. What we have done is we have started getting our planning grants out earlier. In fact, we are trying to award our planning grants for two schools that were recently named for Dilcon and Porcupine, and they were just recently named for the 2006 funding year. I am trying to get out their planning money early. That is one step we have taken is to help them get their design and planning started a little bit earlier.

The CHAIRMAN. How many schools are backlogged that need construction?

Ms. ROSIER. That probably depends on who you ask. On the current list for the Department, we have five scheduled for the 2005 budget. We have five more schools listed. After that, we have just released a list for 14 more schools. That should carry us through the 2007 budget cycle, and it may possibly take us into 2008, too. It just depends on the funding provided.

We have tried to get planning money. Another thing we have done is the result of the Inspector General is concern about that our schools being overbuilt. This past year we have done a lot of policy review inside of our facilities program. One thing we have tried to do is look at our enrollment projections policy, our space guidelines policy, and be more consistent; to provide an official policy so the tribes know ahead of time and have clear expectations of what the process is.

We are doing a lot to improve the program, but I am sure we have some challenges that we still need to complete.

The CHAIRMAN. Thank you. The sooner the better.

The Office of the Inspector General's March 2004 report...

Senator CONRAD. Mr. Chairman?

The CHAIRMAN. Yes, Senator Conrad?

Senator CONRAD. Might I just followup on a question that you asked?

The CHAIRMAN. Sure. Go ahead.

Senator CONRAD. Thank you. I apologize for intruding, but I do not think that we got an answer to the question that you asked, which is a very important question. You asked the question, how many schools are there that need to be built, and how many are backlogged. The answer that was provided was how many are being funded. That is not a responsive answer to the question that was asked. I would say with all respect, you did not answer the gentleman's question. I would ask the same question. How many schools are there that are in the backlog? How many schools are there that need construction? How many schools are there that need rehabilitation?

Ms. ROSIER. I do not have that figure for you today. What I can tell you is the last area of the No Child Left Behind Act rulemaking that we are required to do and we are going to undertake, hopefully, this fall, is for school construction. One of the things that we are mandated by Congress to do is to establish the replacement school construction list and to set the criteria for the Department.

That is one thing that we are going to be evaluating with the tribal members at the table, which is our school construction program.

Senator CONRAD. Could I just say this, Mr. Chairman? If there is anything, well, there are many areas where the system is broken, health care, housing, but schools are a big area. I can tell you, in my State there is a school, and it is not on the list. It was built about 25 years ago. It was built using a southwestern United States architect. It was built at a time when they had this notion of open schools.

The CHAIRMAN. Nice in Phoenix, but not North Dakota?

Senator CONRAD. Mr. Chairman, I would say to you, in the winter in North Dakota, in one part of the school it is 75 degrees; in another part of the school it is 50 degrees, because the heating systems are totally inadequate for our part of the country. Now, sitting in a 50-degree school, and they are not separate school rooms. It is the most incredible situation. It has the open school design, so you cannot hear yourself think. The result is it is a totally chaotic situation, and it is not on the list.

So this is something that is an example of the kind of thing that needs to be dealt with. We have secondary schools that are absolutely abysmal in their condition. I think the first thing that we have to do is establish an accurate and honest and objective assessment of what the need is, which is really what the Chairman was asking. How great is the need? Only then can we fashion a serious Federal response as to how we address that backlog.

In any event, I apologize to the Chairman.

The CHAIRMAN. That is all right.

Ms. Rosier, if you could get an inventory of backlogged schools for the committee, as close as you can come to it, I would appre-

ciate that. I certainly agree with Senator Conrad. I taught school for 10 years in the public schools. You talk to any child psychologist, and they will tell you, kids cannot learn unless the atmosphere is right. If it is too cold or they are hungry or if it is too drafty or disruptive or anything that upsets the learning curve, they are just not going to learn. It is as simple as that.

That is why it seems to me a safe environment and a healthy environment for the kids to learn, that is how they are going to learn. If we do not do that, they are simply not going to learn no matter how much money we pour into the problem. So please find that out for us.

Let's talk about money a little bit. The Office of the Inspector General found in its 2004 report that education funds had not been adequately managed by No Child Left Behind standards. Has the Department delivered a response to the Office of the Inspector General? And what is the status of revising spending plan policies or procedures, if you have?

Ms. ROSIER. We have delivered a response and I know the relationship with the Office of the Inspector General and the BIA, we always provide supplemental information. They always have a request, so we are providing information on an ongoing basis with the Office of the Inspector General.

I can say that Mr. Parisian has been in his position for about 1 year now, and many of those findings were before Mr. Parisian was Director of the Office of Indian Education Programs. I will let him speak about what he has been doing to change the environment. We have worked a lot on accountability. Ultimately, this money should be going to our schools and should be benefiting our students. That is one thing we have tried to do in the past since we became aware of these findings was to work to be accountable to the taxpayers and to our constituents with the Federal funding. I will let Mr. Parisian speak about specifics.

The CHAIRMAN. All right, Mr. Parisian, why don't you go ahead and speak.

Mr. PARISIAN. Thank you, Mr. Chairman.

Ms. Rosier mentioned accountability. I have been in my position since August of last year, approximately 10 months, and I came in stressing accountability, particularly financial management. We are looking at those recommendations and implementing the recommendations that were in the Inspector General's report, particularly if you look at the contingency fund, as an example. It was mentioned in that report. Since I have been in the director's position, this last year we took what was left in the contingency fund and distributed the funds out to the schools. We did not have the need for the emergencies, at that time, as they are defined in the regulations, so the funds went out to the schools.

The CHAIRMAN. Went out to the schools in what form?

Mr. PARISIAN. It went out to schools in dollars per weighted student unit to every school. It was evenly distributed to the schools.

This year's contingency fund we just submitted $30 per weighted student unit and sent it all out to the schools again this year because we did not have it so defined that we had the emergencies that we could justify for contingency funds.

The only two other areas in which we used contingency funds this year was up in the Dakotas. We had a couple of schools that had some suicides, and we intervened and gave some dollars to work with the Indian Health Service to help with counseling services. Otherwise, those dollars were all distributed out to the schools.

My philosophy, since I have come into this position is get the dollars to the schools, let them make the decisions, but then I am going to hold them accountable for results. I think that is the way it should be.

The CHAIRMAN. Good. I have several other questions for you, Ms. Rosier, and I will submit those in writing if you would return those. To move along, let me ask Ms. Vasques a couple of questions, too.

Tribes have indicated that students in rural reservations really do not have any choice in schools because some of them live 100 miles away from the next school. How does the No Child Left Behind Act create choices for kids in those remote areas?

Ms. VASQUES. I will answer that and then if you want to add something, Darla, please do.

We recognize that we do not want a parent sending their child off on a 2-hour, 3-hours in some cases, bus ride one-way. We are working with our rural communities to work out these challenges under parental options. That includes working with parents, the community, and our tribal education departments.

There are other options in our distance learning tutorial services and so forth, but I think Darla might want to elaborate.

The CHAIRMAN. Do you want to add something to that?

Ms. MARBURGER. Sure. I think it is very important that we recognize what resources we do and do not have access to whenever you take into account the rural nature of many of our schools. One of those areas we are really looking into is technology and how we can use technology to better deliver education to students in remote areas.

As a matter of fact, the Secretary is hosting a series of leadership summits focused on technology. Our next one is going to be in Orlando on July 11 and 12. Part of this will include a "virtual schoolhouse" where people can come in and see in action ways that technology is impacting education in allowing students in very different settings to participate in the same type of education. As part of that schoolhouse, I know that we have been talking to some of our grant recipients at Indian schools to be a part of that.

It is very important whenever we do have cases of doing this successfully that we share that success so that others can look to them.

The CHAIRMAN. I am a big supporter of the advancement we have made in technology to help with distance learning. I think it really has a place in all schools. Of course the problem we have a lot of times with Indian children is a lot of them need a hands-on approach because they have problems in the home or problems after school or other places, much worse than the public at large. You cannot fix that with a TV screen in front of you. It requires some personal input and some personal involvement with that child, too.

Ms. Vasques, your testimony mentioned that the BIA must come up with an accountability plan. Does your Department have any oversight on that plan? How do you work with the schools to help meet the requirements of that plan?

Ms. VASQUES. Yes; we are working very closely with the BIA. The reason why Darla accompanied me today is she is our point person for policy on this cooperative working relationship. Do you want to give him more information?

Ms. MARBURGER. Sure. We are working very closely with the BIA regarding accountability and the requirements under No Child Left Behind. As you know, the BIA is in the process right now of adopting a final rule. They have a proposed rule that is out for comment. The comment period is still open on that. They invited the Department to be involved and be a resource to them as they underwent that negotiated rulemaking.

It is very important that our Indian children, as we mentioned earlier, based on the NAEP results, are held to the same high standards as other students, so that they are afforded the same opportunities by having a quality education.

So as part of that, until the final rule is passed, we do have interim measures, accountability measures that are articulated in an agreement between the Department of the Interior and the Department of Education. We meet regularly with the Bureau regarding that and regarding the progress that students are making.

The CHAIRMAN. I understand the Department of Education, and I think you alluded to this Ms. Vasques, that you have an agreement with the BIA regarding the distribution and use of program funds, but I can tell you from my own experience, getting the money to the agencies and getting to the Indians can be quite a different thing. We have had, at least some tribes believe that they are having real difficulties receiving the funding. Do you know anything about that? Is there a particular reason why the tribes have been unable to receive the funds in a timely manner when you have sent them through?

Ms. VASQUES. I can speak for ourselves. We dispersed our funds on September 24, 2003.

The CHAIRMAN. Do you disperse them directly to the tribes? Some of those funds go to the BIA.

Ms. VASQUES. Directly to the BIA.

The CHAIRMAN. Okay, that is where the glitch is. Maybe Mr. Parisian or Ms. Rosier can answer that. Why are some of the tribes complaining that they are not getting the money in any kind of a timely manner?

Mr. PARISIAN. Mr. Chairman, we do get the funds and disperse them out, as I said, down to the school level. The title dollars are based on an application process or amendment process. So we get those amendments in, we work with the schools in getting those in the correct form. Once we do, we do get the dollars out to them.

We have records that show, this year as an example, that we have had some schools not submit us amendments until January of this year, or February, but we can show that we turn the dollars around rather quickly. We have other schools that we gave dollars to in November, when we had the dollars, October, September, that did not get their money until December, but that had to do with

a part B issue, which is a special education issue. When I found that out, I told the Centers for School Improvement that you need to disperse the dollars and we will deal with part B as a second matter. Most of those dollars did get out in December. We are working on improving that for the next school year.

The CHAIRMAN. Okay, very good. Thank you.

Ms. Vasques, you talked somewhat about the funding for American teacher training, which I certainly support. Tribes have a real problem with retention with qualified teachers, in fact even with recruiting. I know in some cases that people go out on the reservation, and some are very, very good teachers that go out on the reservation to teach those Indian kids. Others are simply repaying their student loans and cannot wait to get out of there, very frankly. I have a real problem with that kind of a teacher that has no commitment to the youngsters, but only they put in their 6 hours a day in school and they do not even talk to those kids after school. There is something wrong with that.

How is the Department of Education dealing with recruitment and teacher training and problems associated particularly with those remote locations of tribal schools?

Ms. VASQUES. I can speak on my teacher training corps program, and I am sure Darla can add on the bigger picture.

The CHAIRMAN. Okay.

Ms. VASQUES. We are working very closely with the American Indian Higher Education Consortium which oversees the 34 tribal colleges in the United States. As a matter of fact, before we announced this discretionary grant process, I personally sent a staff person out there to help them better understand what this teacher training program was about so we can get more colleges implementing these programs. Because they are the heart and soul of our Indian communities, so if we can get those certified teachers from that community, I think they will stay.

The CHAIRMAN. Yes; you are absolutely right. That is their home. They are going to stay. If you import them from New York City, a lot of them are going to leave.

Ms. VASQUES. Yes; exactly. I agree. But Darla can address it on the bigger picture possibly.

The CHAIRMAN. Darla, would you like to add a comment to that?

Ms. MARBURGER. Yes; I would just like to say that we also have money that flows to SEAs for teachers, specifically for the recruitment and retention of highly qualified teachers, and for their development so that you can take teachers or para-professionals that may not be certified but, who have an interest and already have exhibited a commitment to Indian children, and work with them to become fully certified.

For example in recent years, we have had more than 50 grants that have gone out to schools and universities, specifically to provide training and professional development for more than 500 Indian teachers and professionals. So those programs are available as well.

Further, we really understand the importance of a teacher and the role that the teacher plays in the success of the student. We have developed the Teacher Assistance Corps to go out to the various States and SEAs and have also offered that to BIA as well.

We can go and talk to them about the highly qualified teacher requirements and professional development and that type of thing and provide ongoing technical assistance to those States in those areas.

The CHAIRMAN. Thank you. Important.

I have no further questions, but I may submit some in writing. Other members may also. Just let me leave you with this. I will tell you, if you do a good job for children, you will rarely have a problem with this committee. I know I am speaking for literally every member, because it comes up over and over. The 12 years I have been on the committee, I will bet you one-fourth of the time our work has something to do with Indian children. I know the connection. We have to help them not only cherish and remember and have pride in their traditional ways, but we have to give them the skills to be able to cope with a modern society that is getting more difficult to cope with all the time.

I just wanted to leave you with that note, help those kids. Thank you.

We will now move to the second panel: Lillian Sparks, director, National Indian Education Association; Carmen Taylor, executive director, National Indian School Board Association; and Roger Bordeaux, superintendent, the Tiospa Zina Tribal School in South Dakota.

Roger, you are Lionel's brother?

Mr. BORDEAUX. Cousin.

The CHAIRMAN. Cousin. He is a good friend. Tell him hello for me. I have not seen him for a few years.

Mr. BORDEAUX. I will do that.

The CHAIRMAN. We will proceed in that order, with Ms. Sparks speaking first and then Ms. Taylor and Mr. Bordeaux last. If you would like to abbreviate, that is good. We will include your complete written testimony in the committee report and I will ask a few questions of you when you conclude.

Go ahead, Ms. Sparks.

STATEMENT OF LILLIAN SPARKS, DIRECTOR, NATIONAL INDIAN EDUCATION ASSOCIATION

Ms. SPARKS. Good morning, Chairman Campbell. My name is Lillian Sparks and I am executive director of the National Indian Education Association. I am presenting testimony today on behalf of Cindy La Marr, president of NIEA. She sends regrets that she cannot be in attendance today as she is traveling out of the country, but she would like to reassure you she is committed to working toward improving the status of Native children throughout this Nation, and looks forward to working with the committee members and witnesses in this honorable goal.

Thank you for this opportunity to submit testimony on behalf of the NIEA with regard to the impact of the No Child Left Behind Act on Indian students and educators of Indian students. This oversight hearing is an important beginning as we work together to implement the newly signed Executive order on American Indian and Alaska Native Education and address concerns of the NCLB Act.

While NIEA generally supports the goals of the No Child Left Behind Act as set forth in detail below, the act needs to be tailored to the unique circumstances faced by schools serving large Native populations and it needs to be funded up to its full authorization levels. An important step toward tailoring the application of the act was taken by President Bush when he recently signed an Executive order on American Indian and Alaska Native Education, whose purpose is to assist American Indian and Alaska Native students to meet the challenging academic standards of the NCLB in a manner consistent with tribal traditions, languages and cultures.

It will take hard work and sufficient Federal funding to fulfill the promise of this Executive order and of the NCLB. NIEA worked closely with the Department of Education and the White House in the drafting of the Executive order. We have high expectations that the Executive order will lead to specific proposals to enhance Indian education under the NCLB. It will take extensive consultation with Indian country and sufficient Federal funding. We believe that the Congress and the Administration have recognized that a culturally based education approach is for Natives not only an educational strategy for improved achievement, but also a fundamental civil right for Indian people. Indian communities have a fundamental right to their languages and culture.

The central pillars of NCLB are increased accountability through testing, more choices for parents and students who attend title I schools that fail to meet state standards, greater flexibility for states, school districts and schools in the administration of NCLB programs, and a major emphasis on reading through the Reading First initiative.

In addition, title VII of the NCLB specifically addresses programs for Indian students. This provision squarely situates Federal Indian education policy within the Federal Government's trust responsibility to Indian people. It also emphasizes the unique educational and culturally related academic needs of Indian children. This is good policy, but the real question is what can be accomplished and will the Federal Government make a commitment sufficiently great as to ensure the success of that policy whose purpose is largely to undo the extraordinary harm that the Federal Government has done to Indian peoples over the course of many years.

A basic tenet of Federal Indian policy is that the education of Indians is the responsibility of the Federal Government. The NCLB law directly addresses improving the quality of education for Indian students in the BIA school system. However, over 92 percent of the Nation's Indian children attend State-run public schools. The U.S. Department of Education's National Center for Education Statistics' most recent data charts indicate 584,000-plus Indian children attend the Nation's public schools, while only about 49,000 attend BIA schools.

The 460,000-plus children served under NCLB title VII formula grants to school districts generate minimal funds at an average of $226 per pupil per year. These meager amounts of money cannot come close to guaranteeing equal access to quality educational services for the vast majority of Indian students attending State-run public schools across the Nation.

We have serious concerns about several obstacles this act presents to Indian communities, particularly to those who live in remote, isolated and economically disadvantaged environments. There are many key factors that inhibit the successful implementation of NCLB in Indian communities. Schools serving Indian students receive inadequate levels of funding through title VII to allow for the development of culturally oriented academic programs. President Bush's proposed fiscal year 2005 budget for the Department of Education, while providing for an overall increase of 3 percent, provides no increases for the title VII program serving American Indians, Native Alaskans and Native Hawaiians. Full funding of NCLB will be necessary if its goals are to be achieved.

As was noted in a September 2003 GAO report on BIA schools, the BIA student population, "is characterized by factors that are generally associated with higher costs of education. Almost all students live in poverty and more than one-half are limited in English proficiency. A substantial number have disabilities."

Similar factors would increase costs to non-BIA schools with large Indian populations. The timeframes for results do not adequately account for the investment in time and resources required to develop effective culturally based education approaches or to develop curricula that reflect the cultural and linguistic heritage of the community. School-based testing requirements fail to recognize the implications of the high student mobility and dropout rates that are characteristic of Indian communities.

According to NCLB, the definition of a highly qualified teacher refers to subject matter competence as defined by certification and college majors. The statute does not add to this definition the conflict of capacity and knowledge of local traditions, beliefs and values in order to be an effective teacher of Indian students, or the fact that remote or isolated communities have limited access to highly qualified teachers as defined.

Knowledge of what works for Indian education programs may exist, but often are not locally available. Accomplishment of the broad-based goals of the statute requires strategic partnerships. The availability of these partnerships in small, rural and isolated communities is limited and often very difficult to coordinate. Many schools that serve Indian populations simply do not have the resources to meet the NCLB standards. NCLB also provides confused guidance on adequate yearly progress mandates, inadequate assessment examples for limited English-proficient students, weakened protections to prevent high dropout rates, a lack of focus on parental involvement, a lack of recognition of para-professional qualifications, and a basic denial of civil rights protections for children.

The fiscal year 2005 budget request proposes a 3-percent increase for the Department of Education. However, Indian education program funding levels would remain the same as for fiscal year 2004 and remain down from the fiscal year 2003 level. The education for Native Hawaiians Program would remain the same as for fiscal year 2004, as would the Alaska and Indian education equity funding. It is difficult to understand why these programs were not given an equitable funding increase.

The overall Interior budget is proposed to be cut by .5 percent, which includes $66 million cut for Indian school construction. The Senate needs to resolve this oversight and restore the education funds proposed to be cut back into the Interior budget.

One of the most powerful actions the Federal Government can take to improve Native education is to support the development of tribal education departments, a strategy that has not been fully implemented, but which has tremendous potential to improve American Indian and Alaska Native student success in schools. It is to support tribal governments in their efforts to improve the education of their tribal members. Achieving more tribal control of education through tribal education departments furthers the Federal policy of tribal self-determination and will increase tribal accountability and responsibility for education of all our students.

Federal support for tribal education departments have been authorized in several Federal statutes, including the No Child Left Behind Act. Despite these authorizations, the Federal Government has never appropriated Federal funds for these programs. For fiscal year 2005, NIEA seeks a total of $250,000 for tribal education departments for 12 tribes as an initial investment to improve Indian education.

The House Appropriations Committee recently requested that funds be restored, including $645 million for BIA education, a $4-million increase over the current funding levels. The committee also recommended restoration of funding for BIA school construction, the United Tribes Technical College and the Crown Point Institute.

In conclusion, President LaMarr would like to respectfully remind the committee about the consideration of forming a task force on public relations as requested by Vice Chairman Inouye in February. NIEA is committed to this effort and we respectfully urge the committee to make Indian education a priority, working to find ways to ensure true progress for Indian students.

We encourage this committee to hold field hearings and listening sessions throughout Indian country to hear the Indian voice. It is eloquent and compelling, and without exception calls for a greater investment in our children.

Thank you.

The CHAIRMAN. Thank you.

Okay, we will go on to Ms. Taylor. As I mentioned before, you may abbreviate because your complete testimony will be in the record and we will be reading it anyway.

