

S. HRG. 111-713

**INDIAN EDUCATION: DID THE NO CHILD LEFT  
BEHIND ACT LEAVE INDIAN STUDENTS BEHIND?**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED ELEVENTH CONGRESS**

SECOND SESSION

—————  
JUNE 17, 2010  
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**THURSDAY, JUNE 17, 2010**

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

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BYRON L. DORGAN,  
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Let me call the Committee to order.

This is an oversight hearing on Indian education entitled Did the No Child Left Behind Act Leave Indian Students Behind?

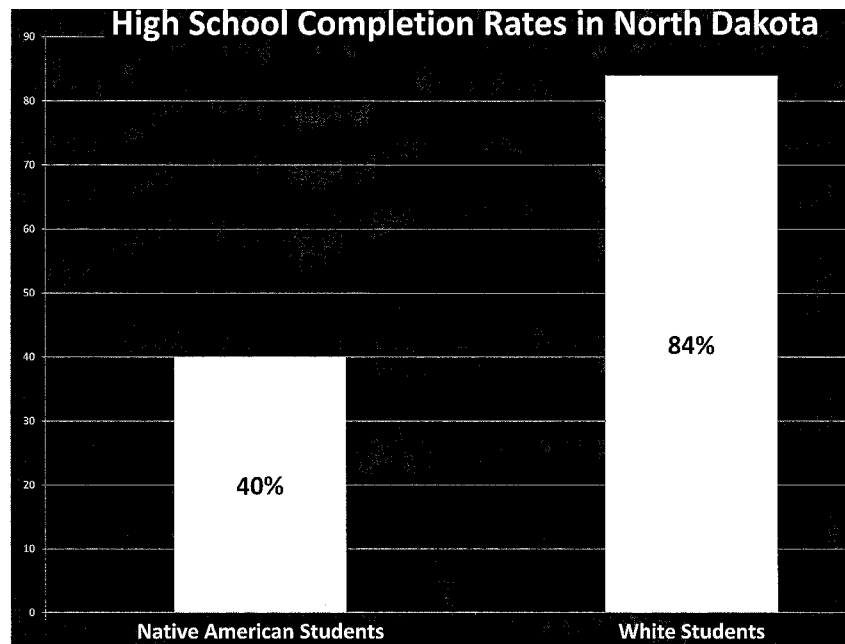
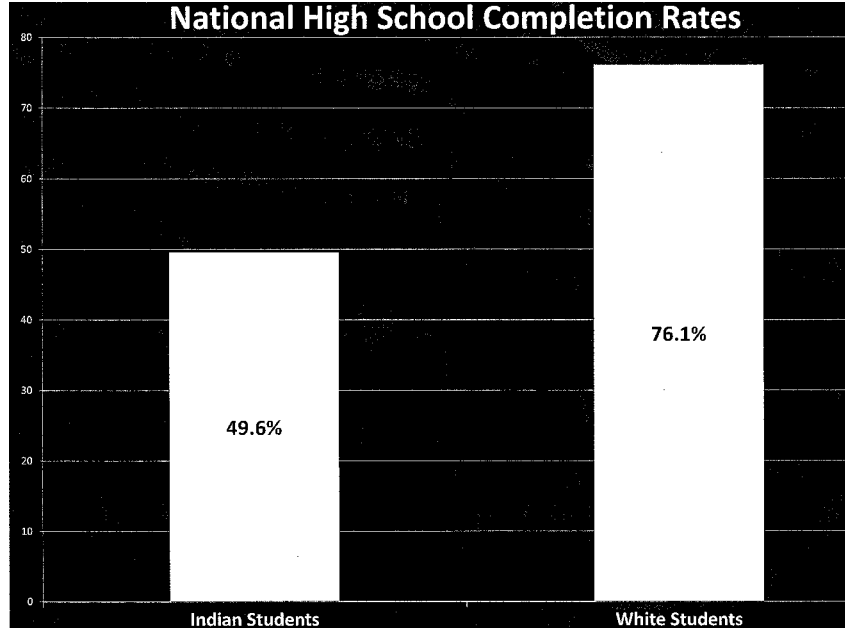
Today, the Committee is going to hold a discussion on Indian education and the reauthorization of the No Child Left Behind Act. It expired in 2008 and Congress will soon consider the reauthorization of that law.

So the purpose of today's hearing is to ensure that the education of Native American students is made a priority in that new law. The state of education in Indian Country today is I believe at a crisis point. We have some charts to show that today less than half of all Indian students graduate from high school and only 13 percent receive a college degree.

We are losing half of our Indian students before they graduate from high school. This is compared to 76 percent of their white counterparts who do graduate from high school. It is a very, very substantial difference.

As you can see on chart two, this is also a significant issue in my home State of North Dakota; 40 percent of the American Indians graduate from high school in North Dakota, compared to 84 percent of their white counterparts in my State. I venture to say that is likely the case in most States in our Country.

[The information referred to follows:]



This statistic is ignored at our peril. We simply cannot ignore it. The Federal Government, I believe, has a trust responsibility to provide education to Indian students. We have signed treaties, made promises, and this is something that we have to deal with.

Throughout our Government's history, we have engaged with tribes and said that schools, teachers and education would be provided in return for the hundreds of millions of acres of what had been their tribal homelands.

Now, I know there are so many factors that impact how well a student performs in school, but at the core is the curriculum that is taught and how well it reaches the students. Some of the major criticisms we have heard from tribes on the No Child Left Behind Act is that it had a disproportionately negative impact on high poverty schools. It was too rigid, required "teaching to the test," and it didn't allow flexibility in teaching.

The tribes I have talked to about this are not seeking lower standards for Indian students. As all of us on the Committee know through our interactions at tribal schools and universities, Indian students are as intelligent, resourceful, creative as any students in this Country who are graduating and going on to college. But it seems to me that they are not given the same opportunities and not given the same tools with which to succeed in this education system.

The one size fits all approach to educating Indian students just appears to me not to be working. We need more flexibility in the system so that tribes can address the needs of their students in a way that is relevant to them, to their culture, to their community, while still meeting or exceeding national standards.

There are talented and dedicated teachers and administrators both in the BIA and the public system who work hard every day to provide a good education for their students. That is why we have to get the next education bill right and give tribes, students and parents the right resources to build the next generation of productive tribal citizens and tribal leaders.

Today, we are going to hear from the Department of Education and the Department of Interior regarding their recommendations for the next reauthorization and how they plan to include tribal governments and tribes in that bill.

I am encouraged at the level of outreach that has occurred so far by the Administration. I know there have been several tribal consultations already, and they have heard and received information from tribes on these priorities.

We will also hear from our new Bureau of Indian Education Director today, Mr. Moore. I know that Keith Moore has just started work last week. We welcome you today to the Committee. I am pleased that he is here to provide testimony.

Let me also say I fully understand, aside from the things I have just described, the issues of poverty, the issues of broken families and all the related issues that affect children also play a significant role in the statistics that I have just described. But it is heart-breaking to me to go to schools that are in disrepair, schools in which children are sitting at desks that are one inch apart, to schools in which there is overcrowding.

And in so many other circumstances it means that a fourth grader or a third grader comes out of that circumstance, going to school in a building that has been condemned. And I have been to those buildings. That third or fourth grader is not going to compete on

an even level with a young child that is going to a school with 15 classmates in a modern, new school.

So we need to get this right. We need to keep our promise, meet our trust responsibilities. That is why we are holding these hearings today.

Let me ask my colleagues if they have any comments with which to open the hearing. I don't know who was here first today.

Senator Johanns?

**STATEMENT OF HON. MIKE JOHANNS,  
U.S. SENATOR FROM NEBRASKA**

Senator JOHANNS. Thank you very much, Mr. Chairman. I will be very brief because I think you made the point.

I just wanted to underscore that with one statistic from my State. I look at that 50 percent rate and it has got to be heart-breaking to everybody. But in fact during a recent school year, one of our schools graduated 12 students, while losing 43. It had a 22.6 percent graduation rate. It doubled the next year, but is still performing below the national average.

So I can't compliment you enough, Mr. Chairman, for taking this issue on. I see the discrepancy that exists here and something just absolutely needs to be done with these kids not graduating. There is truly no hope. You just kind of wonder what happens next in their life.

So I appreciate the opportunity to be here. Thanks for the chance to say a word or two.

The CHAIRMAN. Senator Johanns, thank you very much.  
Senator Tester?

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. Yes, thank you, Mr. Chairman.

I want to echo the remarks of Senator Johanns. I appreciate your having this hearing and I appreciate the witnesses coming today.

Everybody in this room knows how critical education is. If we are going to break the cycle of poverty in Indian Country, we have got to have a good education system. And it amounts to a lot more than just No Child Left Behind. I can tell you that I have never said a good word about No Child Left Behind. Having teachers teach to tests, making teachers into bureaucrats, not teaching kids to think, all those are the kind of things that NCLB brings to the table.

It did do one good thing, though. It did, in Montana, show the achievement gap of American Indian kids. And by the way, it is a very, very obvious gap and it applies to Native American kids across the State of Montana.

So what do we have to do to be successful? We have to have good teachers. We have a hard time recruiting teachers in Indian Country. We have to figure out how to do that. We have to have good schools. I was at a school in Indian Country, I won't say which one, not too long ago. It was a nice looking school, appeared to be a nice school. It had good kids, as good kids as anywhere in the Country. I walked into the bathroom and there was no toilet paper. It was



dirty. It was dingy. It was crummy. And quite frankly, it was all of the above.

And there was an administrator failing right there, I will tell you that. The person should have been looking for work that is all there is to that.

But we also need something else. We need to have families support their students. Oftentimes, we look at this as being a Federal Government issue and it is. We have our trust responsibilities. But unless we have community support for schools, we are sunk. We have to figure out a way to get that as a critical component of our schools across the board, but especially in Indian Country because poverty is so rampant.

I could go on and on about education and how important it is. We all know it. In Montana, we are somewhat lucky: 98 percent of Indian kids attend public schools, but a fair number of those kids also drop out. The top ranking person at the Department of Education is a member of the Blackfeet Tribe, Denise Juneau. Denise knows education across the board very well. She also knows the challenges in Indian Country. She is going to be a pleasure to work with to try to break this cycle of education not meeting the needs in Indian Country.

I can't stress enough that we need teachers. We need quality schools. We need clean schools. We need good administrators. We need counselors, social workers, mental health providers. The list goes on and on. And as important as any of those is we need parental involvement in these programs. It is critically important.

I once again want to thank the Chairman for holding this meeting. I look forward to hearing what the witnesses have to say and the questions that come afterwards.

Thank you.

The CHAIRMAN. Senator Tester, thank you very much. Senator Johnson?

**STATEMENT OF HON. TIM JOHNSON,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator JOHNSON. Thank you, Mr. Chairman, for holding this very important hearing.

I would like to especially welcome the new Director of the Bureau of Indian Education, Keith Moore, from my home State of South Dakota. In fact, he most recently had a position from my alma mater, the University of South Dakota. It is good to know that someone with first-hand knowledge of the situation we face in South Dakota has been selected for this very important position.