STATEMENT OF CARMEN CORNELIUS TAYLOR, EXECUTIVE DIRECTOR, NATIONAL INDIAN SCHOOL BOARD ASSOCIATION

Ms. TAYLOR. Thank you, Mr. Chairman. I am honored to be here this morning. My name is Carmen Taylor. I am an enrolled member of the Confederated Salish and Kootenai Tribes of the Flathead Nation in Montana. I have served as executive director for NISBA for over 20 years. We represent well over half of the 185 Bureau-funded schools, as well as a few public schools as well.

This is a very important hearing on No Child Left Behind, and implementation concerns as well. First, I will state that we have always been supportive of the whole concept of leaving no child be-

hind. I think probably everybody is. We have done this since 1987 by encouraging schools to use the Effective Schools research as the basis for their school reform, because the first belief of Effective Schools is that all children can learn whatever it takes. So I think all children can learn is certainly a parallel with No Child Left Behind. I think probably some of the disagreement that we have might be in the whatever it takes.

Effective Schools is a continuous improvement school reform model. It uses data-driven decisionmaking. It also promotes disaggregation of data for certain groups of students. I believe that one of the positive things that No Child Left Behind has done is to focus attention on student achievement through this disaggregation of data. Because of this, many States are paying much closer attention to the achievement levels and learning of American Indians. In fact, this August the Council for Chief State School Officers will be holding a forum to discuss what the States can do to help Indian students learn.

I guess where we kind of depart is that we do believe that No Child Left Behind assumes that every community, every school and every child are the same, and that is it seen by us as more of a one-size-fits-all model with no regard for socio-economic differences, for differences in learning styles, cultural differences or inequality of resources.

It is a top-down attempt at school reform that in my opinion or in our opinion makes a mockery of such concepts as state rights and local control. This is true at the State level as well as at the 51st State level, which is the BIA. NCLB is punitive, rather than supportive. We should be helping schools build capacity, not punishing them.

Before schools go into school improvement or corrective action, terms that are part of No Child Left Behind, there should be quality technical assistance provided to the schools. For schools funded by the BIA, there has been little or no quality technical assistance provided. Only recently did BIA Office of Indian Education Programs distribute money to schools and education line officers for professional development and other purposes. This has been in the last 2 weeks. This is June. School is out in most locations. This is money that should have been distributed early in the school year so that schools could get the best use out of it.

Grant and contract schools at least are able to carry this money over into the next school year. BIA-operated schools, approximately one-third of the schools in the Bureau-funded system, must have it obligated by September 30. Many school administrators that I have talked to are worried that they will not be able to make it because of the cumbersome procedures and delays in being able to issue contracts to service providers.

We have also had comments from schools about the fact that the Bureau is telling them who and who they cannot use as service providers. The same is true of the contingency funds that Mr. Parisian talked about earlier. Although I can understand why the contingency funds just now went out to the schools on a pro-rated student unit basis, some of the schools may have some difficulties getting these obligated before the end of the fiscal year. I have been

told by some administrators that it can take up as long as 6 months to go through the contracting process.

In a report, From the Capital to the Classroom, Year Two of NCLB, from the Center on Education Policy, it is also noted that 38 out of 48 States responding to a question about capacity reported that they do not have sufficient staff to carryout the duties required under NCLB. Yet local school districts said that State education agencies were the resource they relied on the most to help them implement the Act. In the same report, 24 of 40 States reported that fiscal problems were adversely affecting their ability to carryout the law. One-half of the responding States said that local school districts are currently being hampered in attaining the goals of the act because of fiscal problems attributed mostly to the State budget deficits. All of this certainly has a direct impact on the public schools serving Indian students.

Of concern to most Indian schools, often because of their small size and their isolation, is the provision about highly qualified teachers. As you know, it has been discussed here before that teachers need to have a degree in the subject that they are teaching. In many of these rural schools, they might be teaching two or three or four subjects, and they are not going to be able to meet that requirement. This is the same which is true for BIA-funded schools as well.

Also, the provision about school choice is really not feasible for rural schools, nor is the provision for supplemental services. If a school is failing, there are sometimes no alternatives offered within hundreds of miles and supplemental service providers are often nonexistent or very expensive because they are traveling great distances.

There is way too little focus on social causes of poor performance. Children cannot learn when they are hungry or tired. They cannot learn when they are affected by alcohol and drugs. Indian students also have a long history of struggling on standardized tests. That weakness can be traced partly to their lack of knowledge of English. Non-Indian students typically enter kindergarten with a working knowledge of 20,000 words in English. For Indian students, their vocabulary at that age usually hovers around 3,000 words. These are not excuses, but these are facts of life for children who live on Indian reservations.

I really believe that with No Child Left Behind, there is way too much dependence on the standardized test. There are other ways that we can assess children's learning on an ongoing basis without putting everything on one day in a child's life when they come in to take a test. We have recently completed a 3-year school reform capacity-building grant that was funded through the Office of Education Research and Improvement. We worked with 16 schools during that time, and a the end of the time we found that the schools all showed significant increases in reading achievement.

When we began to isolate the variables, it was shown that the cultural curriculum that was used was the only reliable predictor positively associated with achievement gains at the elementary level. At the middle and high schools, tribal values was the best single predictor of achievement gains. So culture and language are

extremely important in helping make success for the Indian students.

I would like to just say that I made an attempt to go out and get some feedback from administrators within the Bureau system. There is real concern about the focus on the bureaucracy and very little focus on teaching and learning. They are very frustrated. They feel like it is a threatening environment that they are working in that has created even more stressful working environments; that there are unreasonable timelines; dictatorial attitudes; lack of assistance; too many mandatory meetings; poor dissemination of information; funds not available on time; and inconsistent implementation of policies.

A big issue has been background checks. In one instance, an administrator reported that it took 75 days to get clearance on the background check. In another, an administrator hired 10 people in November, 5 ended up taking up other positions while waiting for clearance and two others finally got clearance 3 weeks before school was out.

So we are really concerned about some of the administrative issues, and although those are not connected directly to No Child Left Behind, they certainly affect the implementation. We are also concerned about the reorganization of the Bureau. It is very contrary to the various public laws that we have worked hard on over the years. So education once again no longer has direct control over administrative support services, and that is going to end up being very harmful to the schools in the end.

We thank you again for this opportunity and would be available to answer any questions.

[Prepared statement of Ms. Taylor appears in appendix.]

The CHAIRMAN. Thank you.

When I went to college, I went to what used to be called San Jose State Teachers College. It is in the university system now, in California. Maybe you know that school in San Jose. In those days, the State of California gave two types of teaching credentials. One was called a special education credential, which said you were qualified to teach a specific subject from K–2-year college level. The other one was called a general education certificate which said you were qualified to teach anything K–12. After I got out, one of my first jobs, guess what, I got assigned to music, science, and girls PE, and I did not know one single thing about any of them.

They have changed that now. I still have those credentials, by the way, and I still do not know anything about them. But I never saw such a dumb way of filing credentials for people just so schools could move you around any way they wanted. Of course, public schools, they loved those of us who had general education credentials because that is exactly what they did. They stuck us in all kinds of stuff. Where there was a hole, that is where they would put us.

I thought, what a disservice to kids. Well, I put up with that for a little while, and then I participated in a one-man Indian uprising and got out of there, but it was one of the dumbest things I have ever been involved in, when they gave me that teaching credential.

Well, let me go on. Dr. Bordeaux, I am sure you never faced that problem with your credentials.

Mr. BORDEAUX. Daily, every day.

The CHAIRMAN. Every day. Good to see you. I believe this is the first time you have been in front of the committee since we took testimony on the original bill, if I am not mistaken. Is that correct?

Mr. BORDEAUX. You are close. It was a little over 2-years ago, I believe.

The CHAIRMAN. Thanks for being here.

STATEMENT OF ROGER BORDEAUX, SUPERINTENDENT, TIOSPA ZINA TRIBAL SCHOOL

Mr. BORDEAUX. I would like to talk a little bit about the implementation of the No Child Left Behind law, and specifically a couple of issues that deal specifically with the Native American Education Improvement Act, which you, Mr. Chairman, sponsored. One of the things that is kind of troubling is the Department of the Interior's decision not to implement a lot of things. I think it was brought up by you and Senator Inouye about the reporting requirements and some of the things that have gone.

I think if you even go back to the education amendments of 1978 when 95–561 was passed, there are still some things on the book that they chose never to implement. It is kind of perplexing why they have never done, nobody has ever really pushed them to do a lot of the things.

One of the big issues right now is the big reorganization stuff that is going on. I faxed some exhibits to the committee office and I want to make sure that all of these exhibits become part of the record. I will give them again.

The CHAIRMAN. I am told we do have them. They will become part of the record.

Mr. BORDEAUX. Okay, thank you.

One of them is from the Congressional Research Service. We requested a congressman to do the legal research through CRS to ask if the reorganization complied with the No Child Left Behind law. In essence, the response from CRS said that the Department of the Interior appears to have acted in contravention of that intention and in violation of the statute. I think it is important that somebody in Congress tells them that the reorganization, what they are doing violates the No Child Left Behind law and they need to stop that reorganization process specifically in regard to education functions.

Another big issue which was brought up by Ms. Rosier and also you and the other Senators, deals with the whole thing of school curtailment language in the American Indian Improvement Act. It is a perception that they have that they have the authority to close, consolidate or substantially curtail any school that they choose to. At the committee level of the Negotiated Rulemaking Committee, it was the tribal representatives' interpretation of the law that it is clear that Congress says that they can do that only with tribal governing body approval. I think that is something that needs to be made clear. My interpretation of what Congress intended was that there be a tribal governing body involvement in those decisions.

So I think those are two big things that I think part of the Native American Improvement Act, Indian Education Improvement Act that really needs to be taken a look at.

I also put in the exhibits another thing that kind of troubles me, which is that there are at least 11 different programs that I went through, and all of the funding provisions that are on the Department of Education's Website. There are at least 11 programs that do not have any Indian set-aside money. So if you look at it from one of our perspectives anyway, is that at least in those 11 programs, all of the children that are in public schools receive those moneys through the state. For the 50,000 children that are in BIA-operated or -funded systems, they do not have access to those 11 programs, either through the Bureau or through the States.

There are other places that I think, and I know that not necessarily in NCLB, but the Department has requested as part of special ed, if you look at the funding source in special education, there has been about an 80 or 90 percent increase in the last 3 or 4 years. If you look at the Bureau's appropriation amount, there has only been about a 7- or 8-percent increase. That was something that was initially requested by the Department of Education, I believe, and was concurred by Congress in appropriation language.

Part of that whole funding problem, too, is because of what Carmen said about the Bureau's process of going through amendments and reviews and all this kind of stuff, they end up, this is again what we perceive, at the end of the year at least the last 2 years, they have had a lot of money at the end of the year and they have to give it back to Treasury or somebody, or else distribute it. So they end up distributing money, like within the last 2 or 3 months they came up with a program called Project Achieve at all the schools.

The CHAIRMAN. That is one of the complaints we had, by the way, when I mentioned some complaints a while ago that there is some sort of last-minute dumping of the money so it would not go back to the Treasury, with no real plan about where it was going to go.

Mr. BORDEAUX. Yes; and I think all of that is real planning problems up front. I am not even sure that they have money from the Department of Education for next year's funding cycle for school improvement funds. The program starts July 1, which is only 2 weeks away. In our case, at our agency they are having a meeting on June 28 and 29 about the amendment process, of how to get the money for programs that supposedly start on July 1.

I submitted an application for next year, toward the end of March or early April, in anticipation of something like this, and I have not gotten any response yet at all. I suspect that those funding sources will probably not become available at the school level until September or October. It is planning structures that have to be really fixed because it is happening at the school level, and we are not getting money 10, 11, 12 months into the school year.

And then the last thing I really want to talk about also is the whole accountability stuff in No Child Left Behind in regards to adequate yearly progress and falling into school improvement or corrective action or restructuring. I have some exhibits. I think I have four charts from testing data from Tiospa Zina Tribal School

which shows that results based on norm reference testing which is national testing stuff that the Bureau uses for assessment, I have the State assessment processes which are augmented assessments from the national norm tests, and then I also have some individual assessments that we do based on our own standards that we developed as part of the Goals 2000 legislation a number of years ago.

There is a lot of wide discrepancies on who and what assessment we should use, plus the differences. In taking these three assessments, they show different things on the percentage of students that are proficient and advanced. One of the illustrations is in math. At the 11th graders, in one instance 59 percent of our 11th grade students are proficient or advanced in mathematics, and then in a different case, 29 percent are. So if some schools choose to adopt the State stuff, or if they even adopt their own, I am one of those strong believers that the way that the law is written, all school children will be in schools that will be in restructuring by the year 2014. It just cannot happen where 100 percent of the kids will be proficient or advanced regardless of whose criteria it is going to be.

So I think No Child Left Behind is like a real good idea, but a bad strategy. I was kind of jokingly telling my brother who is a public school superintendent that that whole thing of No Child Left Behind, of having a real good goal to reach, but a bad strategy to get there, reminds me a little bit of what is going on in Iraq right now, but that is a different area that we need to talk about some other time.

So in conclusion, I think that we have to look real close at what we are doing to kids in general and Indian children specifically because of poverty issues on reservations. If we do not change some things and do some proper planning way ahead of time and do stuff, we are not going to make a lot of big significant difference even over the next 4, 5, or 6 years.

Again, if there are any questions, I am more than willing to take them.

[Prepared statement of Mr. Bordeaux appears in appendix.]

The CHAIRMAN. Okay, thank you.

Let me start with Ms. Sparks. You have been in your current appointment less than 1 year, Ms. Sparks?

Ms. SPARKS. About 1 month.

The CHAIRMAN. About 1 month. Well, then I do not want to unload questions on you that you probably do not know anything about, but if you cannot answer them, maybe you could get back to us.

Ms. SPARKS. I will certainly make an attempt.

The CHAIRMAN. Yes; that is good. In your written testimony, you say there are numerous concerns about the act, but as near as I can tell after two years of implementation, the Indian Education Association has not offered any recommendations for changes. Do you know why that is?

Ms. SPARKS. We have spent a lot of time reviewing the legislation. I do not want to make excuses, but we have been short-staffed and my position has been filled just most recently. We are now here in Washington, DC and we are going to be more active and more vocal on legislation with regard to Indian education.

The CHAIRMAN. Good, because we need help. I have to tell you, we do not have all the knowledge around here, and if we do not get help from professional organizations, we wallow around some. So I certainly encourage the National Indian Education Association to participate with recommendations to help us with bills like this.

You have only been there 1 month, but do you know if your organization, the NIEA, has partnered with any tribes or tribal schools to help prevent this terrific dropout rate that we have of Indian kids?

Ms. SPARKS. Certainly. In the past, we have worked with a number of schools and tribes. I can get you the specifics once I get back.

The CHAIRMAN. Would you do that?

Ms. SPARKS. Absolutely. We are looking forward to going out into Indian country throughout the rest of this year and holding listening sessions and working with the schools and finding out exactly what is going on in the community and how we can address it here through our organization.

The CHAIRMAN. All right. If you would provide that to the committee, I would appreciate it.

Ms. SPARKS. Absolutely.

The CHAIRMAN. Your testimony also notes that certain testing is quote, " culturally inappropriate" for Indian kids. Give me an example of that. Is math "culturally inappropriate," for instance?

Ms. SPARKS. I think what that statement means to say is that the way that the tests are being administered is culturally inappropriate and they do not accurately reflect what our children are learning and how they are learning it. I think the exhibits that Dr. Bordeaux has submitted demonstrate what it is that we are trying to convey as far as how the tests are administered, what is included on the tests.

It is not to say that math is culturally inappropriate. What we need to have is testing standards that more accurately assess what our children are learning.

The CHAIRMAN. Can you give me any example of what is culturally inappropriate?

Ms. SPARKS. No; I cannot.

The CHAIRMAN. Your testimony also states that the definition of "highly qualified teachers" does not include knowledge of local traditions. I happen to think that knowledge of local conditions are really important for a teacher of Indian children. Would you suggest that that be included as a definition of "highly qualified teachers"?

Ms. SPARKS. I definitely think that should be taken into consideration. We are very encouraged by listening to the panel before us, as Native language speakers or teachers that would have some of these qualifications. While they are not considered highly qualified teachers to teach content areas, they would still not be excluded from teaching in the schools.

The CHAIRMAN. I think that is important, too.

Your testimony indicates that there was no focus on parental involvement in the No Child Left Behind Act. How can we address that? Does the Federal Government have to dictate parental involvement? I think we do that with Title I, if I am not mistaken.

There has to be an Indian board or something that helps determine the use of Federal money for Indian kids.

Ms. SPARKS. Sure. It certainly could be encouraged through Federal legislation. It has worked in the Native model through Indian Head Start and the Head Start program's parental involvement is included. I do not think that it is something that cannot be included in Federal legislation. I think it is certainly something that should be included as far as encouraging parental involvement because it does work in the Native model.

The CHAIRMAN. Thank you. I appreciate it.

Ms. Taylor, your testimony indicates that since 1987, the National Indian School Board Association has promoted effective schools research. What would you say is the most important data that has come out of that research?

Ms. TAYLOR. Actually, the BIA, Office of Indian Education Programs promoted it and actually used effective schools research for school improvement from about 1987–94. One of the things that we began to see, because we worked with them very closely during that time, we saw definite improvement in the school climate and the learning environment for the children. That seemed to be a very strong focus. We began to see that there was less turnover in teachers and administrators. We began to see improvement in test scores. I would say that those are the three probably primary improvement areas that we saw over time.

The CHAIRMAN. Thank you.

Your testimony also stated that the No Child Left Behind Act made education more standardized, but not for language, culture and history. You do not need to answer this, but I am not sure how we do standardize things like language, culture and history because tribes are different. I think it is important, but certainly ought to be left to the local school boards and the local people to determine what ought to be included.

Ms. TAYLOR. Correct.

The CHAIRMAN. You stated that attracting highly qualified teachers is difficult. I certainly agree. Would you agree that one of the ways to help solve that problem is to get more people who live on the reservation, more Indian people involved in teacher education where they can get training?

Ms. TAYLOR. Yes.

The CHAIRMAN. Do you think we are doing an adequate job in the Administration or in our side of the Hill here in trying to promote that?

Ms. TAYLOR. I think there needs to be more focus on it. Funds always help, of course, to help pay for tuition et cetera, for teachers. I think perhaps there needs to be more focus on what we call the para-educators, those people who are teaching assistants in the schools that are local people, work with them, get them into 4-year positions.

The CHAIRMAN. One of the problems I think on reservations is that a lot of the people that go to the tribal colleges, they are people who got married when they were young, had children, and they have children, and so they find it convenient to go to the tribal college because it is right there, and they can have somebody watch the kids while at school. But it is difficult for them to move to some

city a few hundred miles away to get teacher training or to get their certification because of their children. They cannot do it. It seems to me that the more we can do in the tribal-controlled schools or the Indian colleges toward getting people teaching credentials, the better we would all be.

Are there some successful programs out there that you know that have taught Indian children toward proficiency in both English and their traditional language too? I realize that in some tribes, the language is almost a dying language. Nobody under 60 years old can speak it anymore in some tribes. But the larger tribes, like the Navajo and the Lakota and so on, there are probably some success stories there.

Ms. TAYLOR. I cannot name one right now, but I am sure that there are some.

The CHAIRMAN. That is all right. It was just in passing. Thanks anyway.

I thank this panel for being here. We will submit some questions in writing, too. Thank you very much.

Our last panel will be Terry Ben, director of the Tribal Schools, Mississippi Band of Choctaws; and Leland Leonard, the director of the Division of Dine Education Committee for the Navajo Nation from Window Rock. If you gentleman would sit down. We appreciate your both being here. We will start with Mr. Ben.

As with the other panels, we are running a little late. We have been in here almost 3 hours now. If you could abbreviate, your complete testimony will be in the record.

Go ahead, Mr. Ben.

STATEMENT OF TERRY BEN, DIRECTOR OF TRIBAL SCHOOLS, MISSISSIPPI BAND OF CHOCTAW INDIANS

Mr. BEN. Mr. Chairman, it is a pleasure to be here this afternoon. I will just be abbreviated. The Mississippi Band of Choctaw Indians operates the largest consolidated tribal school system in the Nation. This school system consists of eight schools, including a boarding high school, located in six different tribal communities spread over three counties and claims about 1,800 students.

I know this hearing is about No Child Left Behind, and how it relates to Indian country and the Mississippi Band of Choctaw Indians specifically. The written statement addresses that, but I have a few points that I would like to make here about Indian education in general.

The primary effect of No Child Left Behind is to concentrate tribal and Federal attention on finding the most equitable way to distribute what is in fact inadequate funding. That is the main situation where we would like to concentrate on. The testimony will be reflecting that.

The danger of No Child Left Behind is that it will compare tribal education to the overall education system on an equal basis. However, there is nothing equal about Indian education. It has never been properly funded. We had no schools in all of Mississippi for Choctaw kids until the 1920's and no high school until 1963. Our population is bilingual and disproportionately poor, widely dispersed and isolated.

Such factors as these have to be considered when distributing Federal funds, as well as when looking at performance. No Child Left Behind is useful for measuring academic progress of Indian children in relation to other children within the tribe's State. That is a useful measure that helps to determine if our educational program is working.

But the real challenge is to require the Federal Government to adequately fund Indian education. The only reason Choctaw schools have achieved anything like parity with public schools in our area is because the tribe has spent a lot of its own money, over and above what the BIA has provided, and have been able to add programs, increase teacher pay and build schools.

For the record, over the past 8 years our tribal governments have provided an average of about 20 percent of the annual funding for our schools. Of the $50 million spent on school construction during that time period, approximately $35 million was provided by the tribe. While this has improved educational attainment of our tribal members, it has required a diversion of tribal resources away from tribal government's primary goal of creating jobs and economic development in order to lift the economic success of our people.

Education is certainly a key component to increasing economic well-being, but in Indian country education is supposed to be a Federal commitment and obligation. No Child Left Behind does not solve the funding inadequacies now account for the unique cultural issues of the tribal schools.

Basically, what we are asking and what we heard about as far the testimony this morning, we heard a lot about contingency funds; we heard a lot about grants from different groups coming down and maybe not coming down to Indian country or the Choctaw area. But basically, what we are proposing is increasing the basic ISEP formula, that is the basic number that each individual Indian child, that is what they get in terms of being enrolled and being counted in what they call student count week.

What we would like to do is propose that the committee at some point in the future to maybe raise that particular area in basic ISEP to maybe someday a match or be close to what DOD figures are for military schools. We believe that a consistent funding in the area of basic ISEP will be the basic way to go, rather than relying on grants that a tribe may get or a school may get or not get. Grants are usually for about a 2- or 3- or 4- or 5-year period. Sometimes maybe a good program may not be carried out in its entirety in its life during that time period.

So that is the basic proposal from Mississippi Band of Choctaw Indians to maybe hopefully substantially increase the basic ISEP formula which is usually about $3,000 per child as such.

So to wrap it up, I would like to say three more items just for the committee to hear: A sizable increase for the basic ISEP; also as we heard in previous testimony this morning, increase funding for transportation. We have had our transportation mileage basically decreased over the last 2 years. Also as mentioned in official testimony, we would like basic ISEP also to include a pre-K program to be a part of the basic ISEP.

As we all know, there are all kinds of different studies in America and the importance of the pre-K programs cannot be argued by

anybody. It is a great excellent program. I realize that there are daycare centers out there. I realize that there are Head Start centers out there, but not every child, not every Indian child is part of daycare or they are not part of Head Start because facility constraints; because of distance from those centers.

So we urge this committee in the future also to recommend in the basic ISEP a pre-K program that is one of the things that can really be of great benefit not only for Mississippi Choctaw, but for all of Indian country as such. That is an item I wish to convey.

Before I yield the mike, I would also like to mention one thing that was a concern to us, and I wanted to get up so very bad, but I did not earlier when somebody was talking about school construction. We do have one school. We have a high school there, Choctaw Central High School. It was built in 1963. As one of the fellow Senators indicated on the panel, we could use some dollars in that area, too. Choctaw Central High School was built in 1963. Our school system has some good schools, but we need some more additional new schools.

With that I would like to thank the committee. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I realize you probably do have some problems in construction, and the problems any school has with high school dropouts or a kid now and then going bad, something of that nature. But by and large, I think the Mississippi Band of Choctaws have done a wonderful job with their education program. It is really kind of a model that a lot of other schools ought to take a look at. Any tribe that can provide $35 million of its own money for school construction also says something about their economic situation and the successfulness of the tribe in general.

So please give Chief Martin my personal best wishes. He has been a good friend of this committee for years and years.

Mr. BEN. I will.

The CHAIRMAN. We will now to go our last witness. Mr. Leonard, if you would like to proceed. Your complete testimony will be in the record and you may abbreviate.

STATEMENT OF LELAND LEONARD, DIRECTOR, DIVISION OF DINE EDUCATION COMMITTEE, NAVAJO NATION

Mr. LEONARD. Thank you, sir. Greetings from the Navajo Nation.

Chairman Campbell, members of the committee, on behalf of the Navajo Nation, thank you for inviting us to provide testimony before the honorable committee on the topic of implementation of the No Child Left Behind.

The Navajo Nation's view of implementation of No Child Left Behind of 2001 is two-fold. First, the Navajo Nation agrees with the intent of the No Child Left Behind Act, which is to not only have our children achieve at the highest capacities or capabilities, but also insist that our educators also achieve at their highest capabilities. Second, the changes initiated by the No Child Left Behind Act resulted in the Navajo Nation asking itself two questions. First, do the changes help the Navajo Nation better educate its children and better train its educators? Or, do the changes merely disrupt the

Navajo Nation's self-determined progress in better educating its children and better training its educators?

Based on the implementation thus far, the Navajo Nation says yes to both questions. The changes do help, but they also disrupt. A balance must be reached between both. The Navajo Nation encourages flexibility in the implementation of the No Child Left Behind Act. The Navajo Nation is in the best situation to embrace the changes that help the Navajo Nation better educate its children and better train its educators, while at the same time have the ability to refrain from implementing certain changes that disrupt the Navajo Nation's self-determined progress in better educating the Navajo children and better training for its educators.

The Navajo Nation, along with other nations, only wants to be able to provide the best education for its children and to push our children to achieve higher standards, as recently recognized by the U.S. President in signing an Executive order on Indian Education. The President stated,

> We place a high value on education because we understand the importance of education to our future, and the importance of the education to tribal nations.

It is really important that we get it right. The President also stated his vision was clear. On this day, April 30, 2004, the President agreed that we must make sure our visions are clear, starting at the Federal level. Therefore, the Navajo Nation agrees, especially in regards to the implementation of the No Child Left Behind Act. It must begin at the Federal level with Native input. We must get it right and our vision must be clear.

The Navajo Nation would like to provide some comments on some specific areas of the No Child Left Behind Act, starting with the initial testing results. Navajo testing for the years 2002–03 school years, in BIA-funded schools, 44 percent met AYP. In the New Mexico public schools, where there is a large percentage of Navajo students attending, 55 percent met AYP. In Arizona public schools, 45 percent met AYP.

Over one-half of the schools are already in school improvement, corrective action or restructuring. This number is expected to increase as the proficiency bar continues to rise over the next few years. There is a narrow scope of testing in the No Child Left Behind Act. It only tests in three subject areas: Reading, math, and science. While these subjects are important, the No Child Left Behind Act excludes tests given to students who may be excelling in other areas such as music, art, or Navajo language.

As the committee here is well aware, not only the Navajo Nation but all Natives prioritize retention of their Native languages. As you know, no credit is received for such achievement under the No Child Left Behind Act. The No Child Left Behind Act tempts schools to focus on areas where the statute requires testing and causes them to de-emphasize or eliminate programs that many students are involved with and excelling.

The focus on testing concerning No Child Left Behind, the continued focus, if not the heightened focus on test results, has had predictable results. In many cases, teachers are increasing homework, expanding drill times on what some may say is teaching to the test. This merely encourages implementing methods that were not working before. The Navajo Nation is aware that the children

are very diverse. Some excel in math and science, while others excel in arts and physical science.

The Navajo Nation merely requests the flexibility to foster the excellent in those children according to their talents and skills. Thus far, the Navajo Nation has seen very little flexibility in the No Child Left Behind Act. There is not a lot of data or scientifically based curriculum concerning what works for Navajo children. That which does exist suggests that the most successful curriculum are those that are oriented in the Navajo culture.

Many schools will discard this information or not have access to it, and simply pick programs that have found their way onto the approved list at the state or national level. Schools that have a large Native American population must have the flexibility and opportunity to develop and implement culturally based curricula. There is also a need for specific research funded to evaluate its effectiveness. On Navajo, we have the beginning of such research under the Navajo Nation's Rural Systemic Initiative program, but the funding for this program is being cut this year.

There is a large gap in proficiency. The goal of full proficiency within the 12-year period is far more realistic in schools where students are already testing at a high level of proficiency than those where proficiency levels are very low. The No Child Left Behind Act might still label certain schools that need improvement, while other schools may be achieving high standards and doing an extraordinary job. If we may provide an analogy, sir, the No Child Left Behind Act is like a track and field event, with several events, but the primary focus is on three races. In these three races, the fastest runners are given a huge lead, but the slowest runners are required to catch up by the end of the race.

Even with the best intentions of the No Child Left Behind Act, the danger is that the students who could not compete with the faster runners, although still finishing the race, will still be labeled as failing. The No Child Left Behind Act must require gains in student achievement with recognition that every student is an individual and with his or her own talents and interests. Testing should be used to identify a student's aptitude and provide guidance for the future direction of his or her education.

Schools need to provide more options as the needs of the Navajo Nation and the surrounding society expands. Further, there is an isolation factor that is not addressed in the No Child Left Behind Act. Essential assistance provided under the act is simply not available, or is greatly reduced in isolated areas. There are few tutors available, and not a very large pool of professional educators, no involved business community, and little expert technical assistance available on an economical basis. Such factors make it imperative that the act receive full funding and provide a mechanism for isolated areas such as the Navajo Nation to access the central assistance.

Also, there is another area as far as this reference is concerned regarding school boards and parent training. The Navajo Nation will have an election in November that includes school boards of Bureau-funded schools. We expect a large turnover in school board membership, probably about 80 percent. These new members will take office during a period when the knowledge required of school

board members is at an all-time high, but there is no provision in the law for providing training expense. The committee should revisit the school board and parent training situation, especially for BIA-operated schools where there are no administrative cost grants to pay for training expenses.

Finally, the No Child Left Behind Act has enhanced the Navajo Nation in its process of assuming responsibility and authority over educational programs on Navajo, beginning with the BIA schools. The Nation is pursuing contracts with the Bureau's Office of Indian Education Programs, which will include functions and dollars for providing technical assistance and training to school personnel, school boards and parents, and redesign the program to include regulatory functions such as establishing standards, accrediting schools, data collection and analysis, and also licensing teachers. The Navajo Nation plans to take full advantage of this opportunity in order to make a positive difference in the educational programs on Navajo.

The Navajo Nation is aware that this is a large undertaking and there is the need for additional resources to plan and jump-start our educational system. The Congress previously funded another tribe on a one-time basis and we understand that this program proved to be quite successful. We recommend this committee consider and discuss this option with the Navajo Nation, and the Navajo Nation looks toward this committee for assistance in requesting specific funding for the tribal education department line item in the BIA budget.

Mr. Chairman, members of the committee, again thank you very much for the opportunity to express our concerns.

[Prepared statement of Mr. Leonard appears in appendix.]

The CHAIRMAN. Thank you.

Let me ask each of you a couple of questions. Mr. Leonard, let me start with you. You mentioned that there are no training expenses for new school board members included in the act. What did you do before the act?

Mr. LEONARD. Before the act, I think there was money allowed in other public laws that provided some.

The CHAIRMAN. With the implementation of this act, did it delete the funding that you might have gotten from other sources that you had relied on before for training for school board members?

Mr. LEONARD. I believe it has.

The CHAIRMAN. Frankly, I do not think it did, but we will try to look into that, but you might also. I think that there were resources available before to help train new school board members. I do not know of anything in this Act that would.

Mr. LEONARD. Through the public laws? Through the other public laws? Yes, there is; there remains to be.

The CHAIRMAN. You think there still is.

Mr. LEONARD. I think there still is, yes.

The CHAIRMAN. But the No Child Left Behind Act, I do not think it addresses that.

Mr. LEONARD. It does not address that.

The CHAIRMAN. It does not address that, but it did not delete any other kinds of funding that was already in place either, to my knowledge.

Anyway, let's go on. You said in one of your comments, the No Child Left Behind Act excludes testing on other subjects outside core subjects like math, science and reading, such as testing on tribal languages. How would you implement that from a Federal standpoint? How would you make mandates and accountability on those subject?

First of all, I have to tell you, I do not think, and maybe I am reading it wrong, one of us is probably reading it wrong anyway, the No Child Left Behind Act puts certain standards, but it does not say that you cannot implement some of your own standards through local school board action. So if nothing requires testing in non-core activities like music, science, language, and so on, to my knowledge you can still do that through your own directives from your school board. Am I reading it wrong or are you reading it wrong?

Mr. LEONARD. No; I think we are both right in part. I use that example of behind you, there is a Navajo rug, there is tremendous imagine and vision that went into that. However, if you applied it at school, at this time No Child Left Behind does not give credit for that. I think that is the implication.

The CHAIRMAN. I would encourage you to pursue that, because some of the things that are not in the Act, they may not be specified in the act, but it does not say you cannot. So I think a lot of things you can do on your own for your local school board action.

Your testimony indicated also that research funding has been cut for the Navajo Nation rural systematic initiative program for culturally based curriculum. Was that funding cut as a result of the No Child Left Behind Act? I guess it is similar to the question I just asked 1 minute ago.

Mr. LEONARD. No, sir; that initiative was started 5 years ago, in 1998. There was funding through the National Science Foundation. It ends on September 30.

The CHAIRMAN. I see. So it really did not have anything to do with the No Child Left Behind Act. In your testimony, you stated that the Navajo are pursuing contracts with the Office of Indian Education Programs. What is the status of those contracts?

Mr. LEONARD. At this point in time, the BIA Office of Indian Education program had talked about realignment. The Navajo Nation had opposed the realignment. So we want to be involved in the realigning process, and so our intentions are to contract some of the functions at the Albuquerque BIA Office level. At least right now, we are looking at what percentage of the function is geared toward the Navajo area office. So that is the first thing. We asked for some information. We have yet to receive that information. It has been about 1½ months now.

The CHAIRMAN. In the Navajo schools, do you have Native language programs?

Mr. LEONARD. In most schools, we do. We have been very effective in that area, as tests show.

The CHAIRMAN. Kids are getting pretty proficient at it?

Mr. LEONARD. Definitely. Yes, sir.

The CHAIRMAN. I certainly commend you for that. I think it is really important. Once the languages are gone, it is not the same

as listening to a tape that an elder made before he passed away, and being able to spend time with the elder themselves.

Mr. Ben, to increase funding, we have to certainly have some data. I am the first one to admit that we have not done a real good job at funding Indian education. We have so many youngsters, frankly, I know some tribes where one-fourth of the whole tribe is under 18 years old. That is how fast our birth rate is. So we are always behind the curve when we try to provide the resources through our appropriations process here in Washington.

Now the GAO did a study, but could not assess education funding in part because the BIA did not have any tribal data. Is that your understanding too?

Mr. BEN. That is my understanding.

The CHAIRMAN. Do you do any independent tracking that you could partner with the Bureau in providing some of the information that they have not done?

Mr. BEN. It states in the proposal that if directed at some point, we will be glad to do that. We have some data internally that we keep track based on expenditures that we have tracked all these years.

The CHAIRMAN. I think that could be important.

Unfortunately around here, a lot of times the agencies testify and then they leave. They do not wait and hear the testimony of the other people that might have something to offer or have a different opinion.

Mr. BEN. We would love to take it on. Let's put it that way. We would love to take that project on.

The CHAIRMAN. Okay, good.

We pass a bill and the President signs it into law, and then there are standards and there are rules made in the agencies, as you probably know. During that process when they were developing standards, did your schools or your tribe have any involvement in helping draft the new implementing regulations?

Mr. BEN. There was a process, what they call a negotiated rulemaking.

The CHAIRMAN. Did it work for you?

Mr. BEN. Yes; it is working, the accountability portion and all these other things I mentioned today are working.

The CHAIRMAN. Good. I am glad to hear that.

I do have a few further questions that I will submit in writing. Other members may also do the same. We certainly appreciate your being here. We will keep the record open 2 weeks for any additional comments you may have or anybody in the audience that may have, too.

Thank you for attending. This committee is adjourned.

[Whereupon, at 1:10 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DAVE ANDERSON, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the committee. I am pleased to be here today to speak on behalf of the Department of the Interior about the Department's efforts to implement the No Child Left Behind Act in its Bureau-funded school system. The Bureau operates, either directly or through tribal grants and contracts, 184 elementary and secondary schools [and peripheral dormitories] in 23 States.

On November 19, 2001, George W. Bush stated that, "Indian education programs will remain a priority, so that no American child, including no Native American child, is left behind." President Bush and Secretary Norton are committed to ensuring that the almost 48,000 Indian students attending Bureau-funded elementary and secondary schools receive high-quality educational opportunities and the opportunity to achieve. In fact, the President recently signed an Executive order on American Indian and Alaska Native Education with the purpose of assisting American Indian and Alaska Native students in achieving the academic standards established by the No Child Left Behind Act [NCLB]. The Department is committed to working with the Department of Education to implement this important Executive order.

As Assistant Secretary—Indian Affairs, I have made Indian education a top priority. It is my strong belief that the most valuable asset of our future is our Indian youth. In the last few months, I have visited a number of Bureau-funded schools. What has become evident to me is the need to establish environments where students are encouraged to excel personally and academically.

I believe that the high rates of school drop-out, teen suicides, substance abuse, and unemployment that exist on many of our reservations are directly caused by young people growing up without a strong sense of "HOPE." They don't believe that they have the opportunity to succeed. Success, achievement and accomplishment are not part of their vocabulary.

I believe that NCLB creates an incredible opportunity for the Bureau and the Indian community to partner and create positive learning environments that will empower our native youth. Our native youth need to realize that the American Dream has been made available to them. The American Dream of pursuing your "life's passion" and experiencing achievement and success is available to everyone in this great Nation.

While some may believe that the NCLB is too rigorous, I believe that the human mind, body and spirit were meant to be challenged. Some of our native youth have been allowed to just "squeak" by because they have not been held to challenging standards. It is now time that we recognize that all of our children can learn and should be challenged to fulfill their greatest potential.

To aid in implementing the NCLB in the Bureau-funded school system, I am exploring two important concepts that I hope will provide sweeping change in the way we view Indian education at the Department. First, it is my vision that every Bureau-funded school should incorporate a "Success 101" curriculum into the classroom

to encourage student achievement, leadership, business investment, homeownership, and personal responsibility. Second, I have asked my staff to develop a pilot program to work in partnership with a Bureau-funded school to transform its mission into a Leadership Academy. A Leadership Academy will transform the mission of a school to one of personal and academic excellence. We hope to weave both the core academic curriculum with the personal achievement needs of students by teaching success strategies, teamworking skills, effective leadership and communications, and other important life skills. The BIA hopes to establish partnerships with tribal school, communities and parents to help bring this concept into the bureau-funded schools.

I have asked my staff to develop a Success 101 curriculum and a Leadership Academy pilot program. We are currently analyzing how best to implement these two programs within available funding and our current authority. During the months of July and August, the OIEP will consult with tribal leaders, educators, and community members on incorporating Success 101 and Leadership Academies into the Bureau-funded school system. My goal is to turn the Bureau-funded school system away from the perception that they are "schools of second choice" toward the concept of that they are "schools of first choice: of leadership and achievement."

Since 2001 the Administration has made a substantial investment to provide students and teachers in BIA schools with a safe physical environment in which to learn and grow. A pre-requisite to providing a high-quality education is safe and structurally sound schools. With this in mind, the President has requested and secured funding to replace, rehabilitate, or repair deteriorating schools. In fact, during the President's term he has requested $1.1 billion in funding for the school construction program. We are moving forward with the funding provided and we are optimistic that we will have several schools completed within 1 year.

The Bureau-funded school system is striving to be a leader in building energy-efficient schools. On April 20, 2004, the U.S. Green Building Council awarded the BIA and the Baca/Dlo'ay azhi Community School Project [Prewitt, New Mexico] with the Leadership in Energy and Environmental Design [LEED] designation. The Baca/Dlo'ay azhi Community School was the first LEED certified building in the State of New Mexico, and the Bureau of Indian Affairs. The design, construction and operation of this building should minimize long-term negative environmental effects and energy demands. Several sustainable design features, in addition to Navajo cultural elements, are incorporated into the innovative design of the school. A number of other replacement-school construction projects are also being considered for LEED certification.

While not specifically covered by NCLB, the Bureau has implemented an early childhood education program, named the Family and Child Education (FACE) program. The FACE program promotes family literacy by directly serving Indian children from birth through grade three, encouraging parental involvement in their child's academic experiences, developing school readiness skills, and strengthening the family community-school relationship. Approximately 2,300 children, 2,240 adults and 1,800 families are served each year through the FACE program. The four components of the FACE program include: Early childhood education, parent and child time, parenting skills and adult education. These program components are provided in the home and school setting. Under this Administration, the FACE program for Indian children and families has been expanded from 32 to 39 sites. The BIA is in the process of instituting an independent review to assess the program. The Administration's budget request contains $12.5 million for this program and study.

The Department is committed to improving Indian education and ensuring that no Indian child is left behind. The NCLB is the President's commitment that all public schools will provide students with a high-quality education, and Bureau-funded students and parents can expect that our schools also will carry forward that vision. Full and successful implementation of the NCLB will require a strong partnership between the Department and every Bureau-funded school and its community.

The NCLB required the Department to undertake formal negotiated rulemaking for nine specific areas as discussed below. Upon completion and publication of these final regulations, the Bureau-funded school system will fully implement the President's goal of increased accountability for improved student achievement. In August of 2004, the Department will consult with tribal leaders, educators, and community members regarding the remaining area to be negotiated as required by the NCLB: School construction.