I can submit my full statement for the record.

[The prepared statement of Senator Johnson follows:]

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Good afternoon. Thank you, Mr. Chairman for holding this very important hearing. I would like to especially welcome the new Director of the Bureau of Indian Education, Keith Moore, from my home state of South Dakota. It is good to know that someone with firsthand knowledge of the situation we face in South Dakota has been selected for this very important position.

The education of our Indian students is a top priority for me and for the Tribes in South Dakota. I believe that education is the silver bullet to solving many of the problems that we face not just in Indian Country but across South Dakota and the

Nation. We must do our best to provide our students with the best possible learning environment that includes safe schools, well-qualified teachers and more attention to the individual needs of Indian students.

The ability of all students to succeed in school depends on many factors outside of the school building, including access to nutritious food, a safe and healthy home environment, access to mental health resources, and afterschool activities. I am committed to working with tribal communities on all of these issues. Two weeks ago, I sat down with educators from the Pine Ridge Indian Reservation and listened to the challenges that they face there.

Unfortunately, many of our schools in Indian Country are not meeting their Adequate Yearly Progress benchmarks. I look forward to learning from our witnesses what might be done to enhance the strengths of our students and accurately measure their academic successes. I want to thank you again, Mr. Chairman, for holding this hearing today.

The CHAIRMAN. Senator Johnson, thank you very much.

Panel one today contains Mr. Charles Rose, General Counsel, U.S. Department of Education; and Mr. Keith Moore, the Director of the Bureau of Indian Education at the U.S. Department of the Interior.

As I have indicated, Keith Moore is brand new to his job and been on the beat for one week, but we are nonetheless pleased you are here. Why don't we begin with you, Mr. Moore, and then we will hear from Mr. Rose and ask questions.

Mr. Moore, you may proceed.

**STATEMENT OF KEITH MOORE, DIRECTOR, BUREAU OF INDIAN EDUCATION, U.S. DEPARTMENT OF THE INTERIOR**

Mr. MOORE. Thank you very much.

Mr. Chairman, fellow Members of the Committee, it is an honor to be here. It is quite humbling actually to be here and serve in this capacity.

As you said, my name is Keith Moore, the new Bureau of Indian Education Director and also Sicangu Oyate Lakota from the great Rosebud Sioux Tribe in South Dakota. I just want to thank you for allowing us to be a part of the hearing today and to provide testimony on behalf of the Department of Interior on No Child Left Behind and how it has affected the schools that we fund and the students that we serve.

Let me very briefly today tell you a little bit about who I am. I would like to take just a moment or two to do that.

I grew up on the Rosebud Indian Reservation. My mother was native. My father was not native. I grew up on the reservation until I was eight years old and we left the reservation. Made a tough decision, my parents did, when I was a youngster. Some of my brothers, some of the issues that Senator Dorgan eloquently talked about, many of those issues my family personally faced. My family made a decision to move to a border community where my non-native family was from. I grew up in a border community called Lyman County in South Dakota in between Lower Brule/Crow Creek and Rosebud Reservations.

That was in 1975, and if you know your history, it was the middle of the American Indian Movement in South Dakota and it wasn't very friendly to move to a border community during those years. But as I look back on them, they are very formative years. They molded me in a lot of ways, both good and bad, and I think I hopefully have overcome the bad in the sense of trying to be a

level-headed individual that is working on issues on behalf of Indian students today across this Country.

I grew up there in that border community, poured myself into athletics because it was a way to be a normal kid. I fit in through athletics. And once I figured that out, I really poured my energies into that. I earned my way to college on a basketball scholarship to Northern State University in Aberdeen, South Dakota.

I finished up college and coached and taught throughout the State for a decade and then went back for a couple of advanced degrees. I became a school administrator and then really did some soul searching in wanting to really work on Indian issues in South Dakota, and was offered the position as the State Indian Education Director in South Dakota.

I directed that office for a number of years. It was a great experience, before moving to Senator Johnson's alma mater, the University of South Dakota, to be the Chief Diversity Officer to work on recruiting, retaining and building a framework of success for native students in South Dakota.

I am married, going on 11 years, and have four little girls, which was the toughest part of moving to D.C., moving those little girls away from home. They are eight, six, four and two.

So real quick, I just want to take a moment to introduce myself to you and again say it is an honor to be here today. It is an honor to serve on behalf of Indian students across this Country and I hope to make the Bureau a very responsive and well-oiled machine when we are talking about serving those youngsters across this Country.

Real quickly to move into the challenges of No Child Left Behind and what we feel in the BIE that we have learned over the years with No Child Left Behind.

First of all, as you know, all States had to develop a detailed State accountability workbook that was passed and okayed from the U.S. Department of Education back when No Child Left Behind started. That process was no different for the BIE. The BIE went through a negotiated rulemaking process and the Secretary of Interior at that time decided that the best course of action was to follow the State plans. So at that time, the BIE followed 23 different States, followed State standards, took State assessments and went that path.

That is really complicated for the Bureau of Indian Education. States are able to follow one system with their standards and assessment. The BIE looks at 23 different standards and assessments in order to look at student achievement.

It is very difficult to compare students. It is very difficult to take a look at your students apples to apples and see how those students are doing when you are talking about students all over the board with standards and assessments, different AYP cutoff scores, all of those sorts of things, not to mention that obviously State standards, State assessments didn't take into account tribal input very well through that process.

So as we take a look at those challenges and move forward and decide what the BIE should do moving forward, we are looking to respond to these issues with NCLB by initiating a process to de-

velop a single set of standards and assessment that would apply to all BIE schools.

We feel that will obviously better meet the unique educational needs of Indian students across this Country and it will require consultation and working closely with tribes and educators. That must also accommodate tribes' wishes to develop their own standards and assessments as well, if they wish to do that. So it is one thing that we really feel that we have to move forward with as we talk about reauthorization.

But despite these many challenges, we do feel that we have seen some improvement over the last few years. From the 2007–2008 school year to the 2008–2009 school year, we have seen an 8 percent increase in our schools in terms of meeting AYP. Now obviously we are not happy with where we are at. We know we need to improve even more beyond that. And a number of you gentlemen here and Committee Members expressed that in your statistics earlier.

So as ESEA reauthorization is contemplated, we just hope that the unique position of the BIE should not be forgotten in the process. We want to be a part of that process. We want to work closely with the U.S. Department of Education through this ESEA reauthorization. It is important that BIE's role is defined very well, in a manner consistent with the Administration's priorities and policies of self-determination for our tribal groups across this Country.

So in conclusion today, let me just say the reauthorization of ESEA represents a unique opportunity, I believe, for us to ensure that this Act works for American Indian and Alaska Native communities across this Country. The reauthorized ESEA can support the self-determination of Indian tribes and create an educational system that values tribal cultures and languages.

That is a part that we really feel has been left out as we talk about NCLB is the respect paid to our tribal cultures, our languages, the unique needs that our students need inside standards, the values that we have as a people. All of those things are missing right now in NCLB and are vital for our students' feeling valued and welcomed and comfortable in school systems.

In closing, let me just say thank you again for providing the BIE, the Department of the Interior, the chance here today to testify. We are committed, again, to working with you folks here on the Committee, the U.S. Department of Education folks like Charlie Rose sitting next to me, and with the tribes and with the other departments across fences in order to meet the needs that it is going to take.

So as reauthorization of ESEA moves forward and through Congress, we look forward to working with all parties in order to make a difference for our Indian students across this Country.

So I am happy to answer questions at the end of this Committee hearing, and again thanks a ton, and I can't tell you how honored I am to be here. As a kid that is growing up in Indian Country out in a rural State of this Country, and just as a youngster when you are growing up in those situations, you don't imagine some day you are going to sit here in front of the Senate Indian Affairs Committee and talk about Indian education across this Country. It gives me goose bumps to even say that.

And let me lastly say also I want to thank Senator Johnson, obviously, from our great State, the years of service that he has given in not only Indian education, but Indian issues period across this Country. I can't thank him enough as well.

So thank you.

[The prepared statement of Mr. Moore follows:]

PREPARED STATEMENT OF KEITH MOORE, DIRECTOR, BUREAU OF INDIAN EDUCATION,  
U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Mr. Chairman, Mr. Vice Chairman, and members of the Committee. My name is Keith Moore and I am the newly appointed Director of the Bureau of Indian Education (BIE). Thank you for the opportunity to provide the Department of the Interior's views on how the No Child Left Behind Act (NCLB) has affected the schools we fund and the students we serve. The Administration is committed to providing high-quality educational opportunities for approximately 42,000 students who are educated in BIE-funded elementary and secondary schools throughout the country.

**Background**

The BIE operates a Federal school system for Indian students. The BIE funds 183 facilities on 64 reservations in 23 States, consisting of 121 grant schools and 3 contract schools controlled by tribes, and 59 schools directly operated by the BIE. In addition, the BIE operates two postsecondary institutions, Haskell Indian Nations University and Southwestern Indian Polytechnic Institute, with student populations for the fall through the summer semesters for 2009/2010 of 2,405 and 1,818, respectively. The BIE also provides funds for 26 Tribal Colleges and Universities (TCUs) and two tribal technical colleges.

Federal funding for the education of American Indian students comes from both the Department of the Interior and the Department of Education. The 183 elementary and secondary schools funded by BIE educate approximately 42,000 students, or approximately 7 percent of the total American Indian and Alaska Native student population in the United States. The great majority (over 90 percent) of American Indian and Alaska Native children are educated in public schools.

In 2006, the Assistant Secretary-Indian Affairs established the BIE. Formerly known as the Office of Indian Education Programs, the BIE was renamed and reorganized on August 29, 2006, to reflect its importance in the organizational structure of the Office of the Assistant Secretary-Indian Affairs. The BIE is headed by a Director, who is responsible for the line direction and management of all education functions, including the formation of policies and procedures, the supervision of all program activities and the expenditure of funds appropriated for education functions.

There have been several major legislative actions that affected the education of American Indians since the Snyder Act of 1921. First, the Indian Reorganization Act of 1934 supported the teaching of Indian history and culture in Bureau-funded schools (until then it had been Federal policy to acculturate and assimilate Indian people through a boarding school system). While this was the stated purpose, American Indian students attending Bureau schools continued to experience assimilation-based education for quite some time. Second, the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) provided authority for federally recognized tribes to contract with the Secretary to operate Bureau-funded schools. The Education Amendments Act of 1978 (P.L. 95-561) and further technical amendments (Public Laws 98-511, 99-99, and 100-297) provided funds directly to tribally-operated schools, empowered Indian school boards, encouraged local hiring of teachers and staff, and established a direct line of authority between the Education Director and the Assistant Secretary for Indian Affairs. The No Child Left Behind Act of 2001 (NCLB) (P.L. 107-110) brought additional requirements to the schools by holding them accountable for improving their students' academic performance.

As stated in Title 25 CFR Part 32.3, BIE's mission is to provide quality education opportunities from early childhood through life in accordance with a tribe's needs for cultural and economic well-being, in keeping with the wide diversity of Indian tribes and Alaska Native villages as distinct cultural and governmental entities. Further, the BIE is to take into consideration the whole person by taking into account the spiritual, mental, physical, and cultural aspects of the individual within his or her family and tribal or village context. The BIE school system employs thou-

sands of teachers, administrators, and support personnel, while many more work in tribal school systems.

Assistant Secretary Echo Hawk stated in his February 25, 2010 testimony, “One of our top priorities is to improve Indian Education and provide quality educational opportunities” to Native American students. BIE is committed to taking active measures to improve learning conditions throughout Indian Country. Some of our initiatives include Safe and Secure Schools, High School Excellence, Strengthening and Sustaining the Postsecondary Program, the System of Support, and engaging in partnerships.

In January of this past year, Secretaries Salazar and Duncan hosted a meeting with Indian education experts to discuss how to improve Indian education. Two of the major outcomes of that meeting were renewed focus on BIE and strengthened collaboration between the Department of the Interior and the Department of Education. Collaboration between the Departments has been especially strong, with the Department of the Interior participating in the Department of Education’s regional consultations and several joint initiatives.

### **Challenges of No Child Left Behind**

A key challenge for the BIE, like much of America, has been the implementation of NCLB. Educators have found many problems with NCLB. The accountability system labeled schools as failing even when their students were making real gains and it prescribed the same interventions for all schools that did not make adequate yearly progress. It allowed the lowest-performing schools to stagnate, and did not provide any incentives for success. And it ignored much of the wide variety of data that schools should consider when determining how to improve. These challenges apply across the country, and BIE schools are no exception.

In compliance with NCLB, State education officials developed detailed State accountability plans for approval by the U.S. Department of Education. In its capacity of administering the BIE schools, the BIE also developed a Consolidated State Application Accountability Workbook. Through a negotiated rulemaking process, the Secretary of the Interior determined that BIE-funded schools would use the State assessment systems and standards of the 23 States in which the schools were located. Unlike States, which use a single assessment system, BIE uses 23 different State assessments. This complex system has presented a major challenge for the BIE and BIE-funded schools. Other challenges often voiced by Indian educators, parents, and tribal leaders are that NCLB has diminished American Indian cultures and languages, and that NCLB does not address the unique needs of tribal communities, especially in rural areas.

After thorough review of this policy and responding to issues raised by tribes, BIE is initiating the process to develop a single set of standards and assessments that would apply to all BIE schools and that will better meet the unique educational needs of Indian students. This will require consultation with tribes and educators, and must accommodate those tribes wishing to develop their own standards and assessments.

Despite these many challenges, the BIE is making strides in improving Indian education. We have seen an increase of 8.09 percent in the number of BIE-funded schools meeting adequate yearly progress (AYP) from school year 2007–2008 to 2008–2009, but we are still far from achieving our goals. This Administration is deeply committed to moving things in the right direction.

As ESEA reauthorization is contemplated, the unique position of BIE should not be forgotten. As a federally run school system operating throughout Indian country and in 23 states, BIE must perform many functions and roles, including that of LEA or SEA, depending on the particular provision of the Act. These functions are sometimes not clearly defined by the statute. It is important that BIE’s role is defined in a manner consistent with the Administration’s priorities and policies of self-determination.

### **Conclusion**

Education in the United States is primarily a State and local responsibility. Historically, tribal communities have not been afforded appropriate control over education in their own communities. Outside interests, including the Federal Government, have historically imposed their will on tribal communities and defined the futures of Indian communities through their children.

Reauthorization of ESEA represents a unique opportunity to ensure that the Act works for American Indian and Alaska Native communities. The reauthorized ESEA can support the self-determination of Indian tribes and create an educational system that values tribal cultures and languages.

The BIE is partnering with tribal nations to create an education system that supports academic achievement, accountability, safe learning environments, student growth, tribal control, and the teaching of tribal cultures and languages.

Thank you for providing the BIE this opportunity to testify. We are committed to working with this Committee, with the tribes and with the Department of Education as the reauthorization of ESEA moves forward through Congress.

I am happy to answer any questions the Committee may have.

The CHAIRMAN. Mr. Moore, thank you very much. I hope it never gets old for you to appear here.

[Laughter.]

The CHAIRMAN. But I can tell you are excited about the new challenges. I think because you are brand new, I think it was helpful for our Committee to hear a little about your background, who you are, where you came from. I appreciate your doing that at the start of your testimony.

Next, we will hear from Mr. Charles Rose, who is the General Counsel of the U.S. Department of Education.

Mr. Rose, thank you and thanks for your work. We are anxious to hear your comments.

**STATEMENT OF CHARLES P. ROSE, GENERAL COUNSEL, U.S.  
DEPARTMENT OF EDUCATION**

Mr. ROSE. Thank you very much, Mr. Chairman.

Again, my name is Charles Rose and I have the privilege of serving as the General Counsel for the U.S. Department of Education. On behalf of Secretary Duncan, I would like to thank Senator Dorgan and the Committee for the opportunity to testify today regarding one of our Nation's most underserved student populations, American Indian and Alaska Native students.

On a personal note, this is the first time I have had the opportunity to testify before a Senate Committee. I came here 13 months ago after confirmed by the Senate, and I was prior to coming here a lawyer in Chicago who represented school boards and municipalities across the State of Illinois. So it is a privilege for me to be here in front of you today, and it is equally a privilege to be here with Mr. Moore.

One of the pleasures I have had in the last 13 months is meeting and coming to know Mr. Moore and it is an honor to be here with you today as well.

Because this Committee is intimately familiar with the history between Indian peoples and the Federal Government, there is no need for me to recount that history in any great detail. Still, it is important to acknowledge that history in order to avoid repeating past mistakes, especially in the area of education.

Over a century ago, the U.S. Government used education as a weapon in its war against tribes. It was a means to achieve a policy aimed at assimilating Indian children. The Federal Government often took Indian children from their homes and forced them into boarding schools, some of which were far from their homelands. These schools banned native languages, native dress, religious practices and many students experienced various forms of abuse.

After decades of failed policy, the U.S. Government adopted a new policy of self-determination for tribes in the 1970s. This change in policy was based upon the recognition that the tribes, and not Washington, were in the best position to govern their own

affairs. The Obama Administration has taken great strides to implement this policy and to honor government to government relationships with tribal nations.

On November 5 of last year at the historic White House Tribal Nations Conference, President Obama reaffirmed the Federal Government's commitment to tribal sovereignty. He promised "to develop an agenda that works for tribal communities because Washington can't and shouldn't dictate a policy agenda for Indian Country. Tribal nations do better when they make their own decisions."

Still, there is much work to be done with regard to tribal sovereignty, especially in the area of education. The last reauthorization of the Elementary and Secondary Education Act, No Child Left Behind, exposed the achievement gap, as Senator Tester mentioned in his opening statement, between Indian students and their middle class white counterparts.

It provided us with statistically reliable evidence that Indian students perform at levels far below their peers on academic assessments. These statistics have made one thing clear, at least in the area of education. The Federal Government has failed to live up to its responsibilities to Indian children and this needs to change.

Historically, the Department of Education has not engaged Indian Country in a meaningful way. However, I am pleased to report that under Secretary Duncan's leadership, the Department's focus on Indian education has increased dramatically. For example, on January 11, Secretary Duncan participated in a meeting with Interior Secretary Ken Salazar and Indian education experts. In fact, Mr. Moore was at that meeting.

Since that meeting, I have been working closely with Assistant Secretary for Indian Affairs Larry Echo Hawk and his team to combine and coordinate the Department's resources and to maximize our impact on Indian education. And it has been an honor working with him as well as his team, and two of those individuals are there today, Wizipan Garriott and Del Laverdure. It has been a pleasure. Wizipan, by the way, has been with us at our tribal consultations representing the Department of Interior.

In addition, in the past two months senior staff, including myself, Under Secretary Martha Kanter, Assistant Secretary Thelma Melendez, who has joined me here today, have participated in several regional consultations with tribal leaders across this Country. In fact, we have conducted four tribal consultations and we have two upcoming in the next month.

During these consultations, we heard specific ideas from tribal officials about what works for Indian Country and this is what they said. Tribes want to collaborate with States about how Indian students are educated. Native languages and cultures are dying out and we must make an effort to preserve or restore them. Tribes generally lack the capacity to compete with States for competitive funding. There is little high quality reliable data on Indian students.

Many schools that serve Indian students are dilapidated and present safety risks. Due to domestic violence, substance abuse and high unemployment rates, reservations are distressed communities that affect our Indian students learn. And most importantly, at every consultation, tribal leaders stressed the importance of follow



up. They said consultations were important, but only as a first step. We want to be judged by our actions, not by our words.

This is why we need to follow up on what we have heard. An ESEA reauthorization, as Mr. Moore has pointed out, provides us with the unique opportunity to take action.

We focused on five broad areas for this reauthorization: one, raising standards and improving assessments; two, ensuring that our best teachers and leaders are in the schools where they are needed most; three, ensuring equity in opportunity for all students; four, raising the bar and rewarding excellence; and five, promoting innovation and continuous improvement. These goals are critically important to improving education for all students and particularly for Indian students.

We also have plans for specifically addressing the needs for Indian students. For example, we are exploring ways to promote tribal sovereignty in the context of education. Our proposal would allow schools that serve Indian students to implement locally designed strategies to improve student achievement such as culturally based education and native language instruction.

We are also exploring how to strengthen tribal education agencies. TEAs are really the executive branch departments of tribal governments that are responsible for education-related matters. Several tribal officials testified that strengthening TEAs may provide a mechanism for the Federal Government, tribes and States and even local school districts to combine resources and develop partnerships that would promote tribal sovereignty, increase capacity and improve accountability in schools with high percentages of Indian students.

So in conclusion, as ESEA reauthorization moves forward, we will continue our dialogue with tribal leaders and refine the department's proposals. We are looking forward to working with the Committee to achieve our goals for all Indian students. We are also looking forward to working with our Federal partners at the Department of the Interior.

And thank you again for the privilege of appearing before you this afternoon, Mr. Chairman.

[The prepared statement of Mr. Rose follows:]

PREPARED STATEMENT OF CHARLES P. ROSE, GENERAL COUNSEL, U.S. DEPARTMENT OF EDUCATION

**Framework: From Assimilation to Self-Determination**

My name is Charles Rose, and I am the General Counsel at the U.S. Department of Education. On behalf of Secretary Duncan, I'd like to thank Senator Dorgan and the Committee for the opportunity to testify today regarding one of our Nation's most underserved student populations: American Indian and Alaska Native students.

Because this Committee is intimately familiar with the history between Indian peoples and the Federal Government, there is no need for me to recount that history in any great detail. Still, we must acknowledge this history to avoid repeating past mistakes, especially in the area of education. Over a century ago, the U.S. government used education as a weapon in its war against Tribes—it was a means to achieve a policy aimed at assimilating Indian children into the majority culture of the United States. The Federal Government often took Indian children from their homes, and forced them into boarding schools, some of which were far from their homelands. These schools banned Native language, dress, and religious practices, and many students experienced various forms of abuse.