The NCLB negotiated-rulemaking process provided both the Department and the tribal community a valuable opportunity to reassess our education system. The results are a thoughtful work product that encourages accountability to aid the Bu-

reau in fulfilling its charge to provide a meaningful educational opportunity for the young people whom we serve.

On February 20, 2004, the first six draft regulations were published. These regulations were developed in 5 months through a process in which the Federal Government sat at the table and negotiated with Indian tribal leaders and Indian education professionals to develop proposed regulations to implement the NCLB. These proposed regulations were developed through "consensus" decisionmaking in which all 25 Federal and tribal committee members agreed to the final negotiated product. The rulemaking committee reached consensus on the following six areas: (1) Definition of Adequate Yearly Progress, (2) Geographic Boundaries, (3) Allotment Formula, (4) Student Civil Rights, (5) Grants Administration under the Tribally Controlled Schools Grants Act, and (6) Funding Distribution. The public comment period on these proposed regulations ends on June 24, 2004.

During February 2–7, 2004, the committee reconvened and negotiated two additional areas required under NCLB: (1) Closure or Consolidation of Schools, and (2) National Criteria for Home-Living Situations. Although consensus was reached by the committee in the area of home-living standards, consensus was not reached by the committee in the area of school closure or consolidation of schools because the Federal and tribal committee members had differing legal interpretations of section 1121(d) of the Education Amendments of 1978, as amended by the No Child Left Behind Act. After much thoughtful deliberation, it became clear that consensus could not be reached on the issue of whether the Secretary could, without the approval of the tribal governing body, close, consolidate, or substantially curtail a school pursuant to the regulations promulgated under section 1121 (d).

The Department is finalizing the proposed regulations for both the school closure and home-living standards, and we hope to publish these proposed regulations in the Federal Register in the near future. Following the publication of these proposed regulations, the public will have 120 days to comment. The Department will then review any comments provided.

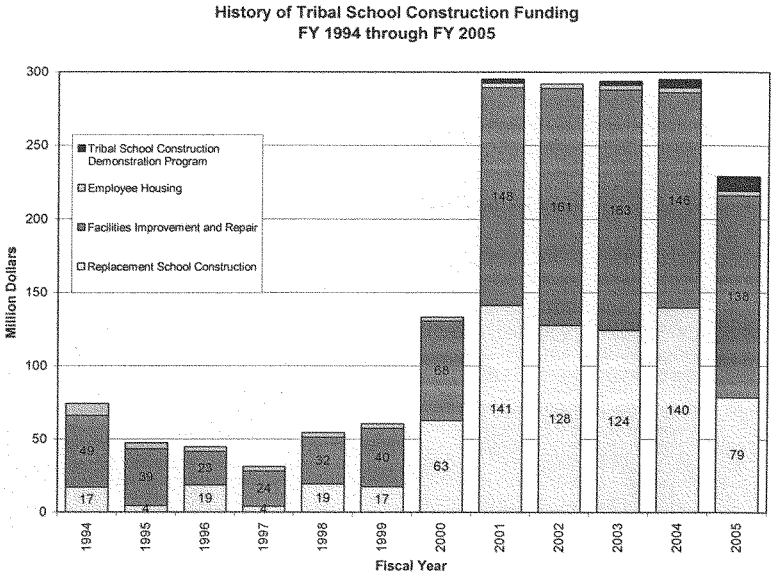
We strongly encourage all tribal communities that are concerned with the issue of school closure and consolidation to provide comments during the 120-day public comment period. This public comment period is invaluable in assisting the Department in fulfilling both the letter and the intent of the NCLB.

The President's budget supports implementation of NCLB in the bureau-funded school system. The Bureau-funded school system has received significant increases in flow-through funding from the Department of Education to aid in the implementation of the NCLB.

In fact, the President's fiscal year 2005 budget request for the Department of the Interior includes a $500,000-increase for the FOCUS program. The FOCUS program provides targeted assistance to the lowest-performing Bureau-funded schools. The purpose of this funding is to provide technical assistance and raise the level of instruction in these schools to encourage greater student proficiency on challenging academic standards and assessments. The FOCUS program has demonstrated improved student achievement with four of the five past participants, and, in fact, after the first year one school raised its student academic proficiency levels by over 20 percent with the help of the FOCUS program.

Another success the Department has had in implementing the NCLB was passing the Department of Education's rigorous review of OIEP's application to receive Reading First grant money. In November 2003, the OIEP was awarded a $30.4-million, 6-year Reading First grant from the Department of Education. The purpose of the Reading First program is to improve reading achievement through scientifically based reading research for grades K–3 by promoting teacher development and instructional strategies that focus on phonemic awareness, phonics, fluency, vocabulary, and text comprehension. In March 2004, the OIEP awarded its first 22 subgrants to eligible schools and will be awarding two more grants in July 2004. We are excited about the opportunities that this Reading First Grant will open in our Bureau-funded school system.

Thank you for the opportunity to be here today to testify on this important issue. I would be happy to answer any questions that you have.


History of Tribal School Construction Funding
FY 1994 through FY 2005
Tribal School Construction Demonstration Program
Employee Housing
Facilities Improvement and Repair
Replacement School Construction
Million Dollars
Fiscal Year
300
250
200
150
100
50
0
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
49
17
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17
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63
148
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161
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My name is Dr. Roger Bordeaux; I am the superintendent of Tiospa Zina Tribal School and the Executive Director of the Association of Community Tribal Schools Inc. (ACTS). I have been the Superintendent for 14 years and the Executive Director for 20 years. I was probably one of the first Title I students in the late 1960's.

Tiospa Zina is a tribal school on the Sisseton Wahpeton Dakota reservation in northeast South Dakota and southeast North Dakota. Tiospa Zina started in the spring of 1982 with 12 students and now serves over 500 students. The primary reason for the growth of the school population relates to the schools strong commitment to cultural relevancy and the Effective Schools continuous improvement model. The schools mission is "Learners will retain their own unique culture and be prepared for a technological/multi-cultural society."

ACTS represents a significant number of the over 125 tribally controlled elementary and secondary schools. There are over 25,000 students in tribal elementary and secondary schools. 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 schools they are prepared for lifelong learning and that these students will strengthen and perpetuate traditional tribal societies."

We are here today to talk about the implementation of the "No Child Left Behind Act" in Native American communities. I would like to talk about the lack of implementation and the disregard for federal law.

1. The Native American Education Improvement Act included in NCLB required the Secretary of Interior to vest all education functions through the Assistant Secretary for Indian Affairs to the Director of the Office of Indian Education Programs. These functions include personnel, contracting, procurement, finance, operation and maintenance, technology, facilities construction, and any other programs and expenditures of Federal funds for the purpose of education. (25 USC 2006)

THE PROPOSED BIA RE-ORGANIZATION VIOLATES FEDERAL LAW AND TAKES ALL OF THESE FUNDS AWAY FROM EDUCATION. ONE EXAMPLE OF A MAJOR EFFECT IS THE BIA's CHOICE TO ABANDON A MASTER TECHNOLOGY PLAN (ORIGINALLY PART OF A VICE PRESIDENTIAL RE-INVENTION LAB) THAT INCLUDED OVER $50,000,000 PER YEAR FROM THE E-RATE PROGRAM TO SCHOOLS.

2. The Native American Education Improvement Act included in NCLB required the Department of Interior to meet specific deadlines including the negotiated rule making process, transfer of functions, feasibility studies, reports to Congress, survey of Facilities Conditions, and establishment of the Division of Budget Analysis.

THE BIA DECISION TO DISREGARD DEADLINES HAS CAUSED UNNECCESSARY DELAYS IN FUNDING TO SCHOOLS AND CONFUSION ABOUT WHETHER A SCHOOL HAS MADE ADEQUATE YEARLY PROGESS.

THE BIA INTERPRETS NCLB AS GIVING THE SECRETARY ARBITRARY AUTHORITY TO CLOSE, CONSOLIDATE, TRANSFER, OR SUBSTANTIALLY CURTAILMENT OF A SCHOOL OR SCHOOL PROGRAM WITHOUT ANY TRIBAL GOVERNING BODY APPROVAL.

3. NCLB'S statement of purpose includes the promotion of schoolwide reform and the promotion of greater decision-making authority and flexibility to schools.

BIA-OIEP HAS IMPLEMENTED NCLB BY QUESTIONING LOCAL SCHOOL DECISION MAKING AND SCRUTINIZING SCHOOL IMPROVEMENT PLANS. THEY HAVE DICTATED FROM AFAR WHAT IS BEST FOR THE CHILDREN IN BIA FUNDED SCHOOLS. THEY HAVE DELAYED FUNDING DISTRIBUTION BECAUSE OF THEIR REVIEW PROCESSES.

THE READING FIRST GRANT PROCESS HAS BEEN EXTREMELY PRESCRIPTIVE WHICH HAS FORCED MANY SCHOOLS NOT TO APPLY. THE STRINGENT ADHERENCE TO WHATEVER THE DEPARTMENT OF EDUCATION SAYS AND WANTS IS LIKE THE TAIL WAGGING THE DOG.

I HAVE HEARD STORIES OF TEACHERS BEING REQUIRED TO GIVE WEEKLY READING FLUENCY TESTS AND DISREGARD READING COMPREHENSION, TEACHERS FOCUSING ON TEACHING TO THE HIGH STAKES TEST AND DISREGARDING HIGHER ORDER THINKING SKILLS, AND TEACHERS PRESSURED TO DISREGARD ALL SUBJECTS EXCEPT DISCRETE READING SKILLS AND DISCRETE MATH SKILLS.

4. NCLB's primary purpose is to leave no child behind but Native children are sometimes not included.

THERE ARE AT LEAST 11 PROGRAMS WITHIN NCLB THAT HAS NO INDIAN SET-ASIDE. THERE IS FUNDING THAT GOES TO THE STATES BUT THERE ARE NO FUNDS THAT GO THE BIA FUNDED SCHOOLS.

THERE ARE OTHER PROGRAMS WHERE THE DEPARTMENT OF EDUCATION APPEARS TO HAVE DECIDED NOT TO GIVE THE INDIAN CHILDREN THE MAXIMUM AMOUNT ALLOWED BY STATUTE. THERE IS A PERCEPTION THAT THE BIA EDUCATION SYSTEM IS UNDER MORE SCRUTINY THEN THE STATE EDUCATION SYSTEMS.

THE DEPARTMENT OF EDUCATION REPORTS A 72% INCREASE IN TITLE I FUNDING TO BIA FUNDED SCHOOLS BUT I HAVE NOT RECEIVED THE SAME INCREASE AT TIOSPA ZINA. WHERE HAS ALL THE MONEY GONE.

EVEN THOUGH SPECIAL EDUCATION IS NOT A PART OF NCLB I WANT TO MENTION THAT THE SPED REVENUE TO BIA FUNDED SCHOOLS WILL BE INCREASED BY 6.4% FROM FY 2001 THROUGH FY 2005 AND THE INCREASES TO THE STATES FOR THE SAME PERIOD AVERAGES NEARLY 75%.

THE DEPARTMENT OF INTERIOR HAS NEVER REQUESTED FULL FUNDING FOR ISEP (funded at 80%), TRANSPORTATION (funded at 70%), OPERATIONS AND MAINTENANCE (funded at 68%) AND ADMINISTRATIVE COST GRANTS (funded at 78%). BIA FUNDED SCHOOLS USE NCLB FUNDS FOR BASIC EDUCATION FUNCTIONS.

5. The accountability measures and sanctions implemented by the Department of Education and the Department of Interior will have all BIA funded schools in restructuring by the 2013-2014 school year.

SCHOOLS THAT ARE CURRENTLY USING THE BIA INTERIM DEFINITION OF ADEQUATELY YEARLY PROGRESS, SCHOOLS THAT CHOOSE TO USE THEIR STATES AYP DEFINITION OR EVEN IF SCHOOLS GET AN ALTERNATIVE DEFINITION OF AYP APPROVED BY THE SECRETARY OF INTERIOR WILL ALL BE IN RESTRUCTING WITHIN THE NEXT 8 YEARS.

THE CURRENT PROCESS IS A DEFICIT IMPROVEMENT MODEL AND NOT A CONTINUOUS IMPROVEMENT MODEL. INDIAN CHILDREN AND INDIAN SCHOOLS CAN IMPROVE ON ACHIEVEMENT SCORES ANNUALLY AND STILL BE IN SCHOOL IMPROVEMENT, CORRECTIVE ACTION OR RESTRUCTURING.

THE STRATEGY TO CLOSE THE ACHIEVEMENT GAP FOR NATIVE CHILDREN

Exhibit A

Memorandum October 27, 2003

TO: House Education and Workforce Committee
Attention: Alex Nock

FROM: Nathan Brooks, J.D.
American Law Division

SUBJECT: The Legality of the Department of the Interior's 2003 Reorganization with Respect to Indian Education Personnel

This memorandum responds to your inquiry as to whether the Department of the Interior (DOI) may have violated 25 U.S.C. § 2006(b)(1) by placing the authority over procurement, contracting, and finance personnel with regards to education programs outside of the ambit of the Director of the Office of Indian Education Programs (OIEP).

Background. In April, 2003, five months after receiving approval to reprogram funds to finance its proposed reorganization, DOI released revisions to the Department Manual that reorganized the BIA, the Office of the Assistant Secretary - Indian Affairs (OASIA), and the Office of the Special Trustee for American Indians (OST). As part of this reorganization, DOI consolidated authority over various administrative personnel - including those responsible for contracting, procurement, finance - under various Deputy Assistant Secretaries,[1] all of whom are outside of the ambit of the Director of BIA and the Director of OIEP. This consolidation was motivated, according to DOI, by a desire to allow those responsible for managing trust assets and providing services, including education services, to concentrate solely on those responsibilities.[2] Some have questioned whether this transfer, inasmuch as it removed OIEP authority over certain personnel, violated 22 U.S.C. § 2006(b)(1),[3] which states in relevant part: "[T]he Director of the Office [of Indian Education Programs] shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or

[1] 210 Department of the Interior Department Manual 8.

[2] *Hearing before the Committee on Indian Affairs, United States Senate, 108th Congress, 1st Session, on Proposed Reorganization of the Bureau of Indian Affairs*, S. Hrg. 108-115, 7 (May 21, 2003) (statement of Aurene Martin, Acting Assistant Secretary, Bureau of Indian Affairs).

[3] *See, e.g., Hearing before the Committee on Indian Affairs, United States Senate, 108th Congress, 1st Session, on Proposed Reorganization of the Bureau of Indian Affairs*, S. Hrg. 108-115, 35 (May 21, 2003) (prepared statement of Senator Daschle).

Exhibit A1

institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs."

Analysis. When interpreting statutes, courts generally do not go beyond the statutory language if that language is clear and unambiguous.[4] Similarly, while agencies enjoy wide latitude in interpreting unclear statutory language, if the intent of Congress is clear on the face of the statute, the agency must yield to that interpretation.[5] The first question, then, is whether § 2006(b)(1) is ambiguous. At first glance, the language might appear to lack clarity, in that it commands the Director of OEIP to supervise "personnel *directly and substantially involved*" (emphasis added) in the provision of BIA education services. This language would leave plenty of room for interpretation were it not for the clause immediately following it, which specifies some of the personnel that Congress had in mind: "school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs." This statute is unambiguous in its command that the personnel listed above are to be under the Director's supervision. Even if a court were to find that this language is ambiguous, the legislative history supports the conclusion that Congress meant for the Director to have control over certain education personnel.[6] With Congress' intent in mind, the next question is whether DOI acted contrary to that intent when it removed authority over certain personnel from the OIEP Director.

The revised Department Manual delegates to the three Deputy Assistant Secretaries authority over budget and financial administration and procurement and contracting,[7] powers which are not included on the OIEP Director's new list of authorities.[8] Authority over procurement personnel formerly resided in the OIEP's Division of Contracting and Grants, while finance personnel were stationed in the Policy, Budget, and Finance Division of OIEP. Under the reorganization, personnel from both divisions are now under the authority of the Office of the Chief Financial Officer,[9] who operates not under the OIEP Director, but rather under the Deputy Assistant Secretary - Management. While the Secretary of the Interior has broad authority to reorganize DOI,[10] 25 U.S.C. § 2006 restricts the Secretary's ability to delegate certain authorities with respect to education personnel. Section 2006(a) states that "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." Section 2006(b)(1) follows by requiring, as mentioned above, that "[T]he Director of the Office [of Indian Education Programs] shall

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[4] *See, e.g., American Tobacco v. Patterson*, 456 U.S. 63 (1982).

[5] *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-843 (1984).

[6] *See* H.R. Rep No. 95-1137, at 119 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4971, 5089 ("The Secretary is directed to transfer the responsibility for and authority over education programs within the Bureau to the Bureau's Office of Indian Education Programs. This constitutes a shift in policy and procedure formulations, monitoring and evaluation control, but not ultimate responsibility").

[7] 210 Department of the Interior Department Manual 8.

[8] 230 Department of the Interior Department Manual 1.

[9] 110 Department of the Interior Department Manual 8.

[10] Reorganization Plan No. 3 of 1950, 5 U.S.C. app. 1.

Exhibit A2

direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for *contracting, procurement, and finance functions* connected with school operation programs" (emphasis added). In effect, what § 2006(a) and (b) do is constrain the Assistant Secretary's delegation authority with regard to such personnel. By placing the authority over procurement, contracting, and finance in the aforementioned Office of the Chief Financial Officer - who is not, it should again be noted, under the supervision of the OIEP Director - it appears that DOI acted outside of this Congressional constraint.

One possible argument in favor of the reorganization is that when the Appropriations Subcommittee reprogrammed money specifically for the reorganization, that action impliedly repealed § 2006(b)(1). However, while it is true that when two irreconcilably conflicting statutes apply to a situation, the more recent of the two prevails,[11] for that rule to apply there must first be two conflicting *statutes*. Reprogramming does not involve legislation proper, but rather very informal non-statutory committee or subcommittee approval,[12] and therefore does not have the force of law.[13] Here, the House and Senate subcommittees with funding authority over the Department of the Interior both issued letters approving the Secretary's reprogramming request,[14] but there was no statute enacted approving the reorganization that could trump the very clear language of § 2006(b)(1).

Conclusion. Congress made clear in 25 U.S.C. § 2006(b)(1) its intent that certain education personnel were to remain under the authority of the Director of OIEP. By removing from the Director authority over procurement, contracting, and finance personnel, DOI appears to have acted in contravention of that intent and in violation of the statute in those specific instances. This could be cured, however, if the Director was re-delegated supervisory authority over the aforementioned personnel.

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[11] 2A Norman J. Singer, Sutherland Statutes and Statutory Construction § 51.02 (6th Ed. 2000) (citing *Watt v. Alaska*, 451 U.S. 259 (1981)).

[12] Government Accounting Office, 2 Appropriations Law Manual 25-26 (2000) ("reprogramming is usually a non-statutory arrangement. This means that there is no general statutory provision either authorizing or prohibiting it, and it has evolved largely in the form of informal (i.e., non-statutory) agreements between various agencies and their congressional oversight committees").

[13] *Blackhawk Heating and Plumbing Co. v. United States*, 622 F.2d 539, 548 (Ct. Cl. 1980).

[14] Senators Byrd and Burns, the Chairman and ranking Member, respectively, of the Senate Appropriations Subcommittee on Interior and Related Agencies, issued a letter to Secretary Norton, as did Representatives Skeen and Dicks of the House Appropriations Subcommittee on Interior and Related Agencies. *See Hearing before the Committee on Indian Affairs, United States Senate, 108th Congress, 1st Session, on Proposed Reorganization of the Bureau of Indian Affairs*, S. Hrg. 108-115, 78-79 (May 21, 2003) (prepared statement of Ross O. Swimmer, Special Trustee for American Indians, and Aurene Martin, Acting Assistant Secretary Indian Affairs).

232 224 6103

United States Department of the Interior Exhibit B

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Office of Tribal Services

MAY 14 2004

Division of Forestry Services
DEF

Memorandum

To: All Regional Directors
Acting Director, Office of Economic Development
Director, Office of Self-Governance

From: ACTING Director, Bureau of Indian Affairs

Subject: Final Distribution of Fiscal Year 2004 Contract Support Funds

The Bureau is still attempting to announce, in the *Federal Register*, the method for the distribution and use of FY 2004 Contract Support Funds (CSF). The announcement gives authority for contractors to receive up to 75% of their CSF requirements with the first distribution of funds. The notice will also indicate that the final distribution of CSF would be made on or about June 30, 2004.

This year there are three major changes in the distribution of CSF. The first, for those tribes without indirect cost rates or absent an indirect cost rate proposal to the National Business Center, negotiated lump sum amounts cannot exceed 15 percent. This change was first announced in the FY 2003 CSF *Federal Register* publication. The second major change is made due to Congressional Statute. The Bureau will only pay CSF for contracts authorized by Public Law 93-638, as amended. The payment of CSF to support school contracts authorized by other legislation, in accordance with the Choctaw Decision, are no longer eligible to receive CSF. The third and final change is the due date for the final CSF report. Because the date for year-end closure has been moved up to the beginning of September, the date for submission of the final report is now June 15, 2004. This new date should give the Regions and Office of Self-Governance, sufficient time to modify all tribal contracts.