After decades of failed policy, the U.S. government adopted a new policy of self-determination for Tribes in the 1970s. This new policy direction was based upon the recognition that Tribes—and not Washington—were in the best position to govern their own affairs. Since then, Tribes and the Federal Government have made strides in implementing this policy and relationship.

This Administration has taken great strides to implement a policy of Indian self-determination and strengthen and honor the government-to-government relationship with Tribal Nations. On November 5th of last year, at the historic White House Tribal Nations Conference, President Obama reaffirmed the Federal Government's commitment to Tribal sovereignty: he promised "to develop an agenda that works for your communities because . . . Washington can't—and shouldn't—dictate a policy agenda for Indian Country. Tribal nations do better when they make their own decisions."

#### **Educational Performance of Indian Students**

Despite these strides, there is still much work to be done with regard to Tribal sovereignty, especially in the area of education. Only about seven percent of Indian students attend schools funded by the Bureau of Indian Education. The vast majority, more than 90 percent, attend traditional, school district-operated public schools. In these schools, there are few venues for collaboration between Tribes and States, even in the case of school district-operated public schools located on Tribal lands.

And the Federal Government hasn't done enough to help in this regard, especially when Congress last reauthorized the Elementary and Secondary Education Act of 1965 (ESEA) through the No Child Left Behind Act (NCLB). NCLB deserves credit for exposing the achievement gap between poor and minority students and their middle-class, white counterparts. It has provided us with statistically reliable evidence that Indian students perform at levels far below their peers on academic assessments in grades 3–8 and high school.

For example, in 2007, Indian students attending public schools under the jurisdiction of States scored 11 points lower in math than the general student population on the fourth-grade National Assessment of Educational Progress test. Unfortunately, when they reached the eighth grade, the achievement gap widened to 17 points. Indian students attending schools funded or operated by the Department of the Interior's Bureau of Indian Education scored 33 points lower in math than their peers in fourth-grade and 38 points lower in eighth-grade.

These statistics make one thing clear—at least in the area of education, the Federal Government has failed to live up to its responsibilities to Indian children.

In addition, by narrowing the school curriculum, in other words, by building an accountability system based almost exclusively on math and reading, NCLB has had the unintended consequence of contributing to the erosion of Native languages and cultures. By some estimates, fewer than 150 Native languages—out of many hundreds that once existed—remain, and many of those are on the verge of extinction, and often, stories and oral histories are dying with the last speakers of these languages.

#### **What the Department Heard on Its Regional Consultations**

Historically, the Department has not engaged Indian Country in a meaningful way. We can avoid repeating past mistakes, however, with regular consultation and a meaningful partnership between the U.S. and Tribal nations. I am pleased to report that, under President Obama and Secretary Duncan's leadership, our focus on Indian Country has increased dramatically. In 2009, Secretary Duncan and senior staff, including myself, held several listening sessions at Tribal schools in Montana, New Mexico and North Dakota. On January 11, 2010, Secretary Duncan, along with other senior officials, participated in a meeting with Interior Secretary Ken Salazar, Senior Policy Advisor for Native American Affairs at the Domestic Policy Council, Kimberly Teehee and Indian education experts regarding ways in which to improve education for Indian students. In March, Secretary Duncan held a teleconference with Tribal leaders from across the country, specifically on reauthorization of the ESEA.

Further, in just the past two months, we have held several regional consultations with Tribal leaders across the country. On April 16, Assistant Secretary Thelma Melendez and Senior Advisor Greg Darnieder were at the Cook Inlet Tribal Council in Anchorage, Alaska, visiting schools and seeking feedback from Tribal officials. On April 19, Assistant Deputy Secretaries Jim Shelton and Kevin Jennings, and I held a consultation with Tribal officials in Shawnee, Oklahoma. On April 28, Deputy Assistant Secretaries Carl Harris and Frank Chong, and I were on the Pine Ridge Reservation in South Dakota, and held a consultation at Pine Ridge High School—a BIE-operated school. Finally, on May 3, Under Secretary Martha Kanter, Deputy

Assistant Secretary Ricardo Soto, and Deputy General Counsel Nia Phillips were on the Espanola reservation in New Mexico and held a consultation at the Santa Clara Day School—a BIE-funded school.

I am also pleased to report that the Department of Education and the Department of the Interior have been collaborating with one another since Secretary Duncan and Secretary Salazar had their historic meeting regarding Indian education on January 11. Specifically, I have been working closely with Assistant Secretary EchoHawk and his staff to combine and coordinate the Departments' resources, and to maximize our impact on Indian education. It has been an honor working with him.

All of these efforts are part of the Department's commitment to renew our engagement with Indian Country, and we made a real effort to meet Tribal leaders on their lands. During these consultations, we've heard specific ideas from Tribal officials about what works for Indian Country. There were several common themes we heard at consultations, including that Tribes:

- Want to collaborate with States about how Indian students are educated. Many Tribal leaders testified the best way to promote Tribal-State collaboration would be to elevate and fund Tribal Education Agencies.
- Want States and Tribes to have the flexibility to consider Native languages as foreign languages.
- Believe that language immersion programs are the best way to increase fluency in Native languages and that we should increase support for these programs.
- Generally lack the capacity to compete with States or school districts for competitive funding.
- Want increased coordination and collaboration among Tribes, States, and the Federal Government—to fully address the needs of Indian students. In particular, we heard about the importance of close collaboration between the Department of Education and the Department of the Interior—to which we are fully committed.

We also heard that:

- Due to high mobility, small numbers, and the fragmentation of the education system for Indian students among school district-operated, BIE-operated, and Tribal schools, there is a lack of high-quality, reliable data on Indian students in the U.S.
- Many schools located on reservations are in dilapidated condition—some of them are a century old, and have never been renovated.
- Due to violence, alcohol and drug abuse, and high unemployment rates on reservations, Indian students face additional educational challenges at school.
- Teacher recruitment and retention is a tremendous challenge for schools on reservations. That is why Tribal leaders recommended that ESEA reauthorization should increase existing support for “grow your own” teacher programs that train Tribal citizens to teach in their own schools.
- Finally, at every consultation, Tribal leaders emphasized the importance of follow-up. One Tribal leader even said “consultation” had become a “bad word” in Indian Country because to “consult” only meant to “confer,” and did not require true collaboration or partnership.

### **Current State of Indian Education**

This is why we need to follow up on what we heard, and reauthorization of the ESEA provides us with a unique opportunity to take action. Reauthorization can be the vehicle that allows us to ensure that States, school districts, and the BIE are meeting the needs of Indian students and preparing them to graduate from high school prepared for college and careers.

There are approximately 644,000 Indian students enrolled in K–12 schools throughout the U.S., and they represent just over 1 percent of all public school students. In five States, however, they account for more than 10 percent of total enrollment, and over 30 percent of Indian students are in schools where they are the majority of the student body. They also disproportionately attend schools that are poor and remote: nearly 60 percent of Indian students attend schools where more than half of students are eligible for free or reduced-price school lunch, and almost 50 percent attend schools in remote areas.

As I mentioned earlier, the vast majority of Indian students attend regular public schools, while about 7 percent attend schools funded by the BIE. Under the ESEA, the Department provides support both to public schools serving Indian students and to BIE schools, including through programs specifically targeted at the unique edu-

cational and culturally related academic needs of Indian students. A significant portion of this support comes through the Title I program, which provides \$14.5 billion to high-poverty schools in order to ensure that all students have the opportunity to meet high standards.

The ESEA also authorizes the Indian Education Program, currently funded at \$127 million, to help meet the specific needs of Indian students. This program provides formula grants to school districts, BIE schools, and Tribes, as well as competitive grants for demonstration projects and pre-service training for Tribal individuals to become teachers or school leaders. Services provided by districts under the Indian Education Program must be designed with special regard for the particular language and cultural needs of Indian students, and can include a variety of specific activities. Other ESEA programs of particular importance to schools that serve Indian students include the Rural Education Achievement Program, which provides \$175 million to small, rural school districts and rural, low-income districts, and the Impact Aid Program (\$1.3 billion), which assists districts that are affected by Federal activities, such as those on Indian reservations.

#### **Goals for ESEA Reauthorization**

We have five broad goals for this reauthorization: (1) preparing college- and career-ready students, through raising standards, improving assessments, and helping States and districts provide a complete, well-rounded education; (2) great teachers and leaders in every school, through improving teacher and leader effectiveness, ensuring that our best teachers and leaders are in the schools where they are most needed, including schools that serve Indian students, and strengthening teacher and leader preparation and recruitment; (3) equity and opportunity for all students, through rigorous and fair accountability at all levels, meeting the needs of diverse learners, and greater resource equity; (4) raising the bar and rewarding excellence, through incentives such as Race to the Top, supporting effective public school choice, and promoting a culture of college readiness and success; and (5) promoting innovation and continuous improvement, through programs such as the Investing in Innovation Fund (which supports, recognizes, and rewards local innovations) and supporting student success by providing comprehensive services. These goals are critically important to improving education for all students, and especially for Indian students.

We also have goals and plans for addressing the needs of schools that serve Indian students. We know that Federal funding is crucial for these schools, especially since they are generally small and remote. Our proposal would continue foundational formula funding in Title I and Title II-A, along with formula funding in the Rural Education, Indian Education, and English Learner Education programs, among others.

For most schools serving Indian students, we want to promote Tribal sovereignty by allowing these schools to implement locally designed strategies to improve student achievement, such as culturally based education and Native language instruction. We want to give grantees more flexibility under the Indian Education Program to carry out Native language restoration and immersion programs, and we want to make it easier for Tribes to apply for grants under this program when districts choose not to.

But we also know that many schools with high percentages of Indian students are among the lowest-performing. For example, ninety percent of Montana's schools in "restructuring" status under ESEA's Title I accountability system are Indian schools, and nearly half of all BIE schools are in restructuring, having failed to make adequate yearly progress for at least five consecutive years. Our reauthorization proposal and fiscal year 2011 budget focus significant attention and support on persistently low-performing schools, with \$900 million in the School Turnaround Grants program to support the implementation of one of four school turnaround models in these schools—with the choice of which model left to the school district. The BIE would receive its share of these funds to turn around its lowest-performing schools.

Our proposal will also address teacher and leader recruitment and retention, especially for schools, like those in Indian communities, where they are needed most. The Administration's proposal includes \$405 million for programs that create or expand high-quality pathways into teaching, along with programs that recruit, prepare, and retain effective teachers, principals, and other school leaders. These programs will be focused on preparing teachers and leaders to work in high-need areas.

Finally, in order to further the Administration's policy of self-determination for Tribes, and to further Tribal-State collaboration, the Department is exploring options to strengthen Tribal Education Agencies (TEAs) through ESEA reauthorization. TEAs are executive branch departments of sovereign Tribal governments that

are responsible for education-related matters (TEAs are not schools, and generally don't deliver educational services directly to students). Several Tribal officials have testified that strengthening TEAs may provide a mechanism for the Federal Government, TEAs, and SEAs to combine and coordinate Federal, Tribal, and State resources, and develop partnerships that would promote Tribal sovereignty, increase capacity, and improve accountability in schools with high percentages of Indian students. Part of strengthening TEAs must include the provision of targeted technical assistance, as well as providing TEAs with data about Indian students—as we heard during our consultations; there currently is a lack of such data.

### **Conclusion**

As ESEA reauthorization moves forward, we expect to continue our dialogue with Tribal leaders and refine the Department's proposal. We're looking forward to working with the Committee to achieve our goals for all Indian students. Thank you and I would be happy to respond to any questions that you have.

The CHAIRMAN. Mr. Rose, thank you very much.

I think the statements that both of you have given us are important in setting out the Administration's interests and their notion of a direction here to address these issues.

Let me call on my colleagues for questions, starting with, in order of appearance, Senator JOHANNIS.

Senator JOHANNIS. Thank you very much.

And thank you for your testimony.

If I could focus on one area of ESEA. I am going to ask your help in trying to figure out how this area impacts Indian Country and schools in Indian Country, and that is turnaround policy. The Administration has set out some methods by which a school that isn't getting the job done would be turned around, I guess, and that is where the terminology comes from. They talk about eliminating personnel, moving students to another school, changing to a charter school. They talk about reassigning principals. In fact, that just happened in a community that I have lived in.

It just occurs to me as I think about these policies, they don't make any sense on a reservation. For one thing, I would love to think that there is an endless line of people who are anxious to sign up and teach, but typically it is recruiting that is a challenge.

So help me think through that. What is wrong with this? And I will just give you my bias. I agree with Senator Tester. I think this Federal policy is so misguided, this whole notion of federalizing K through 12 education. The very junior partner in funding, being the Federal Government, is trying to dictate to literally the smallest school in the Nation how they are going to run their programs.

So you know where my bias is. Talk me through this.

Mr. Rose, let's start with you and then I would like to hear from Mr. Moore.

Mr. ROSE. Okay. Thank you, Senator.

As you know, our School Improvement Grant Program is one of our most prominent initiatives that we are pursuing in order to turn around the lowest-performing schools in this Country. And at the heart of the program is the objective to ultimately close the achievement gap by providing the students in these low-performing schools with educational opportunities that they would not have otherwise had but for this program.

As you mentioned, the Student Improvement Grant Program that we have initiated at the Department of Education has four models. And one of those models is closing the school. Another of

those models might be contracting with a service provider such as a charter school to come in and operate that school. Another model we call the transformation model, which does require a change in principal. And then the fourth is the turnaround model, which requires a change in staff of up to 50 percent in addition to the change in the principal.

Again, at the heart of each one of those models is providing better opportunities for our students in these low-performing schools. And it is our belief that one of the key factors that is involved in increasing those opportunities is, one, addressing the notion of leadership, which is why two of those models require a change in leadership. And it is also, second, addressing the overall quality and effectiveness of the teaching staff, which is why one of those models requires a change in the teaching staff.

But third, the transformation model, which is perhaps a model that is most applicable in the setting that we are talking about here, goes beyond that and goes to the actual programs, and really requires the adults in these schools and these school districts to reassess the programs that they are providing to these students and look at models that will provide a higher quality educational program.

So that is the thrust of what we are trying to do. And like I mentioned, I do think that in terms of our policy, the transformation model is a model that could or is or should be useful in this context.

The Department of Interior, like many of the States, has submitted a proposal for the School Improvement Grant Program and we are in the process of evaluating that, and hopefully that will be approved and then the Department of the Interior can work with the BIE schools in order to allocate that money to the schools that need it to implement those programs.

Senator JOHANNIS. Mr. Moore, I am just ticked right out of time here, and I don't want to impinge on others' time, but maybe there will be an opportunity in response to another question to offer your thoughts. Because again, my concern is these models don't seem to be relevant to many of the problems we are facing, not just in Indian Country, but in other school systems also.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator TESTER?

Senator TESTER. Yes, thank you, Mr. Chairman.

I want to thank you both for being here once again. We have a former teacher and school administrator. We have a former legal counsel who used to work for school boards. You guys have got a great pedigree.

Mr. Moore has been married 11 years, has four kids. You have been busy in your own right, and that is pretty cool.

I want to talk about what I used to do in a previous life. I was on the school board and then I was a teacher at one point in time, both areas that you guys know a little bit about. And I just want to lay out a scenario and how do we solve it.

I am a music teacher. I just graduated from college. I am looking for a job. And I have an opportunity to go to a school where the kids are going to be great. They have a tremendous art program

in their background. It is an Indian school, but there is so much violence in the town I don't want my kids to be a part of that.

So kind of the same thing that you potentially maybe moved up your community for, Mr. Moore. I don't want to put words in your mouth.

How do we recruit teachers in those kind of conditions? What can we do?

Mr. Rose, you talked about the Federal Government has failed to live up to their responsibilities. I don't think there is any doubt about that. How do we fix it? How do we get the most basic thing, other than the student, a good teacher in the classroom, which is one of the things you talked about?

You can go first, Mr. Moore.

Mr. MOORE. I would love to respond. Great question, Senator.

Let me say I am also 10 years older than my wife, so we knew we had to hurry.

[Laughter.]

Mr. MOORE. She is 33. I am 43. So time was ticking on me.

But I think you bring up a very relevant question. That is a tough issue to deal with, finding youngsters that want to go into rural communities that are very culturally different and very tough to serve in terms of the circumstances that may be in those communities on reservations.

Let me just use a model that I think we are trying to work on. My previous university, the University of South Dakota, the School of Education, the dean there is Rick Melmer. We had just developed a model there we had written for a South Dakota Partnership for Teacher Quality Grant. It was specifically written to recruit students into the teacher education program that were going to be educated, and all of their field experience was going to be back in rural, hard to serve settings, in order to recruit them on the front end.

So when we recruited students from high school to go into the field of education, we were already promoting this program of wanting to find teachers to go back into hard to serve schools and communities and showing them what a difference that quality teachers and leaders make in those schools, offering up different types of scholarship programs, paying for a dorm room or food service, whatever it may be, just to be able to pay off part of their tuition fees and so forth in order to recruit them into a program.

We have seen a great response in terms of recruiting students and selling that program. I think those kind of programs, working with tribal colleges on different types of programs to recruit teachers and leaders, again I think it goes back to what the Department of Education is trying to do with policy, which is be creative and be innovative.

I know in Indian Country we have been struggling with these issues in education for hundreds of years. And so it is going to take a new model and a new focus. It is those kinds of programs that can make a difference in convincing young people to go into the field to serve schools and communities.

Senator TESTER. And before I let you respond to the question, Mr. Rose, so what you are saying is in South Dakota it did make

a difference? You got more people that were willing to go into Indian Country?

Mr. MOORE. Right, and we are in the forefront of that program, but we are seeing a great response.

Senator TESTER. Can it be replicated nationally?

Mr. MOORE. Yes.

Senator TESTER. Do you plan on doing that?

Mr. MOORE. I think it is a model that needs to be presented nationally.

Senator TESTER. Keep us informed.

Mr. ROSE, do you want to answer the question?

Mr. ROSE. Sure. I will be brief. In our ESEA reauthorization proposal, one of the five objectives is improving the overall quality of teachers and leaders in this Country. However, let me just mention two things specifically.

In our tribal consultations, one of the proposals that we have heard is that in order to improve the overall quality of American Indian education, we need more Native American teachers in classrooms in front of Native American students. One way in which to do that, which I think Mr. Moore is talking about as well, are these so-called grow your own teacher programs. Those are programs that we support, we want to see more of, and we will work with the Department of the Interior to see if we can, with our partners there, expand those programs.

Second, quickly, is that our ESEA proposal does include \$405 million for Teacher and Leader Pathways programs, which again are designed to prepare effective teachers and principals, but can also be used along these lines that you are suggesting.

So I think those are two ways in which we can work together to address this problem.

Senator TESTER. Do you have any statistics to tell me how many teachers the grow your own teachers has brought into difficult to teach areas?

Mr. ROSE. Off the top of my head, I don't have the statistics, but I would be happy to go back and see what I can provide to you at the department.

Senator TESTER. I agree with you, and I am hearing DOE and the DOI saying the same thing. If there are ways you can expand this program to work across the word, I think it is smart. I also think it is very smart recruiting kids right out of high school. I think that is where you get them.

Anyway, thank you very much for being here.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tester, thank you.

Senator Udall?

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Chairman Dorgan.

I didn't make it here for openings, but put my opening in the record.

The CHAIRMAN. Without objection.

Senator UDALL. I very much appreciate your holding this hearing. I think the focus, when we say did the No Child Left Behind



Act leave Indian students behind, I don't think there is any doubt in terms of how we answer that question. It has left Native American students behind. I don't think there is any doubt about it.

I wanted to ask both of you about what Mr. Rose brought up in terms of these models. You were responding to Senator Johanns' question of how you are going to bring the change about in these schools, which I think all of us up here feel there needs to be dramatic change. Two of the models is changing the leadership.

My first question really is, have you tested this before? Has this ever been utilized in BIE schools? Have you seen a good result? What makes you think if you change the leadership you are going to be able to find the right kind of leadership that is going to be culturally sensitive and understand what is really going on in these schools? So that is the first question.

And then secondly, we all know that teachers, and Senator Tester focused on this, are really the key. What in the past, if there have been success stories, have we been able to track the kind of teachers that then will produce the good results with native students?

Mr. Moore, do you want to start out?

Mr. MOORE. One, I do think we have to, especially in rural settings, consider it is a lot more difficult, obviously, in a rural setting than in an inner city even to fill the chair once the chair is vacated. So I think it is two-tiered.

I think, one, we should work hard to provide technical assistance and professional development to the current administration that is there and leadership. But at the same time, in many instances, we see a real revolving door in administration where on one reservation an administrator may be relieved of their duties and they end up over here at reservation B, and then they are relieved of their duties there and they are over at C and D and E, and they may end up back at A again 10 years later. We see the revolving door of what would be deemed not very effective leadership.

Senator UDALL. That is really unacceptable. If you have made the conclusion that this person is not a good leader in one school, what makes you think they are going to be a good leader in another?

Mr. MOORE. But the point is that it is difficult to find quality individuals. That is where I think grow your own can really assist and help when you are recruiting in Indian Country for folks to become teachers and leaders and administrators in a rural setting and on the forefront really working to fill the pipeline with folks that want to fill those positions, and then working hard there to really teach them and educate them about what it is going to be like culturally and all of those things to serve in those schools and communities.

Senator UDALL. Mr. Rose, please?

Mr. ROSE. Thank you. Before I respond to your question, I just want to share with you, Senator, one of the pleasures of the last few months has been that I am a member of the Board of Trustees for the Udall Foundation as the Department of Education's Director. That has been a real pleasure and a real privilege to serve on that.

Senator UDALL. And there is a lot going on there with native leadership also in a number of other contexts.

Mr. ROSE. Right.

Senator UDALL. Hopefully, there can be some cross-pollination here.

Mr. ROSE. I hope so. We are working with Terry Bracy and Ellen Wheeler and others.

As a former management lawyer or school board lawyer in Illinois, leadership, in my mind, is the key. Yes, in terms of the models that we have promulgated under the School Improvement Grants, finding good leaders is perhaps a challenge, but it is a challenge that we must rise to and meet.