Attached, is the form to be used for reporting the total CSF need. We ask that you use this form without deviation. The Form will be sent to you via email at a later date.

The priority for funding will be, first, to ensure that all contractors have at least 75 percent of their CSF needs. The balance will be distributed on a pro rata share basis with all contractors receiving the same percentage level of funding, which is consistent with Congressional intent. If your region should have any unobligated FY 2003 CSF, these amounts also need to be reported and will be withdrawn to address unmet FY 2003 CSF needs.

Exhibit B 1

The Regions should separately identify CSF needs for those Tribes with Law Enforcement Programs. Beginning in FY 2005, Law Enforcement CSF may be distributed to the Office of the Deputy Director, Law Enforcement, for distribution to the law enforcement programs. Also, because of the recurring confusion regarding the Tribes participating in the P.L. 102-477 grant program, CSF funds for those Tribes will be distributed to the Regions. The Regions will be required to work directly with the Office of Self-Governance and Self-Determination, in the Office of the Deputy Assistant Secretary, Policy and Economic Development, for final distribution to the Tribes.

When your CSF report is completed, it should immediately be sent to the following address:

Bureau of Indian Affairs
Office of Tribal Services
1951 Constitution Ave. N.W.
MS 320-SIB - Attention: Mr. Harry Rainbolt
Washington, D.C. 20245

This report is critical for the distribution of resources and for providing the tribes with adequate time to make adjustments, should funds prove to be insufficient to meet full need. Your immediate attention and response is appreciated.

If you have any questions regarding the CSF distribution or the final report, direct them to Mr. Harry Rainbolt at (202) 513-7640.

Attachment

Exhibit C

March 10, 2004

MEMORANDUM

TO: Honorable Gale Norton, Secretary of the Interior

FROM: Tribal Co-chairs of the No Child Left Behind Negotiated Rulemaking Committee:
Greg Anderson, Administrator, Eufaula Dormitory, Creek Nation of Oklahoma
Lorraine Begay, School Board Member, Chinle Boarding School, Navajo Nation
Roger Bordeaux, Superintendent, Tiospa Zina Tribal School, Sisseton Wahpeton Oyate

CC: Catherine Freels, Designated Federal Official, Negotiated Rulemaking Committee
Theresa Rosier, Federal Co-chair
Larry Byers, Federal Co-chair

STATEMENT OF TRIBAL REPRESENTATIVES ON SECTION 1121(d) OF THE EDUCATION AMENDMENTS OF 1978, AS AMENDED BY THE *NO CHILD LEFT BEHIND ACT* REGARDING CLOSURE OF BUREAU OF INDIAN AFFAIRS-FUNDED SCHOOLS AND OTHER ACTIONS AFFECTING SUCH SCHOOLS

Introduction and Purpose

The purpose of this Memorandum is to analyze the parameters and limitations of the authority granted to the Secretary of the Interior by Sec. 1121(d) of the Education Amendments of 1978, as amended by the NCLBA. Subsection (d) is titled "Closure or Consolidation of Schools." *No Child Left Behind Act of 2001*, Pub. L. No. 107-110, 15 Stat. 2014 (codified at 25 U.S.C. §2001(d)).

Preparation of this Memorandum was prompted by the failure of the *No Child Left Behind Act* Negotiated Rulemaking Committee (established by the Secretary of the Interior pursuant to law) to reach consensus on proposed regulations regarding closure or consolidation of schools which Sec. 1121(d)(3) requires the Secretary to develop. Specifically, the Committee failed to reach consensus on the following question:

> **May the Secretary unilaterally take any of the actions recited in Sec. 1121(d) -- closure, consolidation, transfer to another authority, or substantial curtailment of a school program -- without the approval of the tribal governing body of the affected tribe?**

Positions within the Committee. Tribal representatives on the Committee asserted that tribal governing body approval is required before any of the recited actions can be taken by the Secretary. Federal representatives argued that the Secretary may unilaterally take any of those actions without the approval of the tribal governing body if she performs certain notice and reporting responsibilities described in Sec. 1121(d)(4) and (5). ***See Finding No. 8 below which refutes this position of the Federal representatives.***

Since the Committee could not agree on this fundamental issue, no proposed regulation on the issue achieved consensus; thus, the Committee made no recommendation to the Secretary regarding it.

Exhibit C1

Rather, the federal Committee members indicated the Department of the Interior would proceed to write its own regulation on the issue.

Request of Tribal Committee Members. Because this issue is fundamental to the longstanding Federal policy of Indian self-determination and involves the Federal Government's trust responsibility for the education of Indian children, tribal representatives on the Committee seek the opportunity to make their case directly to the Secretary of the Interior and urge that she neither propose nor promulgate any regulation that would permit unilateral closure/consolidation, etc. action without the approval of the tribal governing body. This memorandum is intended to aid the Secretary in analyzing the provision at issue.

Our Findings are summarized below, and are supported by the following attachments: Legislative History of the provision and Applicable Principles of Statutory Construction; and the text of the provision as enacted in 1984, and revisions made to the provision in 1985, 1988, 1994 and 2002.

Categories of Schools in the BIA School System. Critical to this analysis is an understanding of the terms used to describe the operational categories of the 185 schools and dormitories that comprise the Bureau of Indian Affairs school system. Some are operated by Indian tribes or tribal organizations; some are operated directly by the BIA. The operative terms and their statutory definitions follow:

- ***Bureau school***. *"The term 'Bureau school' means a Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school."* 25 U.S.C. §2021(4). In SY02-03, the BIA directly operated 65 schools/dorms.

- ***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 [of Indian Affairs] under section 102, 103(a) or 208 of the Indian Self-Determination and Education Assistance Act, or under the Tribally Controlled Schools Act."* 25 U.S.C. §2021(6). The contract and grant schools, sometimes collectively referred to as "tribally-operated schools", numbered 120 in SY02-03.

- ***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." 25 U.S.C. §2021(3). All 185 schools and dormitories in the BIA system are Bureau-funded schools.

Summary of Findings

1. A careful reading of Sec. 1121(d) reveals that the nature and extent of the Secretary's authority under the subsection is different for different operational categories of schools. Some paragraphs refer only to "Bureau schools"; other paragraphs apply to "Bureau-funded schools"; and some paragraphs refer only to "a school". In the latter case, it is necessary to interpret the operational category to which Congress likely refers.

2. The subject of paragraph (1) is "Bureau-funded schools"; thus it applies to all schools in the BIA system. Paragraph (1)(A) prohibits the closure, consolidation, or transfer to another authority of any Bureau-funded school, "except as specifically required by law". Thus, unless Congress passes a law ordering any of the recited actions, all are prohibited. Paragraph (1)(B) prohibits the substantial

Exhibit C2

curtailment of a program of "such a school" (that is, a Bureau-funded school), "except in accordance with the requirements of this subsection [(d)]".[1]

3. Paragraph (2) of the subsection sets out two exceptions to the blanket prohibitions of paragraph (1). When one of the exceptions occurs, the other provisions of the subsection do not apply. The two exceptions are:

- If a tribal governing body requests the closure, consolidation or substantial curtailment of "a school", the Secretary may take the requested action. The term "a school" here should be interpreted to mean any Bureau-funded school, as paragraph (2) sets out exceptions to the prohibitions in paragraph (1). Of course, the Secretary is not required to grant the tribal governing body's request; in that case, the action would not occur.

- A temporary closure, consolidation or substantial curtailment of a school may occur if facility conditions constitute an immediate hazard to health and safety. Sec. 1125(e) sets out the procedures and requirements for taking such temporary actions. [These procedures are not at issue here.]

4. The Secretary's obligation to promulgate regulations is set out in paragraph (3) of the subsection. Those regulations are to establish *standards* and *procedures* for the closure, consolidation, transfer to another authority or substantial curtailment of Bureau schools, only. It does not direct the development of such regulations for taking those actions at contract or grant schools. Thus, to the extent the Negotiated Rulemaking Committee recommended and the Secretary promulgates regulations establishing standards or procedures for these actions, they would apply only to schools operated directly by the BIA.

5. Notice and reporting requirements are imposed on the Secretary in paragraphs (4) and (5) whenever any recited action regarding "a school" is under consideration by the Interior Department or the BIA. It is not clear whether Congress intended the term "a school" here to refer to Bureau-funded schools [the topic of Paragraph (1)], or to Bureau schools [the topic of the immediately preceding paragraph (3)].

It would be reasonable to interpret the term "a school" here as meaning a Bureau-funded school, in order that the entities mentioned in paragraphs (4) and (5) learn of the action under consideration and have an opportunity for input. Those entities include: the affected tribe; tribal governing body; local school board; and appropriate committees of Congress. Publication of a notice in the Federal Register is also required, presumably with the objective of informing members of the public -- such as parents, school staff, and other schools -- of the proposed action.

6. Paragraph (7), the final paragraph of the subsection, allows the Secretary to take any of the actions described there *"with the approval of the tribal governing body."* To the extent this clear language requires any interpretation, it must mean that the Secretary may not take any of the recited actions *unless* the tribal governing body approves. The recited actions are: termination, contracting, transfer to another authority, consolidation, or substantial curtailment of the operations or facilities of --

---

[1] We note that in prior version of this law, the phrase "except in accordance with the requirements of this subsection" applied to the entire paragraph (1). In the *No Child Left Behind Act*, however, that phrase was attached only to paragraph (1)(B). *Compare* Education Amendments of 1984, Pub. L. No. 98-511, 98 Stat. 2366; Indian Education Technical Amendments Act of 1985, Pub. L. No. 99-89, 99 Stat. 379; Tribally Controlled Schools Act of 1988, Pub. L. No. 100-297, 102 Stat. 385; Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518; No Child Left Behind Act of 2001, Pub. L. No. 107-110, 15 Stat. 2014.

Exhibit C3

- a Bureau-funded school that was in operation on or after January 1, 1999;
- any program of such school that was in operation on or after January 1, 1999;
- any school board operated under a TCSA grant.

7. A full reading of subsection (d) gives rise to questions about why Congress enacted the subsection in that form and using the language that appears in the *No Child Left Behind Act*, as some language may be seen as superfluous or redundant. These questions may be partially explained in the Legislative History portion of this Memorandum (below). Indeed, some wording may be the result of inartful legislative drafting.

Nonetheless, the critical issue on which the tribal and federal members of the Negotiated Rulemaking Committee could not reach consensus can -- and must -- be resolved solely by reference to the language that appears in the current law. The conclusion of the current law is that no closure or other recited action may be taken with regard to any *Bureau-funded school* unless one of three events occurs:

- Congress orders such action in a law (per §1121(d)(1));
- The tribal governing body requests such action (per §1121(d)(2)(A)); or
- The tribal governing body approves such action (per §1121(d)(7)).

8. Federal representatives on the Negotiated Rulemaking Committee have argued that Congress could not have intended that the Secretary go through all the notice and reporting steps of paragraphs (4) and (5) if, in the end, a tribal governing body could withhold its approval under paragraph (7) and defeat the action. This position is misguided, as it assumes that even after the thorough consideration required by (4) and (5), the tribal governing body would, in every case, refuse its approval. If the case for the action is persuasive, the tribal governing body may approve it.

Similarly, the Secretary herself, after following the steps in (4) and (5), may decide that the proposed action is ill-advised and should be abandoned. In other words, the ultimate decisions of the tribal governing body and the Secretary should not be assumed. Both entities should have the benefit of the thorough consideration of a proposal before making a final decision, just as Congress intended. **Thus, it is clear that Congress intended that if the Secretary and the tribal governing body agree, the action may be taken. If they do not agree, the action is not to be taken.**

Using the Federal representatives' approach, one could also ask the corollary question: Why would Congress include a tribal governing body approval requirement if it intended that this tribal role could be rendered inoperable merely by the Secretary filing a notice and a report? The obvious answer is that Congress had no such intent; it did <u>not</u> state any circumstance where the tribal role could be rendered inoperable. That requirement is not superfluous and should not be read as such by the Federal representatives.

9. The Federal representatives' position requires one to *ignore* paragraph (7) in a case where the Secretary complies with paragraphs (4) and (5). This reading is supported by no rules of statutory construction. In fact it violates several such principles described below under "Applicable Principles of Statutory Construction".

Exhibit C4

Conclusion

For reasons set out here and in consideration of the legislative history of the provision and accepted principles of statutory construction (attached), it is clear that the law requires the concurrence of the tribal governing body before the Secretary of the Interior may take any action to close, consolidate, contract, or transfer to any other authority a Bureau-funded school or dormitory or substantially curtail its operations or facilities. Any interpretation to the contrary violates the plain meaning of the law, ignores the legislative history of the provision, and transgresses principles of statutory construction, including the Indian canon of construction.

Thus, the Secretary must direct that no regulations implementing Sec. 1121(d) be promulgated that in any way provide that such action may be taken without first obtaining the approval of the tribal governing body, and, further, that no such actions be administratively undertaken (with or without a regulation in place), if the tribal governing body has not granted its approval.

Exhibit D

DEPARTMENT OF EDUCATION

Mathematics and Science Partnerships

State or Other Area	2001 Actual	2002 Actual	2003 Actual	2004 Estimate	2005 Estimate	Change Fiscal Year 2004 to 2005 Amount	Change Fiscal Year 2004 to 2005 Percent	FY 2001 to 2005 % Change
Alabama	0	0	1,760,356	2,573,186	2,586,107	12,921	0.5%	---
Alaska	0	0	499,218	741,850	745,575	3,725	0.5%	---
Arizona	0	0	1,755,710	3,141,135	3,156,908	15,773	0.5%	---
Arkansas	0	0	1,025,320	1,634,969	1,643,178	8,209	0.5%	---
California	0	0	13,901,945	20,513,767	20,616,771	103,004	0.5%	---
Colorado	0	0	939,446	1,493,502	1,501,002	7,500	0.5%	---
Connecticut	0	0	659,459	986,244	991,196	4,952	0.5%	---
Delaware	0	0	499,218	741,850	745,575	3,725	0.5%	---
District of Columbia	0	0	499,218	741,850	745,575	3,725	0.5%	---
Florida	0	0	4,674,882	7,474,629	7,512,160	37,531	0.5%	---
Georgia	0	0	2,958,451	4,411,931	4,434,084	22,153	0.5%	---
Hawaii	0	0	499,218	741,850	745,575	3,725	0.5%	---
Idaho	0	0	499,218	741,850	745,575	3,725	0.5%	---
Illinois	0	0	3,408,938	5,283,333	5,309,862	26,529	0.5%	---
Indiana	0	0	1,216,249	1,970,774	1,980,670	9,896	0.5%	---
Iowa	0	0	507,278	802,074	806,101	4,027	0.5%	---
Kansas	0	0	706,027	881,036	885,460	4,424	0.5%	---
Kentucky	0	0	1,419,361	2,072,257	2,082,663	10,406	0.5%	---
Louisiana	0	0	2,499,228	3,400,858	3,417,935	17,077	0.5%	---
Maine	0	0	499,218	741,850	745,575	3,725	0.5%	---
Maryland	0	0	1,030,554	1,595,510	1,603,522	8,012	0.5%	---
Massachusetts	0	0	1,731,107	1,975,915	1,985,836	9,921	0.5%	---
Michigan	0	0	2,618,519	3,850,888	3,870,224	19,336	0.5%	---
Minnesota	0	0	931,332	1,162,128	1,167,961	5,835	0.5%	---
Mississippi	0	0	1,526,926	2,195,614	2,206,639	11,025	0.5%	---
Missouri	0	0	1,749,036	2,262,599	2,273,960	11,361	0.5%	---
Montana	0	0	499,218	741,850	745,575	3,725	0.5%	---
Nebraska	0	0	499,218	741,850	745,575	3,725	0.5%	---
Nevada	0	0	518,874	857,239	861,544	4,305	0.5%	---
New Hampshire	0	0	499,218	741,850	745,575	3,725	0.5%	---
New Jersey	0	0	1,795,702	2,503,946	2,516,518	12,572	0.5%	---
New Mexico	0	0	1,006,976	1,498,223	1,505,746	7,523	0.5%	---
New York	0	0	7,361,349	10,585,113	10,638,263	53,150	0.5%	---
North Carolina	0	0	2,498,850	3,672,366	3,690,806	18,440	0.5%	---
North Dakota	0	0	499,218	741,850	745,575	3,725	0.5%	---
Ohio	0	0	3,099,930	4,191,357	4,212,403	21,046	0.5%	---
Oklahoma	0	0	1,215,104	1,922,061	1,931,712	9,651	0.5%	---
Oregon	0	0	875,963	1,427,252	1,434,418	7,166	0.5%	---
Pennsylvania	0	0	3,001,100	4,099,071	4,119,653	20,582	0.5%	---
Rhode Island	0	0	499,218	741,850	745,575	3,725	0.5%	---
South Carolina	0	0	1,398,033	2,030,590	2,040,786	10,196	0.5%	---
South Dakota	0	0	499,218	741,850	745,575	3,725	0.5%	---
Tennessee	0	0	1,826,032	2,720,550	2,734,211	13,661	0.5%	---
Texas	0	0	9,064,833	13,889,838	13,959,582	69,744	0.5%	---
Utah	0	0	499,218	765,163	769,005	3,842	0.5%	---
Vermont	0	0	499,218	741,850	745,575	3,725	0.5%	---
Virginia	0	0	1,544,679	2,376,130	2,388,061	11,931	0.5%	---
Washington	0	0	1,375,857	2,142,879	2,153,639	10,760	0.5%	---
West Virginia	0	0	711,469	1,005,845	1,010,895	5,050	0.5%	---
Wisconsin	0	0	1,026,868	1,621,003	1,629,143	8,140	0.5%	---
Wyoming	0	0	499,218	741,850	745,575	3,725	0.5%	---
American Samoa	0	0	499,218	741,850	745,575	3,725	0.5%	---
Guam	0	0	499,218	741,850	745,575	3,725	0.5%	---
Northern Mariana Islands	0	0	499,218	741,850	745,575	3,725	0.5%	---
Puerto Rico	0	0	5,005,935	8,025,827	8,066,126	40,299	0.5%	---
Virgin Islands	0	0	499,218	741,850	745,575	3,725	0.5%	---
Freely Associated States	0	0	0	0	0	0	---	---
Indian set-aside	0	0	0	0	0	0	---	---
Other (from State allocations)	0	0	500,000	745,000	120,000,000	119,255,000	16007.4%	---
Total	0	0	100,343,500	149,115,000	269,115,000	120,000,000	80.5%	---

NOTE: Detail may not add to total due to rounding of total.

NOTE: The amounts contained in this State table are preliminary estimates for fiscal years 2004 and 2005. Final allocations may change significantly in some cases.