I am not aware specifically about change of leadership in BIE schools, but obviously that is one of the things that we need to pursue, working closely with the Department of the Interior.

As far as other schools across this Country, there is evidence in areas like Chicago, L.A. and New York, and we can provide some of this to you as a supplement to my testimony here, that changing leadership has resulted in positive student growth in these schools. As difficult as it is, changing leadership is often vital to making that change. I will provide that to you.

Senator UDALL. Okay. Thank you.

The tenor of what you say is very important. We just need to get it working on the ground to have the reality of native students doing better, and I hope you are both committed to that and going to make that happen.

Thank you very much.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

In our state of New Mexico, we have 3 tribal colleges (Southwestern Indian Polytechnic Institute, Navajo Technical College, and the Institute of American Indian Arts) and 45 tribal schools, 27 of which are solely BIE operated. In fact, 24 percent of the Nation's tribal schools are in New Mexico.

Tribal education is crucial to sustain the culture and traditions of our Native peoples. A critical part of this is encouraging the survival of Native languages, through such avenues as the Esther Martinez Native American Languages Preservation Act. As Indian children grow, we must provide the safest, healthiest, and best education possible and honor our Trust agreements.

However, I am concerned that this responsibility is not being met. Too many tribal schools have severe safety and code violations, suicide and dropout rates are unacceptably high. Native students are simply not learning in environments that allow them to reach their full potential.

American Indian youth have to endure unacceptable disparities in services and outcomes and face social barriers that make completing school much, much harder. Seventy-six percent of White students graduate from high school, but only 57 percent of American Indians do.

I am also concerned that there is no system in place that support school health programs in BIE schools the way there is in most public schools.

I realize that there are many challenges in providing the best education for our Native youth, from attracting and retaining qualified teachers and administrators, to transporting our children in safe vehicles over better roads regardless of weather conditions, maintaining old school buildings and accessing broadband and other technologies.

Today we're focusing on how to improve the reauthorization of the Elementary and Secondary Education Act to address some of these issues. I look forward to the testimony of our witnesses and hope that they will identify the best ways to improve these conditions. These children deserve more. Thank you.

The CHAIRMAN. Senator Udall, thank you very much.

I am going to call on Senator Johnson and then Senator Murkowski, and then we will have four additional witnesses. One of them will be by the Internet for the second panel today.

Senator Johnson?

Senator JOHNSON. I am impressed with the need for more quality teachers.

Mr. Moore, I was home on the Pine Ridge Reservation just last weekend and it struck me how many Teach for America faculty there were, which is both good news and bad news. The good news is they are talented teachers and capable. The bad news is they are short term and they tend not to be Native American.

Where do the tribal colleges and universities fit into this scheme for providing more teachers? And has it for the most part been successful?

Mr. MOORE. Mr. Chairman, Senator, thanks for the question.

I think historically we have seen waves where we do a good job of recruiting teachers, native teachers and leaders. There are different periods if you look in history where different grant programs come in and we do a nice job of recruiting a good cadre of folks that become teachers and leaders. And then when those dollars go away, we see the shortage for 10, 20 years, and then something may come back and we will see the pipeline fill again.

I think we need to find more consistent measures and consistent ways to recruit native youngsters into the field of education and really adequately develop programs that do that. I think that is an issue. So I think at times we see success, but then there are times that we don't have success in terms of filling those chairs.

I also would, if you don't mind, comment on Teach for America. When I was State Indian Education Director, that program was really growing in South Dakota. And I do think one thing that Teach for America does do well is they do nice training on the front end for their teachers of trying to culturally prepare them for the situations that they are stepping into.

At the same time, I know some folks call it a band-aid measure because they are maybe only around for two or three years, but you are talking about some of the best and brightest youngsters in this Country that go in and really understand the curriculum; the materials to teach it. They have a solid understanding of it.

And so it is a tough one. I ask myself, do you want Teach for America or do you not want Teach for America? If you do not want Teach for America, you may be filling that classroom with a warm body in many instances. We struggle to find people right now to apply for jobs in Indian Country on reservations. We have about 70 youngsters right now serving on the Rosebud and Pine Ridge Reservations in Teach for America and I think they are making a difference in terms of what young people are learning.

So we have to be careful in the work that we do here, whether we support these programs ongoing, or how do we change direction and find more teachers that are going to stay for a long-term basis. But right now it is tough to say that Teach for America isn't making a difference in youngsters' lives in terms of serving and educating youngsters in those areas. So I just wanted to comment on that real quick.

Senator JOHNSON. Again, what role do you see for tribal colleges and universities for the provision of teachers?

Mr. MOORE. If I didn't answer that, I was going to say I think we need to develop more consistent measures of how we recruit and train teachers. I think there are times, again, that we do a nice job of that and then maybe we feel like we have had a nice group that have been educated and are in the pipeline and serving, and then maybe the focus becomes somewhere else because there are so many needs on reservations.

Senator JOHNSON. Mr. Rose, what steps has the Department of Education taken to coordinate with the BIE?

Mr. ROSE. Senator, before I answer that question, I just want to say in terms of the White House Initiative on Tribal Colleges and Universities, Maggie George recently joined the Department as the Executive Director of that program. And front and center on her agenda, as well as ours generally at the Department, is trying to use that position in coordination with the BIE to improve the overall quality of teachers and get qualified teachers into our BIE schools. And I think that is a tremendous opportunity to do that.

What are we doing in terms of coordinating with the BIE? Number one is the consultations. BIE has been with us every step of the way and I can't thank them enough. Second is, we do hold regular meetings and conference calls with our BIE colleagues in order to coordinate. Number three, we have outside of the tribal consultations and outside of these meetings visited tribes and other education leaders in this Country in order to ascertain what the proposals are to improve our system of education for American Indians.

So at the top, Secretary Salazar and Secretary Duncan have been very, very supportive of our interagency collaboration. So those are what we are doing to make that commitment a reality.

Senator JOHNSON. My time is expired.

The CHAIRMAN. Thank you very much.

Senator Murkowski?

**STATEMENT OF HON. LISA MURKOWSKI,  
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate the hearing.

Gentlemen, the Committee has had a series of listening sessions to hear from tribes about their priorities. As we look to reauthorization of the ESEA, one of those that has come from that is a focus on cultural and language-related curriculum. We have some successes in Alaska. One that I have visited in the not too distant past was the Yu'pik Immersion Program in Bethel, Alaska. It really goes to the core of what makes our native students so successful in achieving their educational success. They know who they are. They have a sense of pride in who they are. They are not hiding, living in shame.

It is something that I think we look to. And as we try to determine what is it that it going to make that connect between the student and academic success, where is that relevancy? I think we see it so much when we are able to engage our young people in their native cultural languages.

I have introduced a bill, Mr. Chairman. It is called the School Accountability Improvement Act. I serve on the HELP Committee. I have chosen to focus on certain areas that relate to Alaska Native students and rural schools. I would actually like, Mr. Chairman, to include in the Committee's record my Floor statement when I introduced that legislation as a part of the Committee record.

Senator MURKOWSKI. I also have an opening statement that I would like to include as well.

The CHAIRMAN. Without objection.

Senator MURKOWSKI. But again, I think that is so key as we look to those ways that, again, we ensure that relevancy.

Mr. Rose, I want to ask you about the teacher turnover. We talked a little bit about retention. We know that the turnover rate in the schools that serve our Indian children is so incredibly high. On the HELP Committee, we have been focused on the Secretary's blueprint and how we turn these schools around. And those of us who come from rural States are more than a little bit concerned about the restructuring status in the four proposed turnaround models.

The concern that I have is that under these four models, firing the principal and at least 50 percent of the teachers is required as that first step in this turnaround process. For us in Alaska, part of our problem is we can't get the administrators to the school. We can't get the teachers to the school.

It is not just because we face a shortage of teachers. In far too many of our communities, there are other factors at play. You are in a village that is small. You are teaching multiple subjects. You are in a village that does not have running water, sewer. Your housing conditions are not acceptable. It is very, very difficult for a multitude of other reasons.

So the concern that we have is if this is your first step in turning a school around, we are not going to get any of these lower-performing schools or these schools that need help, the help that we need. How will we get a principal out to a school?

When I took the Secretary of Education out, not this one, but Secretary Paige, the principal was living in the broom closet. How am I going to get another principal to go out to Savoonga if he or she knows that they are going to have no housing?

So how do we work through this? Because I am very concerned as we move forward with ESEA, we are going to have situations where it is children in our villages up north; it is children on our reservations where we are not going to be able to get those key administrators, those key teachers to come in. How do we address this?

Mr. ROSE. Well, Senator, in our tribal consultations, just to address the first issue in terms of language and culture, that has been one of the preeminent issues that has arisen. Once I respond to your question, I just want to share with you a quote from one of our consultations on that issue that really has resonated with us at the Department.

As you know from the Secretary's testimony before the HELP Committee and what I have said here, the core of our turnaround strategy is ensuring that the adults that are in front of our children are in fact the highest quality adults as possible in terms of

the leading and teaching students that are otherwise in low-performing schools.

We recognize the challenges that our models present in rural areas and particularly in areas like Alaska. I think as the Secretary has also expressed, we will continue to work with Congress and the Committees in order to address those concerns.

I also want to say that sometimes, as difficult as it may be, I am also speaking from my experience as a school board lawyer before I took this position, a change in leadership is necessary. Again, if that is going to happen, we, the folks that are involved in pursuing those changes, need to work with those school districts, with those individuals to ensure that there are high quality principals in those schools. And that is part of a larger systemic issue, I think, facing public education, but we are committed to working through this and trying to address and resolve some of these concerns.

Let me just share with you briefly this quote. During our consultation in Anchorage, Alaska, one of the tribal leaders said in connection with the language and culture issue, and I think this is what really has resonated with us is the following quote: "I feel that the native language should be taught and I also feel that it is a beautiful jewel, the native language, to wear. If I wear it, it will shine. But if I put it away in a jewelry box, what is the use of it being there?"

And that spirit has really resonated with us as we continue to work with Indian Country on our ESEA proposals and also work with Congress on our proposals.

Senator MURKOWSKI. I appreciate that, a beautiful quote. I am going to have to get that from you. But as it relates to how we deal with these schools where it is very difficult to get the teachers and the staff, I would hope that you would work with us in these areas where there are other factors that are at play that so complicate it. It looks good on paper, but we have to make sure that it translates.

Thank you, Mr. Chairman.

[The prepared statement and Floor statement of Senator Murkowski follow:]

PREPARED STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Chairman Dorgan, Vice Chairman Barrasso, I am pleased to join you today to discuss the impacts of the No Child Left Behind Act on Indian students as well as tribal recommendations as the Senate considers reauthorization of NCLB.

We must recognize that American Indian and Alaska Native students face many more challenges than students on Main Street, America. The lack of law enforcement creates an unsafe situation for too many Alaska Native and American Indian children. The lack of running water and sewer in Alaska Native villages and some reservation communities presents health challenges that no other community in the country faces.