Compiled for posting on the WEB by the Budget Service on May 3, 2004

Exhibit E

DEPARTMENT OF EDUCATION

Special Education–Grants to States

State or Other Area	2001 Actual	2002 Actual	2003 Actual	2004 Estimate	2005 Estimate	Change Fiscal Year 2004 to 2005 Amount	Change Fiscal Year 2004 to 2005 Percent	FY 2001 to 2005 % Change
Alabama	100,426,123	119,980,334	143,066,181	160,385,829	175,155,880	14,770,051	9.2%	74.4%
Alaska	18,460,830	22,190,605	26,601,189	30,483,423	33,946,108	3,462,685	11.4%	83.9%
Arizona	92,343,757	111,045,656	132,562,806	152,382,476	169,803,374	17,420,898	11.4%	83.9%
Arkansas	59,842,674	71,962,298	85,906,324	97,209,622	106,698,741	9,489,119	9.8%	78.3%
California	650,017,799	781,662,507	933,124,077	1,072,636,899	1,189,168,464	116,531,565	10.9%	82.9%
Colorado	78,209,425	94,048,771	112,272,460	129,058,489	143,812,907	14,754,418	11.4%	83.9%
Connecticut	76,114,202	88,245,788	103,861,437	116,976,890	127,742,764	10,765,874	9.2%	67.8%
Delaware	16,919,300	20,345,877	24,288,267	27,919,643	31,111,514	3,191,871	11.4%	83.9%
District of Columbia	8,507,074	10,229,967	12,212,212	14,039,079	15,642,961	1,604,882	11.4%	83.9%
Florida	344,413,144	405,878,306	479,524,885	551,219,391	611,333,306	60,113,915	10.9%	77.5%
Georgia	162,338,968	195,216,655	233,043,493	267,866,185	298,511,871	30,625,686	11.4%	83.9%
Hawaii	21,338,561	25,660,148	30,632,276	35,212,155	39,237,732	4,025,577	11.4%	83.9%
Idaho	28,717,888	34,533,972	41,225,568	47,389,266	52,745,332	5,356,066	11.3%	83.7%
Illinois	263,066,424	336,446,325	393,133,924	442,911,364	484,769,849	41,858,485	9.5%	71.3%
Indiana	145,373,315	170,853,119	200,791,461	226,574,790	247,968,567	21,093,777	9.3%	70.4%
Iowa	70,380,938	82,526,911	96,042,219	107,669,127	117,293,794	9,624,667	8.9%	66.6%
Kansas	60,170,732	70,893,325	84,072,314	94,250,141	103,089,848	8,839,707	9.4%	71.3%
Kentucky	88,537,364	104,503,321	122,927,410	137,596,944	150,009,832	12,306,888	8.9%	69.4%
Louisiana	99,271,780	119,376,775	142,508,233	163,814,859	182,542,747	18,727,888	11.4%	83.9%
Maine	31,546,701	36,989,288	43,046,968	48,256,251	52,572,111	4,313,860	8.9%	66.6%
Maryland	111,365,477	131,443,233	153,621,502	175,273,494	191,787,676	16,514,182	9.4%	72.2%
Massachusetts	163,656,198	191,890,947	223,316,539	250,351,438	272,730,640	22,379,202	8.9%	66.6%
Michigan	216,776,390	260,135,764	308,119,146	349,104,817	383,668,977	34,564,160	9.9%	77.0%
Minnesota	109,440,436	128,321,623	149,336,682	167,416,417	182,481,071	15,065,654	9.0%	66.7%
Mississippi	64,197,563	77,198,160	92,157,925	105,936,599	117,534,187	11,597,588	10.9%	83.1%
Missouri	130,959,742	153,553,541	178,700,774	200,334,359	218,242,477	17,908,118	8.9%	66.6%
Montana	19,591,702	23,559,507	28,124,897	32,188,959	35,522,291	3,333,332	10.4%	81.3%
Nebraska	43,048,869	50,475,888	58,742,248	65,853,607	71,740,337	5,886,730	8.9%	66.6%
Nevada	34,727,666	41,760,879	49,852,822	57,306,394	63,857,861	6,551,467	11.4%	83.9%
New Hampshire	27,359,981	32,080,256	37,333,991	41,853,659	45,595,006	3,741,347	8.9%	66.6%
New Jersey	208,389,355	244,340,509	284,355,787	318,780,009	347,276,120	28,496,111	8.9%	66.6%
New Mexico	52,531,809	61,594,963	71,699,432	80,822,604	88,366,494	7,543,890	9.3%	68.2%
New York	429,667,970	509,305,853	597,207,574	669,505,756	729,353,644	59,847,888	8.9%	69.7%
North Carolina	169,440,174	202,724,229	235,924,071	270,089,237	296,327,688	26,238,451	9.7%	74.9%
North Dakota	13,738,266	16,520,608	19,721,781	22,670,415	25,262,176	2,591,761	11.4%	83.9%
Ohio	209,885,503	286,498,284	344,364,350	393,414,603	432,873,868	39,459,265	10.0%	80.5%
Oklahoma	81,913,464	98,502,970	118,368,189	130,959,004	143,666,037	12,707,033	9.7%	75.4%
Oregon	72,297,813	86,394,113	100,990,582	115,229,988	126,499,432	11,269,444	9.8%	75.0%
Pennsylvania	235,280,772	281,508,625	336,056,128	379,055,914	415,368,129	37,312,214	9.9%	76.5%
Rhode Island	25,211,373	29,560,959	34,402,113	38,566,846	42,014,381	3,447,535	8.9%	66.6%
South Carolina	98,231,807	115,429,949	137,796,637	154,478,352	168,446,330	13,967,978	9.0%	71.5%
South Dakota	16,365,852	19,680,342	23,493,772	27,006,362	30,093,824	3,087,462	11.4%	83.9%
Tennessee	128,733,463	154,805,179	181,996,487	205,312,182	224,954,322	19,642,140	9.6%	74.7%
Texas	505,689,457	608,102,888	725,934,083	834,409,609	929,869,093	95,399,484	11.4%	83.9%
Utah	57,042,839	68,595,427	81,887,060	94,101,314	103,577,132	9,475,818	10.1%	81.6%
Vermont	13,246,513	15,929,020	19,015,562	21,858,609	24,357,561	2,498,953	11.4%	83.9%
Virginia	153,995,278	181,233,563	214,068,545	244,666,927	267,974,503	23,307,576	9.5%	74.0%
Washington	118,603,148	142,623,221	170,259,108	195,714,810	215,386,891	19,674,081	10.1%	81.6%
West Virginia	43,783,893	51,337,899	59,745,197	66,977,974	72,965,212	5,987,238	8.9%	66.6%
Wisconsin	117,131,359	140,599,055	163,780,418	183,607,739	200,405,895	16,797,956	9.1%	71.1%
Wyoming	13,896,695	16,711,120	19,946,209	22,931,840	25,553,495	2,621,649	11.4%	83.9%
American Samoa	5,127,424	5,705,650	5,816,515	5,935,219	6,015,425	80,206	1.4%	17.3%
Guam	12,387,778	12,629,867	12,896,699	13,180,101	13,357,940	177,839	1.4%	7.7%
Northern Mariana Islands	3,161,854	4,372,921	4,416,970	4,516,173	4,571,122	60,949	1.4%	44.6%
Puerto Rico	56,447,698	67,879,755	81,032,713	93,148,039	103,797,049	10,649,010	11.4%	83.9%
Virgin Islands	9,391,764	7,999,558	8,197,048	8,364,335	8,477,366	113,031	1.4%	-9.7%
Freely Associated States	0	0	0	0	0	0	---	---
Indian set-aside	77,724,538	79,377,301	80,458,990	81,616,614	82,719,541	1,102,927	1.4%	6.4%
Other (non-State allocations)	23,244,059	22,579,306	22,579,306	22,579,306	22,579,306	0	0.0%	-2.9%
Total	5,339,685,000	7,528,533,000	8,874,397,536	10,068,106,000	11,068,106,000	1,000,000,000	9.9%	74.6%

NOTE: Detail may not add to total due to rounding of total.

NOTE: The amounts contained in this State table are preliminary estimates for fiscal years 2004 and 2005. Final allocations may change significantly in some cases.

Compiled for posting on the WEB by the Budget Service on May 3, 2004.

Exhibit F

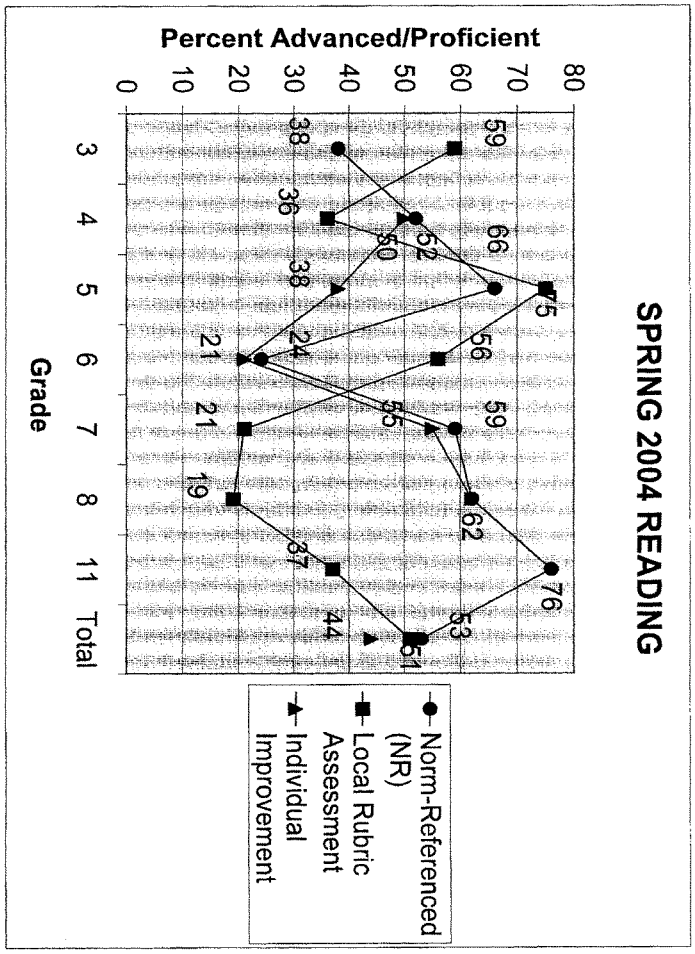

SPRING 2004 READING
Percent Advanced/Proficient
80
70
60
50
40
30
20
10
0
59
66
75
56
59
62
76
53
51
52
50
55
38
36
38
24
21
21
19
37
44
3
4
5
6
7
8
11
Total
Grade
Norm-Referenced (NR)
Local Rubric Assessment
Individual Improvement

Exhibit F1

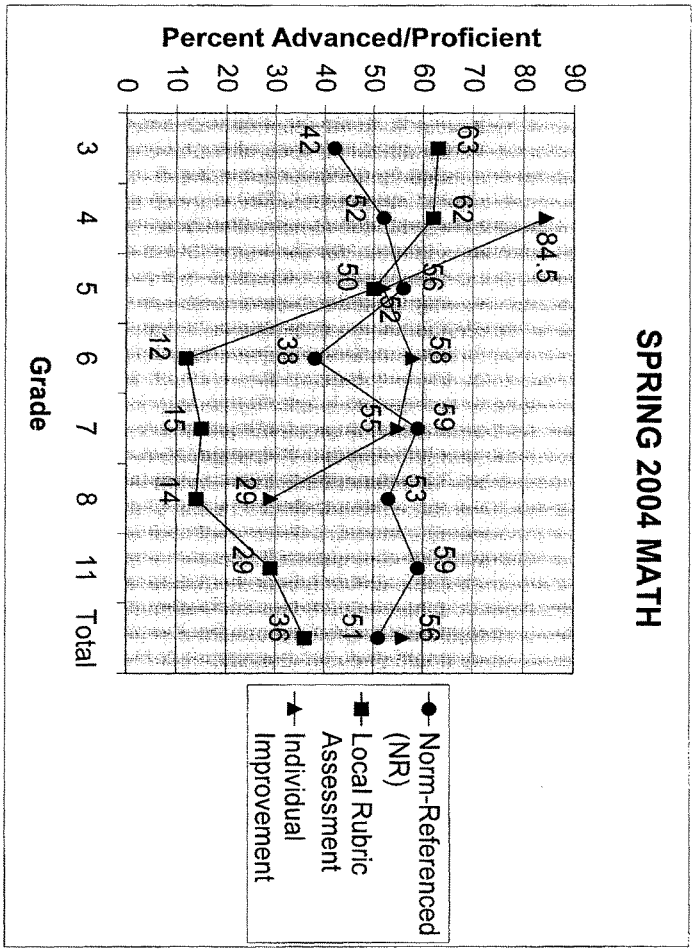

SPRING 2004 MATH
Percent Advanced/Proficient
90
80
70
60
50
40
30
20
10
0
63
62
56
52
50
42
84.5
58
52
38
12
59
55
15
53
29
14
59
29
56
51
36
3
4
5
6
7
8
11
Total
Grade
Norm-Referenced (NR)
Local Rubric Assessment
Individual Improvement

Exhibit F2

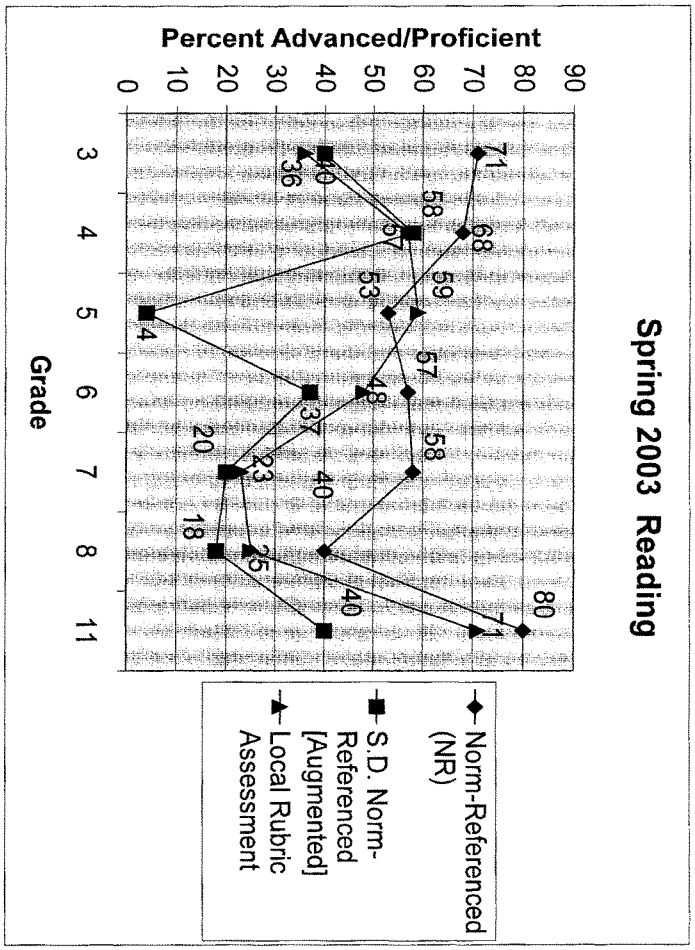
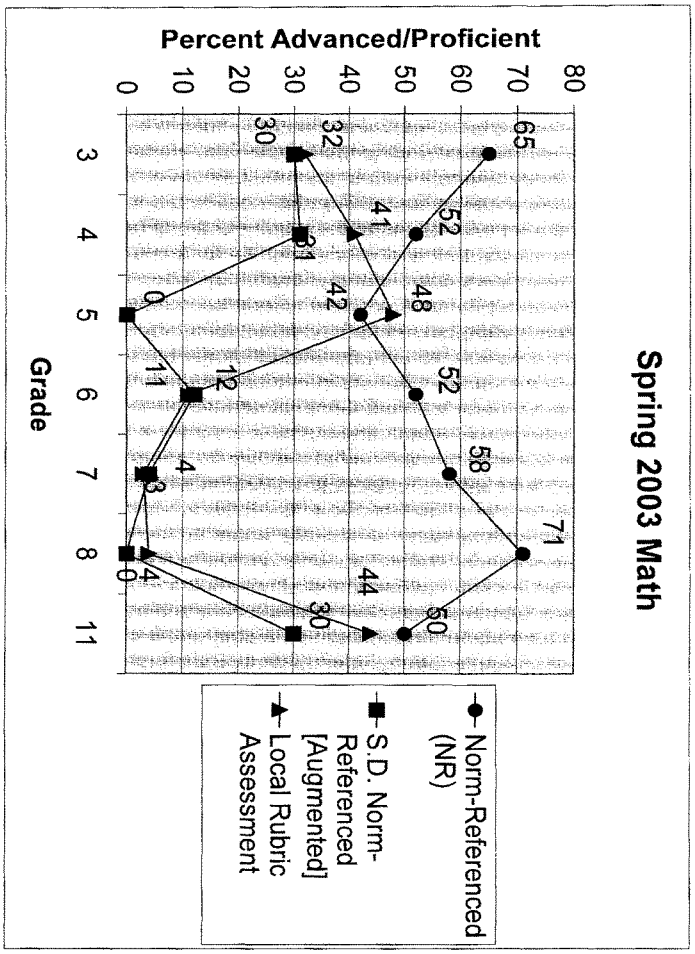

Spring 2003 Reading
Percent Advanced/Proficient
90
80
70
60
50
40
30
20
10
0
3
4
5
6
7
8
11
Grade
71
68
59
57
53
48
37
23
20
18
25
40
80
71
58
57
40
36
4
Norm-Referenced (NR)
S.D. Norm-Referenced [Augmented]
Local Rubric Assessment

Exhibit F3


Spring 2003 Math
Percent Advanced/Proficient
80
70
60
50
40
30
20
10
0
65
52
41
61
0
11
4
3
0
71
58
44
30
52
48
42
12
4
3
0
50
32
30
3
4
5
6
7
8
11
Grade
Norm-Referenced (NR)
S.D. Norm-Referenced [Augmented]
Local Rubric Assessment

TOM DASCHLE
SOUTH DAKOTA

United States Senate
Office of the Democratic Leader
Washington, DC 20510–7010

Statement of Senate Democratic Leader Tom Daschle
before the
Senate Committee on Indian Affairs
on the Indian provisions of the No Child Left Behind Act
June 16, 2004

Mr. Chairman, Mr. Vice Chairman, and members of the committee, thank you for holding this important hearing. As you know, I've felt for a while that it is vital to explore the many concerns people have raised about the impact of the No Child Left Behind Act in Indian Country.

I am also pleased that Roger Bordeaux of the Tiospa Zina tribal school on the Sisseton-Wahpeton reservation in northeastern South Dakota is testifying on behalf of the Association of Controlled Tribal Schools, known as ACTS. Roger is one of the founders of the tribal college movement, and, as a well-known Indian educator in South Dakota, offers a unique perspective on many of the challenges facing Indian youth today.

There is a line by Sitting Bull that I love. He said, "Let us put our minds together and see what life we can make for our children." By holding this hearing today, you are taking an important step toward making Sitting Bull's vision a reality.

If there was ever a time that we needed to put our minds together for the sake of our children, now is that time. The No Child Left Behind Act is the most significant overhaul of America's federal education policies in nearly 40 years. The ideas behind the law are good. They include the belief that every child in America has the right to go to a good school and be taught by a qualified teacher in every classroom. No Child Left Behind says that we should set high academic standards for all students, give schools the resources to meet the new standards, and hold them accountable for results. I don't know anyone who doesn't support those ideas.

The problem, as we all know, is that the law isn't working as well in reality as it does on paper. Concerns about No Child Left Behind aren't limited to Indian Country, or to South Dakota. In all, 23 states have now lodged formal complaints against the new law. Still, the problems with No Child Left Behind seem to be especially acute in many schools serving Native American students. That includes BIA-funded and -operated schools, as well as public schools serving large numbers of Indian children.

I was recently contacted by John Derby, the Acting Director of the South Dakota Indian Education Association, who told me that, as a result of funding shortfalls in No Child Left Behind, his school district is receiving less money per pupil at the same time its enrollment is increasing. Perhaps most troubling was the fact that the district is being forced to make cuts to curriculum, staff training, and student supplies in order to make up for the lack of funding. As he succinctly put it, "We are going backwards."

And his isn't the only voice of concern. I've heard from several Indian educators lately who tell me they are especially troubled by three things. The first is the overly rigid way the No Child Left Behind Act is being implemented by the BIA and the federal Department of Education. There's too much emphasis on testing students and labeling schools, and not enough emphasis on helping schools correct problems. Second, there's a great deal of concern about the need to preserve the native cultures and languages, and successful Indian education programs. Finally, people are concerned about what is becoming the chronic under-funding of the No Child Left Behind Act by the federal government. All of these concerns are legitimate, and they need to be taken seriously.

In 2000, when he was running for President, then-Governor Bush met with tribal leaders in New Mexico and promised to invest $1 billion to fix crumbling BIA schools. Since he signed No Child Left Behind, President Bush has proposed three federal budgets. All three have shortchanged No Child Left Behind. The President's proposed budget for next year – fiscal year 2005 – underfunds the new law by $9.4 billion. When you add up all three budgets, the total shortfall comes to $26.5 billion. Schools serving Indian children are already shamefully under-funded. The last thing children attending Indian schools need is to be denied the opportunities, resources, and good teachers the new law promises – and then have their schools labeled as "failing." We need to put our minds together and make sure that no Indian child is left behind.

We also need to repair and rebuild the school buildings in Indian Country. The BIA estimates the backlog in education facility repair and construction in Indian Country at nearly $1 billion. Yet the President's proposed budget for next year actually cuts funding for the reconstruction of schools – for the second year in a row. That's wrong.

The federal government gave its word, in treaties and laws, to provide an education for every Indian child. Those treaty obligations must be honored. I am going to continue to push the Administration and Congress to fully fund No Child Left Behind – and other education programs serving Indians. That includes tribal colleges, one of the best education investments this nation makes.

We also need better implementation of No Child Left Behind. I am pleased that this committee has honored my formal written request of last April for hearings on how No Child Left Behind is affecting Indian Country. This is a good start, but I would strongly encourage the committee to conduct field hearings throughout Indian Country to so that we can have a thorough evaluation and assessment of how the Act is being currently implemented.

South Dakota is blessed with some of America's best Indian educators – and friends of Indian education. I am pleased that this Committee is holding these hearings, and hope it will continue its efforts in this area by conducting a Senate field hearing in South Dakota. I believe your wisdom and experience can help make a better future for Indian children – not just in South Dakota, but throughout our nation.

All of us, Indian and non-Indian, have a vested interest in making sure that the potential of every Indian child is nurtured by the school he or she attends. I look forward to working with you to make the federal government a better partner in this effort. And I thank you, again, for your commitment toward that end.

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703-838-2870 / 703-828-1620 fax

Testimony of Cindy La Marr
President, National Indian Education Association
Before the Senate Committee on Indian Affairs
on the No Child Left Behind Act

June 16, 2004

Chairman Campbell, Vice Chairman Inouye and Members of the Senate Committee on Indian Affairs, thank you for this opportunity to submit testimony on behalf of the National Indian Education Association (NIEA) with regard to the impact of the No Child Left Behind (NCLB) Act on Indian students and educators of Indian students. NIEA actively advocates on behalf of our membership and their requests to address concerns and issues relating to the education of Native youth throughout the nation.

Thank you for responding to NIEA's request for an oversight hearing on the NCLB. It is an important beginning as we work together to implement the newly signed Executive Order on American Indian and Alaska Native Education and address issues related to the NCLB Act.