Mr. Chairman, I have stated many times, in my home State of Alaska, we have many unique challenges in providing Native peoples with a high-quality, appropriate education. It is a challenge to recruit teachers to places where the culture is so different from their own, there is no running water, nor law enforcement, limited access to health care, and costs are high. It is a challenge for students to stay motivated about their education when there is a lack of opportunity for good jobs in their home communities. Instead of academic success, hopelessness breeds substance abuse, and youth suicide. It is also a challenge to ensure that local communities value the education that is being provided in the school when some educators are willing to trade Native language and culture for teaching to the test in order to make AYP.

Despite this stark reality, I know hope exists. The Ayaprun Yupik Immersion School in Bethel, Alaska is one example. The immersion school addresses the core of what makes Native students successful in achieving educational success—knowing and valuing who they are. For too long, through generation after generation, the history of Native Americans, Alaska Natives, and Native Hawaiians has included hurt and shame. We must do our part to ensure that history stops with this generation of students.

Part of our job is to make sure that federal education law embraces local communities' desire to revitalize their culture and language. In Alaska, Hawaii, and several other states, Native Americans are working hard to keep their indigenous languages and cultures alive. Teachers will tell you, and research supports them, that Alaska Native, Native Hawaiian, and American Indian students learn better when their heritage is a respected and vibrant part of their education. This is true of any child, but particularly true for these groups of Americans.

Mr. Chairman, as ESEA is reauthorized, we must work to ensure that flexibility is provided for Native language immersion programs, that elders are allowed into classrooms to guide the young people, and that teachers and principals have guidance in incorporating appropriate learning styles, culture, and Native ways of knowing into their curriculum. We must continue to disaggregate the proficiency data so that the light continues to shine on Native students' achievement. And we must ensure that all of ESEA works for our nation's indigenous peoples—not just the Indian title of the law.

Thank for you for holding this hearing today, and directing attention to a very important issue. I look forward to hearing the witnesses' testimony.

#### FLOOR STATEMENT—SCHOOL ACCOUNTABILITY IMPROVEMENT ACT

Ms. MURKOWSKI. Mr. President, I rise today to introduce the "School Accountability Improvements Act."

As you know, the 2001 re-authorization of the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, or NCLB, made significant changes to Federal requirements for schools, school districts, and states. Many of these changes have been good, and were necessary.

Because of NCLB, there is more national attention being paid to ensuring that schools, districts, and states are held accountable for the achievement of students with disabilities, those who are economically disadvantaged, and minority students. In my own state of Alaska this has meant, for example, that our more urban school districts are paying more attention than ever to Alaska Native students' needs.

People across the nation are also more aware that a teacher's knowledge of the subject matter and his or her ability to teach that subject are the most important factors in ensuring a child's achievement in school.

Teachers, parents, administrators, and communities have more data than ever about the achievement of individual students, subgroups of students, and schools. With that data, changes are being made to school policies and procedures and more students are getting the help they need to succeed in schools.

While these are just a few of the positive effects of the No Child Left Behind Act, there have been problems. This is not surprising, as it is difficult to write one law that will work well for both New York City and Nuiqsut, Alaska.

My bill, the "School Accountability Improvements Act" is meant to address six issues that are of particular concern in Alaska and in other states around the nation.

First, my legislation would give flexibility to states regarding NCLB's "Highly Qualified Teacher" requirements. In very small, rural schools, it is common for one teacher to teach multiple core academic subjects in the middle and high school grades. NCLB requires that this teacher be "Highly Qualified" in each of those subjects.

While it is vital that teachers know the subjects they teach, it is also unreasonable to expect teachers in very tiny schools to meet the current requirements in every single subject. It is almost impossible for tiny, remote school districts to find and hire such teachers. Yet, students deserve to have teachers who know the subjects they teach.

My legislation would provide flexibility by allowing instruction to be provided by Highly Qualified teachers by distance delivery if they are assisted by teachers on site who are Highly Qualified in a different subject. This provision is offered as a compromise in those limited situations.

Second, my legislation would give credit to schools, rather than punish them, if students are improving but have not yet reached the state's proficiency goals by re-

quiring the U.S. Department of Education to allow states to determine schools' success based on individual students' growth in proficiency. While it can be useful to teachers and administrators to know how one group of third graders compares to the next year's class, it is much more useful for educators, students, and parents to know how each child is progressing—is the child proficient, on track to be proficient, or falling behind? Many states now have the robust data systems that will allow them to track this information; NCLB should allow them to use the statistical model that will be most useful.

My bill also improves NCLB's requirements for school choice and tutoring. No Child Left Behind gave parents an opportunity to move their children out of dysfunctional schools. I support that. But the law requires school districts offer school choice, and to set aside funds to pay for transportation, in Year Two of Improvement Status. Schools don't have to tutor the students until the following year. Mr. President, this is backwards logic. Schools should be given the opportunity to help students learn first before transporting them all over town. I think most parents agree, and that is one reason why we're seeing fewer than 2 percent of parents choose to transfer their children to another school. My bill would require schools to offer tutoring first before providing school choice.

Mr. President, NCLB also requires schools to tutor and offer choice to students who are doing well at their neighborhood school. Schools should not be forced to set aside desperately needed funds to serve students who don't need those services. My bill would require schools to provide tutoring and choice only to those students who are not proficient. In addition, it would allow school districts to provide tutoring to students even if the district is in Improvement Status. While school districts may need improvement overall, those same districts employ teachers who are fully capable of providing effective tutoring.

Mr. President, many educators and parents also have concerns about NCLB's requirements for Corrective Action and Restructuring. These are very significant requirements that can include firing staff and closing schools that don't meet the law's AYP requirements. They are even more significant if the actions are not based on reliable information.

As you know, assessing whether a child is proficient on state standards in a reliable and valid way is difficult. It is even more difficult when the child has a disability or has limited English proficiency. Some question whether or not the tests we are giving these two groups of students are valid and reliable. Yet, NCLB requires districts and states to impose significant corrective actions or restructure a school completely if a school or district does not make AYP for any subgroup repeatedly. For truly dysfunctional schools and districts, that may be appropriate.

But Mr. President, how do we justify taking over a school, firing its teachers, turning its governance over to another entity, or other drastic measures if the students are learning but have not yet met the state's proficiency benchmarks? We can't.

That is why my bill would not allow a school or school district to be restructured if the school missed AYP for one or both of those subgroups alone *and* the school can show through a growth model that the students in those two subgroups are on track to be proficient in a reasonable amount of time. Schools that are improving student learning should not be dismantled based on potentially invalid test results.

Mr. President, in Alaska, Hawaii, and several other states, Native Americans are working hard to keep their indigenous languages and cultures alive. Teachers will tell you, and research supports them, that Alaska Native, Native Hawaiian, and American Indian students learn better when their heritage is a respected and vibrant part of their education. This is true of any child, but particularly true for these groups of Americans.

Many schools around the country that serve these students have incorporated indigenous language programs into their curriculum. The problem is that in many instances, there is no valid and reliable way to assess whether or not the students have learned the state standards in that language. Neither is it valid to test what a student knows in a language they don't speak well. Research also tells us that students who are learning in a full language immersion program do not test well initially, but by 7th grade they do as well or better on state tests *and* they can speak two languages.

My legislation would allow schools with Native American language programs in states where there is no assessment in that language to calculate Adequate Yearly Progress for third graders by participation rate only. It would then allow the school to make AYP if those students are proficient or on track to be proficient in grades 4 through 7.

Finally, Mr. President, I know as a parent how important it is to my boys that their father and I have always been involved in their education. NCLB recognizes,



in many ways, how important parents are in a child's education, but improvements can still be made. My bill would amend Title II of NCLB—which authorizes subgrants for preparing, training, and recruiting teachers and principals—to allow (but not mandate) more parental involvement in our schools. This section of my bill would allow parent-teacher associations and organizations to be members of federally funded partnerships formed to improve low-performing schools and to provide training to teachers and principals to improve parental engagement and school-parent communication.

I can tell you that as wonderful as our nation's teachers are, very few of them graduate from college having had a course in how to effectively communicate with parents. Teachers are very busy people, and when a parent shows up at the classroom door and says, "Hi, I'm here to help" teachers often don't know how to react. Many teachers have difficulty communicating with parents who may be working two jobs, or who have a different cultural background or language. In my view, parents should be a part of improving their children's schools, and have insights into how communication between school and home can be improved.

Mr. President, I know that these six issues are not the only issues that my colleagues, Alaskans, and Americans may have with the No Child Left Behind Act. I have been talking with Alaskans about NCLB since I came to the Senate, and I look forward to working hard on the reauthorization of the law this year.

Thank you, Mr. President.

The CHAIRMAN. Senator Murkowski, thank you very much.

I am going to be submitting questions to you because I want to have the next panel, and we are expecting at some point here a series of votes on the Floor of the Senate, so I want to make sure I get the testimony from the next panel.

I really appreciate the testimony that both of you have given today. If this is in fact your first testimony before a Senate Committee, you have both done very, very well and I think it is very productive for us. So thank you very much.

We will dismiss both of you and ask that we have the Honorable Chad Smith, Principal Chief of the Cherokee Nation in Oklahoma to come forward. We have an Indian youth, Ms. Mariah Bowers from the Yurok Tribe in Klamath, California. She will be appearing via Skype.

We have Ms. Mary Jane Oatman-Wak Wak, who is the President-Elect of the National Indian Education Association. And we have Mr. David Beaulieu from Milwaukee, Wisconsin.

So let me begin with Mr. Chad Smith. Mr. Smith, welcome. You are the Principal Chief of the Cherokee Nation in Oklahoma. You have heard the previous testimony and we welcome you here as the start of the second panel. You may proceed.

**STATEMENT OF HON. CHAD SMITH, PRINCIPAL CHIEF,  
CHEROKEE NATION**

Mr. SMITH. Thank you very much, Mr. Chairman.

We have several recommendations regarding the reauthorization bill to address the challenges and specific needs of Indian Country by including the focus on native history, culture and language; to allow the tribes greater access to education formal funding and flexibility to self-determine their educational future; and lifting the moratorium on the grades one through eight at Sequoyh High School and some of the Bureau of Indian Affairs schools.

Basically, after the American Civil War, the Cherokee Nation had fought two-thirds for the north and one-third for the south. It created 4,000 widows and orphans. We built an orphanage.

At Oklahoma Statehood in 1907, the Federal Government took over and our boarding school became an Indian training orphanage. It evolved through the Depression, because many of our families could not afford to raise their children because of the Depression. In fact, my dad graduated from high school at Sequoyh Indian Training School in 1940.

In 1985, the Cherokee Nation contracted back from Bureau of Indian Affairs. Ten years ago, we wanted to become a Leadership Academy. In fact, in 1999, we had a capacity of 350. We had enrollment of 205. It was known as a school of last resort. If you got kicked out someplace else, you came to Sequoyh.

To build that Leadership Academy, we understood that the product was singular, to create leadership, where every child could make sound decisions to lead themselves, lead their families, to lead their communities, their nation and their country.

Today, we have an enrollment of 400. We have 83 on a waiting list. In the last five years, we have a host of State championship titles in girls basketball and boys basketball; championships in cross country, softball, and football. In fact, one of the success stories is here in Nathan Stanley, who graduated two years ago from Sequoyh. He will be, if he will go, the starting quarterback at Ole Miss next year.