"No Child Left Behind" Act

The primary legislation that authorizes federal spending on education, the Elementary and Secondary Education Act (ESEA) was reauthorized in January of 2002, now known as the "No Child Left Behind" Act. NCLB requires states to set 12-year goals to ensure that all students meet state academic standards and to close achievement gaps between rich and poor, and minority and non-minority students.

The central pillars of NCLB are: (1) increased accountability through testing; (2) more choices for parents and students who attend Title I schools that fail to meet State standards; (3) greater flexibility for states, school districts, and schools in the administration of NCLB programs; and (4) a major emphasis on reading through the Reading First initiative.

In addition, Title VII of the NCLB specifically addresses programs for American Indian students.

Title VII of the NCLB states:

It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian

Children. The Federal Government will continue to work with local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children. (NCLB, Section 7101)

This provision squarely situates Federal Indian Education policy within the Federal Government's trust responsibility to Indian people. The real question is what can be accomplished and will the Federal Government make a commitment sufficiently great as to ensure the success of that policy, whose purpose is largely to undo the extraordinary harm that the Federal government has done to Indian peoples over the course of many years.

True success will come only when Indian students are receiving a high quality education that not only prepares them for the demands of contemporary society, but also thoroughly grounds them in their own history, culture and language.

Concerns

Congress coupled the new reforms in ESEA with historic increases in funding and targeting schools with high percentages of low-income children. However, the President's FY05 Budget under funds ESEA by $9.4 billion below the authorized level. Our emphasis right now should be to follow through on this previous commitment made by the President and Congress, and to meet the goals of the NCLB, especially for Indian children.

A basic tenet of federal Indian policy is that the education of Indians is the responsibility of the federal government. The NCLB law directly addresses improving the quality of education for Indian students in the BIA school system; however, over 92% of the nation's Indian children attend State run public schools. U.S. Department of Education's National Center for Education Statistics (NCES) most recent data charts (2001) indicate 584,153 Indian children attend the nation's public schools, while only about 49,000 attend BIA schools.

The 460,285 children served under NCLB Title VII Formula Grants to school districts (OIE data, 2001), generate minimal funds, at an average of $226 per pupil per year. These meager amounts of money cannot come close to guaranteeing equal access to quality educational services for the vast majority of Indian students attending State-run public schools across the nation.

In order to develop a comprehensive approach to improve the educational level of Indian people, federal policy must be developed and implemented in collaboration with Tribes and Indian educators. State public education systems and local public schools must be made accountable to put policies and programs into practice that uphold the rights of American Indian students to reap the benefits of education reform as promised in NCLB.

NIEA has serious concerns about several obstacles this Act presents to Indian communities, particularly to those who live in remote, isolated and economically disadvantaged environments. Key factors that inhibit the successful implementation of NCLB in Indian communities include:

Financial Resources. Schools serving Indian students receive inadequate levels of funding through Title VII to allow for the development of culturally oriented academic programs. President Bush's proposed FY 2005 Budget for the Department of Education, while providing for an overall increase of 3%, provides no increases for the Title VII programs serving American Indian students.

According to a September 2003 GAO report on BIA schools, the BIA student population "is characterized by factors that are generally associated with higher costs in education. Almost all students live in poverty, and more than half are limited in English proficiency. A substantial number have disabilities." (GAO Report: GAO-03-955, p. 5). Similar factors would increase costs to non-BIA schools with large Indian populations.

Time Frames for Results. The time frames for results do not adequately account for the investment in time and resources required to develop effective culturally based education approaches or to develop curricula that reflect the cultural and linguistic heritage of the community. In Indian Country, there is no "one size fits all" when it comes to culturally based curricula. Each Indian community has to develop its own curriculum because each Indian community has its own language, culture and history. Obviously, developing sound curricula is going to be a lengthy and costly process.

Testing Validity and Reliability. School-based testing requirements fail to recognize the implication of the high student mobility and drop-out rates that are characteristic of Indian communities. Therefore, year-to-year measures and comparisons of the effectiveness of school-based improvements are meaningless. Also, tests measuring academic performance and achievement are generally culturally inappropriate for Indian students. As a result, cultural and Indian language programs are often subsumed as schools shift the curriculum to meet the stringent academic standards measured by these tests.

Definition of "Highly Qualified." According to NCLB, the definition of a highly qualified teacher refers to subject matter competence as defined by certification and college majors. The statute does not add to this definition the concept of capacity and knowledge of local traditions, beliefs and values in order to be an effective teacher of Indian students or the fact that remote and isolated communities have limited access to highly qualified teachers as defined.

Available Knowledge of "What Works." Knowledge of "what works" for Indian education programs may exist but often are not locally available. High quality information that is both available and accessible is needed in order to develop effective strategies to improve school programs.

Available Strategic Partnership. Accomplishment of the broad based goals of the statute requires strategic partnerships. The availability of these partnerships in small, rural and isolated communities is limited and often very difficult to coordinate

Accountability. Many schools that serve Indian populations simply do not have the resources to meet the NCLB standards. Alternatives are not readily available and accountability must be

guided by practicality and a real focus on supporting disadvantaged school systems in their efforts to improve educational outcomes.

Other Issues. NCLB also provides confused guidance on adequate yearly progress mandates, inadequate assessment examples for limited English proficient students, weakened protections to prevent high dropout rates to occur, a lack of focus on parental involvement, a lack of recognition of paraprofessional's qualifications, and a basic denial of civil rights protections for children.

The recent waivers and extensions of time frames for results granted by Secretary of Education, Rod Paige, are also needed in Indian County, as they relate to teacher qualifications and regulations mandating the testing of special education students and those who speak limited English.

Executive Order on American Indian and Alaska Native Education

On April 30, 2004, President Bush signed the Executive Order on American Indian and Alaska Native Education (E.O. 13336) whose purpose is to assist American Indian and Alaska Native students to meet the challenging academic standards of the No Child Left Behind Act *in a manner consistent with tribal traditions, languages and cultures.* NIEA worked closely with the U.S. Department of Education and The White House in the drafting of the Executive Order.

NIEA has high expectations that the EO will lead to specific proposals to enhance Indian education under the NCLB. It will take extensive consultation with Indian Country and sufficient Federal funding to fulfill the promise of this Executive Order and of the NCLB. Through this EO, Congress and the Administration have recognized that a culturally based education approach is, for Natives, not only an educational strategy for improved achievement but also a fundamental "civil right" for Indian people. Indian communities have a fundamental right to support and retain their languages and culture.

The EO firmly establishes several major principals with regard to Indian education, including:

- recognition of the legal relationship between the United States and American Indian tribes, as well as a special relationship with Alaska Native entities;
- the commitment of the Federal government to work with tribes on a government-to-government basis;
- evidence of the Administration's support for tribal sovereignty and tribal self-determination;
- parameters to assist American Indian and Alaska Native students to meet the challenging academic standards of the No Child Left Behind Act *in a manner consistent with tribal traditions, languages and cultures.*

This is an important step towards refining the No Child Left Behind Act so that it works for Indian students in a manner that supports Indian culture.

Budget Issues

FY 2005 Department of Education Budget Request. The FY 2005 Budget Request proposes a 3% increase for the Department of Education. However, Indian Education program funding levels would remain the same as for FY 2004 (and remain down from the FY 2003 level); the Education for Native Hawaiians program would remain the same as for FY 2004, as would the Alaskan Indian Education Equity Funding. It is difficult to understand why these programs were not given an equitable funding increase.

The FY 2005 Budget Request for Impact Aid, which provides financial support to school districts affected by Federal lands, is also proposed to be held flat. Because of the trust status of most Indian lands, this program is extremely important for public schools located on or near Indian lands.

Also, the President's FY 2005 Budget Request includes a $1 billion increase (8 %) for low-income school grants which are provided through Title I of the NCLB. This increase falls more than $7 billion short of the NCLB authorized level. The President's budget would also provide a $1 billion increase (10 %) for special education grants which are authorized through the Individuals with Disabilities Education Act which still is less than half the full funding authorization level when the IDEA was first adopted in 1975. These inadequate increases also eliminates 38 education programs that provide vital services to Indian children, such as dropout prevention, gifted and talented education, school counseling, and after-school programs.

While increases in Title I funding are relatively large overall; if a relatively small portion of that increase were placed in the Title VII Indian Education Funding, the impact would be vast. Data does not show how Title I increases have benefited Indian students. NIEA recommends that some portion of Title I funds be shifted to Title VII Indian Education programs, or that a concerted measure be put into place that guarantees Title I funds truly reach Indian students.

FY 2005 Department of the Interior Budget Request. The overall Interior budget is proposed to be cut by 0.5%, which includes $66 million cut for Indian school construction funding. The Senate needs to resolve this oversight and restore the education funds proposed to be cut put back into the Interior budget.

Based on the BIA's budget book, education programs are targeted for reductions of nearly $79 million, which includes:

- Scholarships reduced by $547,000;
- Early Childhood Development reduced by $33,000, which includes the highly regarded Family and Child Education (FACE) program and a cut to the Therapeutic Residential Model (TRM) program to help at-risk Indian students.
- Student Transportation reduced by $58,000;
- Administrative Cost Grants/Administrative Cost Grants Fund reduced by $3.2 million;
- School Statistics reduced by $2,000, although the No Child Left Behind Act calls for maintenance of performance-related data;

- Tribal Colleges and Universities are proposed to be cut by $5.2 million, with the United Tribes Technical College in North Dakota and Crownpoint Institute of Technology in New Mexico slated for elimination; and
- Replacement school construction and for facilities improvement and repair is proposed to be reduced by $69 million, or when reduced by related offsets, $65 million,.

The House Appropriations Committee recently requested funds be restored and includes $645 million for BIA education, a $4 million increase over current funding levels. The Committee also recommended restoration of funding for BIA school construction, the United Tribes Technical College and the Crownpoint Institute.

Conclusion

Although our concerns reflect a negative tone, NIEA is encouraged by the atmosphere of the Congress to move forward with real efforts to address the needs of our children. The priority for them to have a successful future rests on our shoulders and they should not have to sacrifice while we deliberate their basic educational needs.

NIEA respectfully urges this Committee to make Indian education a priority, working to find ways to ensure true progress for Indian students. We encourage this committee to hold field hearings and listening sessions throughout Indian Country to hear the Indian voice. It is eloquent and compelling, and without exception calls for a greater investment in our children.

Navajo Nation Testimony
Regarding the Implementation of the
No Child Left Behind Act of 2001

Senate Committee on Indian Affairs

June 16, 2004

Chairman Campbell, members of the Committee, on behalf of the Navajo Nation, thank you for inviting us to provide testimony before this honorable Committee on the topic of the implementation of the No Child Left Behind Act of 2001. My name is Leland Leonard, newly appointed and recently confirmed Division Director of the Navajo Nation's Division of Diné Education. Navajo Nation President Shirley, Jr., regrets not being able to be here to present the Nation's testimony himself, but extends his appreciation for the opportunity.

The Navajo Nation's view on the implementation of the No Child Left Behind Act of 2001 is twofold. First, the Navajo Nation agrees with the intent of the No Child Left Behind Act, which is to not only to have our children achieve at their highest capabilities, but to also insist that our educators also achieve at their highest capabilities. Second, the changes initiated by the No Child Left Behind Act resulted in the Navajo Nation asking itself two questions... do the changes help the Navajo Nation better educate its children and better train its educators, or, do the changes merely disrupt the Navajo Nation's self determined progress in better educating its children and better training its educators? Based on the implementation thus far, the Navajo Nation says yes to both questions. The changes do help, but they also disrupt. A balance must be reached between both. The Navajo Nation encourages flexibility in the implementation of the No Child Left Behind Act. The Navajo Nation is in the best situation to embrace the changes that help the Navajo Nation better educate its children and better train its educators, while at the same time, have the ability to refrain from implementing certain changes that disrupt the Navajo Nation's self determined progress in better educating its children and better training its educators.

The Navajo Nation, along with other Native Nations, only want to be able to provide the best education to its children, and to push our children to achieve higher standards. As recently recognized by the United States President, in signing an Executive Order on Indian Education, the President stated, "we place a high value on education because we understand the importance of education to our future and the importance of education to Tribal Nations. ***It's really important we get it right***. In the words of the late Sam Ahkeah, the former Chairman of the Navajo Nation Council, "We must encourage our young people to go into education. We need thousands of young lawyers and doctors and dentists and accountants and nurses and secretaries," is what he said. You can't be one of those unless you're educated.... His vision was clear. And that's what we're here to talk about today, to make sure all ***our visions are clear***, starting at the federal level."

Therefore, the Navajo Nation agrees, especially in regards to implementing the No Child Left Behind Act, it must begin at the federal level. ***We must get it right, and our visions must be clear.***

The Navajo Nation would like to provide some comment on some specific areas of the No Child Left Behind Act, starting with initial testing results.

Navajo Schools Testing results - as of 2002-2003 School Year

BIA funded schools – ---------- about 44% are meeting AYP

NM Public Schools (with large % of Navajo) – about 55% meeting AYP

AZ Public Schools (with large % of Navajo) -- about 45% meeting AYP

Over half of the schools are already in school improvement, corrective action, or restructuring. This number is expected to increase as the proficiency bar continues to rise over the next few years.

Narrow scope of testing – The No Child Left Behind Act tests only in three subjects: Reading, Math, and Science. While these subjects are important, the No Child Left Behind Act excludes tests given to students who may be excelling in other areas, such as music, art, or Navajo language. And as the Committee here is well aware of, not only the Navajo Nation, but all of Native Country prioritize retention of their Native languages. But, as you know, no credit is received for such achievement under the No Child Left Behind Act. The No Child Left Behind Act tempts schools to focus on the areas where the statute requires testing and causes de-emphasizing or eliminating programs that many students are involved with, and excelling.

The Focus on Testing - The continued focus, if not heightened focus on test results has had predictable results. In many cases, teachers are increasing homework, expanding drill time, or what some may say, "teaching to the test." This merely encourages implementing methods that weren't working before. The Navajo Nation is aware that its children are very diverse. Some excel in math and science, while others excel in the arts and physical sciences. The Navajo Nation merely requests the flexibility to foster the excellence in those children according to their talents and skills. Thus far, the Navajo Nation has seen very little flexability in the No Child Left Behind Act.

Scientifically based curriculum – There is not a lot of data concerning "what works" with Navajo children. That which does exist suggests that the most successful curricula are those that are oriented in the Navajo culture. Many schools will disregard this information or not have access to it, and simply pick programs that have found their way onto an approved list at the state or national level. *Schools that have a large Native American population must have the flexible opportunity to develop and implement culturally based curriculum, and there also needs to be specific research funded to evaluate its effectiveness. On Navajo, we have the beginnings of such research under the*

Navajo Nation's Rural Systemic Initiative program, but the funding for that program is being cut.

The large gap in proficiency – The goal of full proficiency within a 12 year period is far more realistic in schools where students are already testing at a high level of proficiency than in those where proficiency levels are very low. Implementally, the No Child Left Behind Act would still label certain schools as needing improvement, while such schools may be achieving high standards and performing an extraordinary job. If we may provide an analogy, it would go something like this...the No Child Left Behind Act is a track and field event, with several events, but the primary focus is on only three races, and in theses races the fastest runners are given a huge head start, but the slowest runners are required to catch up by the end of the race given the same distance, and the slow runners have completed the race. Even with the best intentions of the No Child Left Behind Act, it is very likely, and the danger is, that the students who could not compete with the faster runners, although still finishing the race, will be labeled as "failing." *The No Child Left Behind Act might require "gains" in student achievement with recognition that every student is an individual, with his own talents and interests, but testing should be used to identify a student's aptitude and provide guidance for the future direction of his\her education. Schools need to provide more options, as the needs of the Navajo Nation, and the surrounding society expand.*

The Isolation Factor – Further, there is an isolation factor that is not addressed in the No Child Left Behind Act. Essential "assistance" provided under the Act is simply not available, or is greatly reduced in isolated areas. There are few tutors available, not a very large pool of professional educators, no involved business community, little expert technical assistance available on an economical basis. *Such factors make it imperative that the Act receive full funding, and provide a mechanism for isolated areas, as much of the Navajo Nation is, to access the essential "assistance."*

School Board and Parent Training – The Navajo Nation will have an election in November that includes school boards of Bureau funded schools. We are expecting a large turnover in school board membership – probably about 80%. These new members will take office during a period when the knowledge required of school board members is at an all time high, but there is no provision in the law for funding training expenses. *The Committee should revisit the school board and parent training situation, especially for BIA operated schools, where there are no Administrative Costs Grants to pay for training expenses.*

Navajo Nation Department of Education – Although not directly related to implementation of the Act, the No Child Left Behind Act has enhanced the Navajo Nation in its process of assuming authority and responsibility over the educational programs on Navajo, beginning with the Bureau of Indian Affair's schools. The Nation is pursuing contracts with the Bureau's Office of Indian Education Programs, which will include functions and dollars for providing technical assistance and training to school personnel, school boards and parents; and redesigning the program to include regulatory functions, such as establishing standards, accrediting schools, data collection and

analysis, and licensing teachers. The Navajo Nation plans to take full advantage of this opportunity in order to make a positive difference in the educational programs on Navajo. The Navajo Nation is aware that this is a large undertaking and there is the need for additional resources to plan and jump-start our educational system. The Congress previously funded another tribe on a one-time basis and we understand that program proved to be quite successful. *We recommend this Committee consider and discuss this option with the Navajo Nation, and the Navajo Nation looks toward this Committee for assistance in requesting specific funding for the tribal education department line item in the BIA budget.*

Mr. Chairman, Members of the Committee, again, on behalf of President Joe Shirley, Jr., and the Navajo Nation, thank you for this opportunity for the Navajo Nation to express its concerns and provide a few recommendations. It is an exciting time for education and we are doing our best to ensure that the changes that occur will be positive ones. The Navajo Nation is available to answer any questions, now or at any later date, you may have regarding the implementation of the No Child Left Behind Act, or Navajo Education in general.

For additional information on any of the above, please contact Mr. Leland Leonard, Executive Director, Division of Dine' Education. (928) 871-7475.

PREPARED STATEMENT OF PHILLIP MARTIN, TRIBAL CHIEF MISSISSIPPI BAND OF CHOCTAW INDIANS

Mr. Chairman and Vice Chairman, I appreciate the opportunity to address your committee this morning concerning the No Child Left Behind Act of 2001.

My name is Phillip Martin, tribal chief of the Mississippi Band of Choctaw Indians. Accompanying me today, is Terry Ben, director of Choctaw Tribal Schools.

The Mississippi Band of Choctaw Indians operates the largest consolidated tribal school system in the Nation. This school system consists of eight schools, including a boarding high school, located in six different tribal communities spread over three counties and contains about 1,800 students.

Being part of one of the two school systems (BIA and DOD) over which the Federal Government exercises direct responsibility, the Mississippi Band of Choctaw Indians welcomes any Federal initiative that is designed to improve the performance of our schools and contribute to the academic success of our children. The intellectual stimulation and preparation of our children is essential if they are to be successful in a competitive 21st Century workforce.

I was pleased to attend the signing of the President's executive order on Indian education on April 30 of this year. The President recognized the unique legal and moral relationship that exists between the United States and Indian tribes as provided in the Constitution of the United States, treaties, and Federal statutes. We welcome the commitment of this Administration to continue working with tribal governments on a government-to-government basis, its support of tribal sovereignty and self determination, and its promise to assist our students in meeting the No Child Left Behind Act standards in a manner that is consistent with tribal traditions, languages, and cultures.

The primary goal of the No Child Left Behind Act was to create a standard measure of accountability for public schools in each State with the State's share of Federal funding tied to the performance of its schools, generally measured by a state testing plan.

In Indian country, it was assumed that the BIA was to act as the State and develop the accountability and testing plan. The agency failed to do so claiming a lack of funding to carryout such an activity. Neither states nor tribes are able to use such an excuse. We would actually lose current Federal funding if we failed to implement the act.

As a result, it was determined that tribal schools should adopt the State plan of the state in which the tribe is located with the ability to apply for certain waivers when necessary. This application of the act is in fact acceptable to the Mississippi Choctaw and is workable due to the fact that we have strived for at least parity with local public schools and we believe that we have largely succeeded.

As a result, we fully support the goals of the No Child Left Behind Act. However, the act has not solved any of our educational problems and it has certainly not dealt with funding issues. The act will allow us to measure our children's educational performance against other children in our state but it provides no funding to support improved performance. In fact, it threatens a portion of our funding if we fail to "measure up" to the state standard at the same time the existing level of Federal funding is inadequate to allow us to so measure up.

Fortunately, the Mississippi Band of Choctaw Indians has for more than a decade been able to heavily supplement our schools' finances. For fiscal year 2005, the tribe will provide almost $4.5 million of our schools total $30 million budget. And, over a period of time, we have invested some $35 million in construction and development of our educational infrastructure. We believe that we would have no hope of meeting the state standard if we relied solely on BIA funding. As such, the No Child Left Behind Act serves to further point out the inadequate funding levels for BIA education.

There have been a number of studies conducted over the years of BIA schools. One thing that we have definitely learned is that education in BIA and tribal schools is expensive. The per capita cost of educating a student in our schools (BIA and tribal) is considerably higher than most other publicly funded schools. But the high cost of educating our children does not negate the Federal responsibility to do so nor should it reduce the financial commitment required to do so properly.

There are reasons that education on Indian reservations is so expensive. In the case of the Mississippi Choctaw, for example, we had no schools at all until the 1920's and we did not have a high school until 1963. We have a bilingual population, historically high rates of poverty and low levels of educational attainment among our population. Hunger and a lack of health care was the norm on our reservation well into the 1970's and the high incidence of congenital diseases, such as diabetes, continues to plague all age levels of our community. When it comes to edu-

cation, we started far behind the populations that we are now being compared to both on a performance basis and in terms of funding.

Additionally, the size of our school system and the fact that it is spread over three counties affects our costs. The need for prekindergarten and after-school programs to accommodate parents working at a distance from their communities and schools are also important factors to note.

Even so, our children are beginning to measure up. We have advanced rapidly not because of Federal initiative but because our tribal government has taken up the slack, not just with the provision of tribal funds as previously noted, but also through direct tribal administration of our schools.

We are concerned that No Child Left Behind may be used to compare our children to other populations without accounting for these factors. The disproportionate socio-economic handicaps that tribal children and tribal school systems have had to face must be a part of the equation when examining performance and funding.

We need the increased financial support promised by this reauthorization of the Elementary and Secondary Education Act. We also share the concern of the tribal representatives of the negotiated rulemaking team that the ISEP funding for our schools is totally inadequate and not based on the level of need rulemaking team was tasked to develop a formula to *equitably distribute inadequate funds.* BIA funded schools do not have adequate financial support for academic instruction, transportation, or dormitories. As mentioned in a September 2003 GAO report, BIA funded schools must routinely supplement transportation funds from the academic programs. In addition, we need Federal funding for pre-kindergarten in all elementary schools.

We ask that this committee direct the BIA to follow the recommendations of the September 2003 GAO report by working with the National Center for Education Statistics to develop a user friendly data collection instrument to collect instructional, transportation, and residential cost data. Once developed the Mississippi Band of Choctaw Indians would be willing to have our schools field test this instrument. If we found it to be a good product, we would urge all tribally operated schools to participate in the data gathering effort. This would provide valuable information to assess the adequacy of future BIA school funding.

Congress wisely enacted the Native American Language Act. However the act does not include any funding. Since the act does not authorize funding, the rulemaking committee has recommended that the funds available for bilingual education be used for language restoration as well as for limited English proficient students. We support this change, but would prefer the committee revise the Native American Languages act to authorize funding. If our languages are lost, so are our cultures and traditions. However, our students must also master the English language. We believe that our students can master both languages at a high level if they are provided appropriate resources.

The rulemaking committee proposes that we use the State of Mississippi accountability plan. We believe that Choctaw Students can and will perform well under this plan.

We have actively recruited highly qualified educators. We have also implemented staff development opportunities and incentives for our educators to improve their skills. We are accomplishing this at a significant financial cost to the tribe, but we must insure success for our students. We need appropriate and promised funding to continue our improvements.

We understand that the negotiated rulemaking team has been unable to reach consensus on a regulation regarding Secretarial authority to close or curtail programs at a BIA-funded school. Of course such action should only be made with tribal approval, otherwise such a move would contradict the law and be in direct conflict with tribal sovereignty and Indian self-determination rights. The President's Executive order signed on April 30 makes this clear and we trust that the Secretary will not allow such a potential conflict to exist in regulation.

In closing, I again state that we support the goals of the No Child Left Behind Act and that its implementation is not unduly burdensome for our tribe. However, it does not deal with funding inadequacies nor does it address the broader socio-economic issues that we as a tribe must address. Job development and improved economic attainment are the keys to raising our socio-economic success. We can not adequately deal with those issues when our tribal resources have to be spent on education, health care, law enforcement, all programs for which the BIA is responsible.

Thank you.

Testimony

Provided by

Carmen Cornelius Taylor, Executive Director

National Indian School Board Association

To

Senate Committee on Indian Affairs

June 16, 2004

My name is Carmen Cornelius Taylor. I am an enrolled member of the Confederated Salish and Kootenai Tribes of the Flathead Nation in Montana. I have served as the Executive Director of the National Indian School Board Association, Inc. (NISBA) for over 20 years.

NISBA represents over half of the 185 Bureau-funded schools. We also have a few members and associate members from public schools with Indian students. I am honored to be included on this panel today to address issues regarding the No Child Left Behind Act and implementation concerns.

First, I will state that NISBA has always supported the idea of "No Child Left Behind". We have done this since 1987 by encouraging schools to use the Effective Schools research as the basis for school reform. The first belief of Effective Schools is that ***"All Children Can Learn – Whatever It Takes".***

Effective Schools is also a continuous improvement model and uses data-driven decision-making. Like NCLB, Effective Schools promotes the disaggregation of data for certain groups of students. One of the positive things that NCLB has done is to really focus attention on student achievement; and because of the disaggregation of test scores for various groups of students, including American Indians/Native Americans, states for the first time are focusing some extra attention on the learning of Indian students. For example, some states are holding focus groups, holding summits and creating advisory groups as ways to address achievement levels of Indian students.

NCLB assumes that every community, every school, and every child are the same. It is a "one size fits all" model that has no regard for socioeconomic differences, for differences in learning styles, or inequality of resources. It is a "top down" attempt at school reform that makes a mockery of such concepts as "state rights" and "local control". This is true at the state level as well as at the "51st state" level – the Bureau of Indian Affairs. NCLB is punitive rather than supportive.

Before schools go into "school improvement" or "corrective action", there should be technical assistance provided to the school. For schools funded by the BIA, there has been little or no technical assistance provided. Only recently, BIA/OIEP, distributed money to schools and Education Line Officers for professional development and other purposes. This is June.

School is out in most locations. This is money that should have been distributed early in the school year so that schools could get the best use out of it. Grant and contract schools are able to carry this money over into the next school year. BIA-operated schools must have it obligated by September 30th and many are worried that they will not be able to make it because of the cumbersome procedures and delays in being able to issue contracts to service providers. I have been told by some administrators that it can take as long as six months to go through the contracting process.

In a report "From the Capital to the Classroom – Year 2 of NCLB" from the Center on Education Policy, it is also noted that 38 out of 48 states responding to a question about capacity reported that they do not have sufficient staff to carry out the duties required under the Act, yet local school districts said that state education agencies were the resource they relied on the most to help them implement the Act. In this same report, 24 of 40 states reported that fiscal problems were adversely affecting their ability to carry out the law. Half of the responding states said that local school districts are currently being hampered in attaining the goals of the Act because of fiscal problems, attributed mostly to state budget deficits. All of this certainly has a direct impact on the public schools serving Indian students.

Of concern to most Indian schools – often because of their small size and/or isolation – is the provision about "highly qualified" teachers. In many rural schools, however, one teacher may well teach three or four subjects. No matter what the size of the schools, we all want teachers to be as qualified as possible. But it's unreasonable to expect a teacher in a small school, who may well be making $25,000 or less a year, to have separate degrees in all the different subject areas. That demand, combined with the shortage of teachers nationwide, would make it nearly impossible to attract teachers who meet the federal requirements. Although the Department of Education has provided a one year extension from the deadline to school districts with fewer than 600 students, this won't solve the problem for most rural schools. In Montana, for example, 391 of the state's 450 districts have fewer than 600 students. With a couple of exceptions, this includes all schools located on Indian reservations.

The provision about School Choice is not really feasible for rural schools – nor is the provision about Supplemental Services. If a school is failing, there are sometimes no alternatives offered within hundreds of miles. And

Supplemental Service providers are often non-existent or are very expensive because they have to travel great distances to get to these rural, isolated schools.

There is too little focus on social causes of poor performance. Children cannot learn when they are hungry or tired. They cannot learn when they are affected by alcohol and drugs – either directly or indirectly. Indian students have a long history of struggling on standardized tests. That weakness can be traced partly to their lack of knowledge of English. Non-Indian students typically enter kindergarten with a working knowledge of 20,000 words in English. For Indian students, their vocabulary at that age usually hovers around 3,000 words. These are not excuses. These are facts of life for children who live on Indian reservations. We are not starting out on a level playing field. Do we believe "All Children Can Learn"? Yes, we do. Do we have high expectations and hopes and dreams for our children? Yes, we do. Can we best address student success for these children the same way as mainstream America? I think not.

Let me give you an example from Browning Public Schools located on the Blackfeet Reservation in Montana. An eighth grade counselor at Browning Middle School has been working with the students, practicing during the winter for the state tests. She couldn't help but notice that nearly all her students missed the vocabulary question about the word "awning". "Of course they missed it", she said. "This is Browning. Nobody has an awning. The wind blows 70 miles per hour here!" The Superintendent in Browning notes that the things that work, in terms of strategies to improve mainstream education, don't always translate well in an Indian school. "In recent years" she said, "the biggest improvements have come from school district efforts to move away from standardized education, not toward it". This includes the incorporated of language, culture and history.

While this example contains some humor – it is all so real. There are many words contained in standardized tests that disadvantaged children would not recognize. We know from the research conducted by the Center for Research in Education, Diversity and Excellence (CREDE) at the University of California, Santa Cruz, that children learn best "in context" – that when they can make connections to their world, the learning "will stick".

NISBA has recently completed a 3-year school reform capacity building grant. We worked with 16 schools over that period of time. The schools

involved in the project have shown significant increases in reading achievement. When the variables were isolated, it showed that the cultural curriculum was the only reliable predictor positively associated with achievement gains at the elementary level. At the middle and high schools, tribal values was the best single predictor of achievement gains.

In the feedback that I have gotten from administrators from within the BIA/OIEP system, there is much concern about the focus on bureaucracy and very little focus on teaching and learning and what's best for students. There is strong indication that they are working in a threatening environment which, in turn, has created even more stressful working environments. They report that there are unreasonable timelines for data/report requests and there are dictatorial attitudes. Further, they report that there is lack of technical assistance, too many mandatory meetings, poor dissemination of information, funds not available on time, and inconsistent implementation of policies.

There are other issues which have been brought to my attention. Security background checks for personnel are a major concern of the schools. In one instance, an administrator reported that it took 75 days to get clearance. In another instance, another administrator hired 10 people on November 4th of 2003, five ended up taking other positions while waiting for clearance and two others finally got clearance 3 weeks before school was out. There are also concerned about the cost of these security clearances.

There is concern that the Reorganization of the Bureau has caused some of the delays of administrative support services because Education no longer has control over personnel, finance, and other administrative support services. This is a direct violation of the law. With the passage of Public Law 95-561 and subsequent amendments, we have worked hard to vest all education functions through the Assistant Secretary for Indian Affairs to the Director of the Office of Indian Education Programs. And yet that was all stripped away with the BIA Reorganization proposal.

These administrative issues might not be directly related to NCLB. However, they have a direct impact on its implementation – or the implementation of any school reform efforts.

There was a wonderful opportunity presented to us under the BIA provisions of NCLB. There was authorization and an appropriation for the Bureau to

develop their own Criterion Referenced Test. A Request for Proposal was put out, bids received, and a contract awarded. However, a decision was made to pull the contract and not proceed. One of the very early policies under Public Law 95-561 was that the Bureau would develop its own test. Here was the opportunity – another one lost!

The authors of this Act want everybody to be the same. But the fact is, we're not all the same. Much of Indian Country sees NCLB as another "major assimilation policy". Indian Education must be in the possession of Native peoples – Tribal governments and Tribal education systems. It's the only way to perpetuate who we are: Tribal citizens and Tribal communities.

Thank you for this opportunity to share these thoughts with you today about the implementation of NCLB in Indian schools and communities.

PREPARED STATEMENT OF VICTORIA VASQUES, DEPUTY UNDER SECRETARY, OFFICE OF INDIAN EDUCATION, DEPARTMENT OF EDUCATION

Mr. Chairman and members of the committee:

On behalf of Secretary Paige, thank you for this opportunity to testify on the implementation of the No Child Left Behind Act [NCLB] for American Indian and Alaska Native children. My name is Victoria Vasques, and I am the Deputy Under Secretary and Director of the Office of Indian Education [OIE]. I am here with my colleague, Darla Marburger, the Deputy Assistant Secretary for Policy in the Office of Elementary and Secondary Education.

It was, in large part, our Nation's long and unfortunate history of too often ignoring the educational needs of some children that led President Bush to propose his No Child Left Behind reforms. Ignoring these students is no longer an option for States, school districts, and schools, because under NCLB, they are responsible for ensuring that Indian and Alaska Native children meet the same challenging academic standards that other children are expected to meet.

We also know, however, that there are implementation challenges and that a one-size-fits-all approach will not work. There are challenges in areas such as providing school choice for children who live in remote and rural areas, assisting schools in meeting requirements that they employ highly qualified teachers, and determining how native language immersion programs for students in grades K–3 affect assessment requirements that begin in the third grade. However, we are committed to working in consultation with all local, State, and tribal governments to provide flexibility where possible while ensuring that this and future generations of Indian students are not left behind. Working with each of you on this committee, the Department wants to build upon the special relationship between the Federal Government and American Indians and our shared commitment to educational excellence and opportunity.

The President recognized the unique cultural and educational needs of these children in his April 30 Executive order on American Indian and Alaska Native Education. In particular, the Executive order emphasizes the importance of helping American Indian and Alaska Native students meet the challenging academic standards of the NCLB Act "in a manner that is consistent with tribal traditions, languages, and cultures." We believe, in fact, that the No Child Left Behind Act, which combines greater accountability for results with flexibility for local school districts and more choices for parents, provides an excellent framework for meeting the goals of the Executive order for the nearly 500,000 American Indian and Alaska Native students in our public schools.

Another important event occurring on April 30th was the swearing in of the National Advisory Council on Indian Education. Council members were appointed by the President and will advise Secretary Paige on the funding and administration of all Departmental programs that benefit Indian children or adults.

According to the most recent data from the National Assessment of Educational Progress [NAEP], only 16 percent of American Indian and Alaska Native fourth-graders score at or above the proficient level in reading, compared to 41 percent of white students and 31 percent of all students. By the time Indian students reach eighth grade, only 15 percent are proficient in math and only 17 percent are proficient in reading. After falling so far behind in the early years, it is not surprising that Indian students scored 100 points below white students and 60 points below the general population on the 2001 SAT.

Under NCLB, States must ensure that all students, including American Indians and Alaska Natives, are proficient in reading and mathematics-as measured against State standards-by the 2013–14 school year. We know this won't happen overnight, so-the law requires each State as well as the Bureau of Indian Affairs [BIA] to develop accountability plans for reaching this goal. The plans are based on academic standards for these core subjects, as well as annual assessments based on those standards for all students in grades three through eight and once again in high school. They also include annual objectives for improving student performance on those assessments-part of the concept known as adequate yearly progress [AYP].

A key advance in the new law is the incorporation of subgroup accountability into AYP standards. This means that the performance of schools and school districts is based not just on overall student achievement-which can mask significant gaps between groups of students-but also on the progress of major racial and ethnic subgroups. The result is a system that will hold the BIA, States, school districts, and schools specifically accountable for improving the academic achievement of American Indian and Alaska Native students.

All 50 States, Puerto Rico, and the District of Columbia have developed, and are currently implementing, NCLB accountability plans, which—include both a system

of rewards for schools that perform well and a system of interventions for schools and districts that are not meeting their goals. These accountability plans are critical to improving the education of American Indian and Alaska Native students because more than 90 percent of these students are enrolled in public schools operated by public school districts, which are held accountable by the States in which they are located. We are confident that the new subgroup accountability requirements, coupled with significant increases in funding for programs under the NCLB Act, will help close the achievement gaps. We have no doubt that American Indian and Alaska Native students will benefit considerably from the $3.6 billion, or 41 percent, increase in title I Grants to Local Educational Agencies funding since the passage of the NCLB Act in 2001. In addition, the National Activities program carried out by my office supports much-needed research and data- collection on the performance of Indian students and will promote ongoing program improvement for Indian education programs.

Although most American Indian and Alaska Native students are served by public schools, I know this committee has a special interest in the BIA-funded schools that serve about 48,000, or some 9 percent, of American Indian students. Under the NCLB Act, total Department funding for schools operated or funded by the BIA has grown to nearly $131 million, an increase of more than $60 million or 85 percent since fiscal year 2001. In addition, the law requires that the Departments of Education and the Interior enter into an agreement regarding the distribution and use of program funds under the Act. This agreement must be in place before the Department of Education can transfer funds to Interior. To this point, we have entered into interim annual agreements with the Department of the Interior to transfer these funds. We are working with Interior to come up with a long-term agreement that will ensure the timely and effective dispersal of NCLB funding to the BIA schools during the remaining years of the current authorization.

Finally, we note that, over the past 2 years, the BIA has worked diligently to establish the regulations required for implementing various provisions of NCLB, including accountability measures.

In addition to the title I program, the Department of Education provides other significant assistance to States and school districts that support improved achievement for American Indian and Alaska Native students. For example, last year, Secretary Paige announced a 6-year, $30.4 million Reading First grant to the BIA. This major initiative seeks to improve reading achievement using scientifically proven instructional methods for Indian children in kindergarten through third grade.

Putting a highly qualified teacher in every classroom is also a critical concern for Indian students. Assistance is provided through such programs as Improving Teacher Quality State Grants, which is funded at $2.9 billion and includes a set-aside of $14.6 million for BIA schools in fiscal year 2004. The Department's OIE will award approximately $10 million to support the training of high-quality Indian education personnel through the Teacher Corps and Administrator Corps programs. These funds will be used to support the American Indian Teacher Corps, which trains Indian individuals at the bachelor's degree level or higher to meet full State teacher certification or licensure requirements. These funds will also be used to support the American Indian Administrator Corps to train Indian individuals at the master's degree level to become new school administrators with full State certification. Together, these programs have trained more than 1,000 teachers and administrators to date.

Our OIE awards about $96 million annually to help approximately 1,200 rural and urban school districts and BIA-funded schools meet the educational and culturally related academic needs of their American Indian and Alaska Native students. OIE also awards about $10 million for projects that help Indian preschool children learn to read and Indian high school students make the transition from secondary to postsecondary education.

The No Child Left Behind Act demands accountability for improving the achievement of all children, including all American Indian and Alaska Native students.

We recognize that the NCLB Act set high standards, and that finding the right mix of accountability and flexibility can be a challenge. However, I am sure that the members of this committee would agree that few have more to gain from a concerted, good-faith effort than our American Indian and Alaska Native students as we continue to implement NCLB for their benefit and for the benefit of all our students.

In closing, I ask you the same question the President asked when he signed the Executive order on American Indian and Alaska Native education, "How can we work together to raise the standards and expect the best?"

We will be happy to answer any questions you may have.

ASSOCIATION ON AMERICAN INDIAN AFFAIRS

June 25, 2004

Jack F. Trope
Executive Director

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Senator Ben Nighthorse Campbell
Chairman
Senate Committee on Indian Affairs
836 Hart Senate Office Building
Washington, D.C. 20510

Re: Senate Committee on Indian Affairs hearing on implementation of the No Child Left Behind Act – June 16, 2004

Dear Senator Campbell:

Please accept this letter for the record of the above-captioned hearing.

The Association on American Indian Affairs is an 82 year old Indian advocacy organization located in South Dakota and Maryland and governed by an all-Native American Board of Directors. Our current projects focus to a considerable extent in the areas of cultural preservation, youth, health and federal recognition of unrecognized Indian tribes.

One of our programs is a Dakotah language preservation program in Sisseton, South Dakota called "Wakanyeja Kin Unspe" (Teach the Child). AAIA is working closely with the Sisseton Wahpeton Oyate and Sisseton Wahpeton Community College to develop a pre-school immersion program or "Language Nest". It is designed to begin the process of creating a true language immersion program at Sisseton.

In planning the future expansion of this program into the elementary school grade levels, we have identified a significant obstacle created by the No Child Left Behind Act – namely, the teacher certification requirement. As the National Indian Education Association pointed out in its testimony, the concept of a "highly qualified teacher" does not take into consideration "knowledge of local traditions, beliefs and values." In no circumstance is this failure more serious than in the context of the teaching of Native languages.

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In Sisseton, only elders speak the Dakotah language fluently. Their involvement in the instructional process is critical to the success of the language program, particularly if the immersion model is to be utilized. As this Committee heard from representatives of the Piegan Institute on the Blackfeet Reservation and Aha Punana Leo from Hawaii, among others, during its June 2003 hearing on amendments to the Native American Languages Act, the education-based programs that have proven to be most successful in creating fluent Native language speakers have been immersion programs. What is significant about these programs from the standpoint of the goals of the No Child Left Behind Act is that students who have taken part in these programs have not only become fluent in their Native languages, but are bilingual and competent in English as well. Indeed, in general, the academic performance of students in these schools has exceeded that of students attending regular public schools in the same communities.

Thus, we would urge this Committee to advocate for changes to the No Child Left Behind Act that would recognize that fluent tribal elders are not only a desirable resource, but are necessary if tribes are to rejuvenate their languages and effectively educate their children. The concept of providing children with "highly qualified" teachers – a goal with which no one disagrees – should be modified to reflect the cultural and educational realities in tribal communities. In particular, fluent tribal elders should be able to be involved in an instructional role in tribal language programs without regard to their educational achievement and without need for certification.

Thank you for considering this testimony.

Sincerely,

Jack F. Trope
Executive Director

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