Other athletes that we have been able to graduate include Angel Goodrich, who will be starting guard at Kansas basketball; the Hammer sisters at Mercer. We actually have students now at the Air Force Academy, the Naval Academy and West Point. As of this date, in the last five years, we have now had 32 Gates scholars.

So the success there is basically students from us wanting to make it a Leadership Academy. The Cherokee Nation having contracted it, and creating a focus allows us to create an environment that is healthy and happy and wholesome. For example, it is an open campus. We get an incident report each year, every month actually. This last two months, our greatest incidence of discipline was for improper use of cell phones, which is a great blessing for us.

What you see here is part of the investments we are making over the next few years in academics, including robotics training. There we compete with the State. We are investing in math, science, music and art. So it has become a school of choice.

Critical to the growth of the school is that we are now funded through the Bureau of Indian Affairs in grades 9 through 12. With tribal funds, we added the seventh and eighth grades so we could prepare the kids to acclimate to our all-Indian school.

We have actually begun an immersion school which when the children go into the school at pre-K, they speak no English. It has been a great success. In fact, we now have 80 children. We added one grade per year. We have 80 children in immersion school, and when they are in the second grade, they become literate in our language, not only fluent. This is a graduating class from the immersion school as kindergartners.

This is sort of fascinating. We have had to redevelop the entire curriculum for teaching Cherokee. We have had our literate language since 1822 when Sequoyh developed it. In the last decade, we have lost a great sense of literacy. In fact, in 1828, we were 90

percent literate in our language. And so we have had to use every technique and trial and error we could.

And so with our language, we are developing the curriculum and we need more work with not only translation, but grammar and syntax and verb conjugation. But we have had great assistance from the private community with Apple. Andy Kemp is here from Apple. He has helped us with the iPhone and the iPad to help us develop translations and books for children.

In fact, our children can type back and forth to each other in the second grade being literate in the Cherokee language. We introduce English literacy later in the fourth grade.

With the Chairman's permission, I would like to have staff come and show you this iPad with our language in it, with stories about President Obama and President Bush.

Basically, what we believe in Indian Country is critical. It has allowed the tribes the self-determination to create this success. Every school is different. We are so happy that we have had the opportunity to attend.

And just as a short footnote to follow up some of the questions the panelists have responded to. In 1973, I graduated from the University of Georgia in a cohort called the Indian Teacher Training Program. There were 15 Indian folks like myself, highly intensive with counseling and such. We were interned on a reservation one semester and back in the classroom in Georgia the next semester. It was a very, very effective program. So to add to the earlier testimony, that program was very successful.

The CHAIRMAN. Mr. Smith, that is a very inspiring story and I almost wanted to keep that iPad. They are very hard to find, as you know, but you are very lucky to have one.

[Laughter.]

The CHAIRMAN. Thank you for sharing that with us, and especially what you are doing with the youth and education system.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF HON. CHAD SMITH, PRINCIPAL CHIEF, CHEROKEE NATION

Chairman Dorgan and Vice Chair Barrasso, on behalf of the Cherokee Nation, I thank you for hosting this discussion on the No Child Left Behind Act and the subsequent effect it has had on students in Indian Country. My name is Chad Smith and I am the Principal Chief of the Cherokee Nation. The Cherokee Nation is the second largest American Indian nation in the United States, with approximately 280,000 citizens. The Cherokee Nation Tribal government is seated in Tahlequah, Oklahoma with a territorial jurisdiction spanning 14 counties in northeast Oklahoma.

We have a 100 year plan and believe the vision or "designed purpose" of the Cherokee Nation is to become a happy and healthy people. Our strategy is to become economically self-reliant, revitalize our language as the vessel of cultural intelligence and develop cohesive place and interest communities. We execute our strategy with leadership. We acquire leadership through education.

Education has always been a major priority to the Cherokee people. The history of our tribe is adorned with many great scholars and intellectual minds. One of the first governmental acts after the Trail of Tears was an appropriation by the Cherokee Nation to set up numerous day schools in the Cherokee Nation decades before the formation of the state of Oklahoma. The Cherokee Female Seminary was the first institute of higher learning for women west of the Mississippi, established in 1851. Today we are continuing this portion of our legacy through the success of our education programs at Sequoyah Schools and our Cherokee Nation Immersion School. Sequoyah Schools, an Indian boarding school, originated in 1871 when the Cherokee National Council passed an act setting up an orphan asylum to take care

of the many orphans who came out of the Civil War. In 1914, the Cherokee National Council authorized Chief Rogers to sell and convey the property of the Cherokee Orphan Training School, including 40 acres of land and all the buildings, to the United State Department of Interior for \$5,000. In 1925, the name of the institution was changed to Sequoyah Orphan training School in honor of Sequoyah, the Cherokee citizen who developed the Cherokee Syllabary.

The Cherokee Nation resumed operation of Sequoyah in 1985 and added 7th and 8th grades in 2006 when it became known as Sequoyah Schools. From a school with one building and 40 acres of land, Sequoyah Schools has grown into a modern institution covering more than 90 acres and a dozen major buildings nestled on a beautiful campus five miles southwest of the Cherokee Nation capital city of Tahlequah, Oklahoma. It is regionally and state accredited for grades 7-12 and currently enrolls 400 students representing 42 tribes and 14 different states. Students are eligible to attend if they are members of a federally recognized Indian tribe or one-fourth blood descendants of such members.

The purpose of Sequoyah is singular: to develop leadership so our graduates can lead themselves with sound decisions, and lead their families, communities, Nation and Country to be happy and healthy people.

It is an honor to be accepted to Sequoyah Schools. To be considered, students must have a 2.25 grade point average, three letters of reference, and no incident reports at their previous school. School administration feels that setting a standard for entrance requirements motivates students at an early age to perform their best in order to work towards attending Sequoyah Schools. It creates an expectation of success. This has been attested to by many elementary and junior high principals from surrounding school districts. Sequoyah Schools offers an academic curriculum that focuses on preparing students for college success. The majority of graduates from the School go on to higher education.

Many students have earned scholarships as a result of their academic success and their heavy involvement in community service and volunteering. Some of the recent success stories include students being accepted to West Point, The Air Force Academy, The Naval Academy, Dartmouth and Mercer.

For several years, there has been a moratorium on expansion of grade levels at Bureau of Indian Affairs Schools. This moratorium has chilled growth at Sequoyah High School, since no funding is allowed for 1st through 8th grade. Sequoyah Schools has become the primary school of choice in Northeastern, Oklahoma for Indian students. Students at Sequoyah consistently perform at higher levels than their peers in the Oklahoma public school system. Over 25 percent of Sequoyah seniors are enrolled in concurrent college courses. Excellence in academics and extra-curricular activities has elevated Sequoyah as a leader in Indian education. Sequoyah is continually producing record numbers of Gates Millennium Scholarships as well as many state athletic titles. Within the last five years we have had 32 Gates Scholars.

Sequoyah Schools has enjoyed many successes in the area of extra and co-curricular areas. Student athletes have advanced in every sporting arena consistently on an annual basis. Team leadership, self-motivation, commitment, and cohesiveness valued above individual talent. The school also offers Robotics, Drama and Speech, Junior Achievement (a class designed to allow students to become entrepreneurs), and many other beneficial classes, clubs, and organizations.

One of the reasons for success at Sequoyah and why my daughter attends is the sense of family, community and security. Each month I get a report of disciplinary incidents, last month the most significant number of infractions was 4 abuses of cell phones.

The Cherokee Nation believes that teaching success begins at birth and that in order for our young Native American students to have the greatest likelihood to succeed that we need every opportunity to have a positive impact at the beginning. In order to build a continuum, from cradle to career, we have recently begun a Cherokee Language School beginning with preschool age students that not only focuses on the Cherokee language but covers all the core academic areas as well.

In 2001, Tsalagi Tsunadeloquasdi was begun as a Language Preservation program. Twenty-six students and four staff members paved the way to revitalizing the language with our young people. Today we have over 80 students with our first class now entering the 5th grade this fall. Our students have excelled in the areas of technology and communication skills. The students in the school are being taught all of the core academic subject areas and are moving yearly towards higher standards. As a result of this program many adults have also been inspired to make a stronger commitment towards working to become more proficient in the Cherokee language. The mission of Tsalagi Tsunadeloquasdi is to promote the revitalization and usage of the Cherokee language while educating children in a safe and cultural

environment. The Immersion School provides a culturally relevant foundation for education as well as prepping students to move on to Sequoyah Schools.

The implementation of NCLB/ESEA at Sequoyah Schools has had both positive and negative impacts on our school and others. Many of the positive outcomes can be attributed to the increased accountability mandates. On the other hand holding everyone to general teaching and testing standards discourages creativity and critical thinking skills. Administrators often hold teachers accountable for test scores and many teachers in turn teach specifically narrow their focus and teach to the test objectives leaving many other beneficial skills and objectives out.

We have identified from our language and cultural intelligence twelve attributes of Cherokee leadership and we are striving to align our curriculum, activities, teaching and learning to achieve for each student these attributes: respectful, determined, integrity, lead by example, communicate, confidence, cooperative, responsible, teach others, patience, humility and strength.

The NCLB Act specifically has increased our accountability through standardized testing, highly qualified teacher requirements, specific teaching objectives in the core academic subject areas, and higher levels of transparency. Also as result general teaching and testing standards has discouraged creativity and the importance of teaching critical thinking skills. School Administrators are forced to hold teachers accountable for test scores and many teachers in turn specifically narrow their focus and teach to the test objectives leaving many other beneficial skills and objectives out. For this reason, criticisms of NCLB have often centered on why a high test score is more valuable than a well-rounded education that may include learning outcomes that are often not required by the common core areas.

The Cherokee Nation feels that adjustments need to be included in the reauthorization of NCLB to better address the needs of Indian students. The Nation would specifically like to see less emphasis on testing and more flexibility in establishing our own measurables. We feel that a more diverse curriculum will better fit the needs of our students by including increased focus on Native Culture and Language. Culturally relevant education is successful with Indian students because there are certain inherent qualities that are interwoven that have helped us to face adversity, adapt, survive, prosper, and excel for generations. Our younger children, Immersion students included, are also forced to take tests in English while many students in rural areas are English Language Learners (ELL), meaning they arrive at school knowing little or no English which causes them to test poorly. We would like Uniform Standards that include Tribes as active participants in uniform standards development. If assessment is tied to standardized testing, tribes need to be heard so curriculum is relevant to native students. American Indian Language and History should be included in the standards.

The Cherokee Nation believes that Johnson O'Malley (JOM) and similar programs should be utilized to supplement NCLB initiatives with updated formulas and funding to account for increased numbers of native students. Currently, the Nation receives funding for 19,000 students, but has over 22,000 students in the program. In years past, JOM funding has been omitted completely by the presidential budget request. The Cherokee Nation requests implementation of an updated funding formula that will take into account the increased numbers of American Indian students, as well as proportional increases in funding to accommodate the increased numbers.

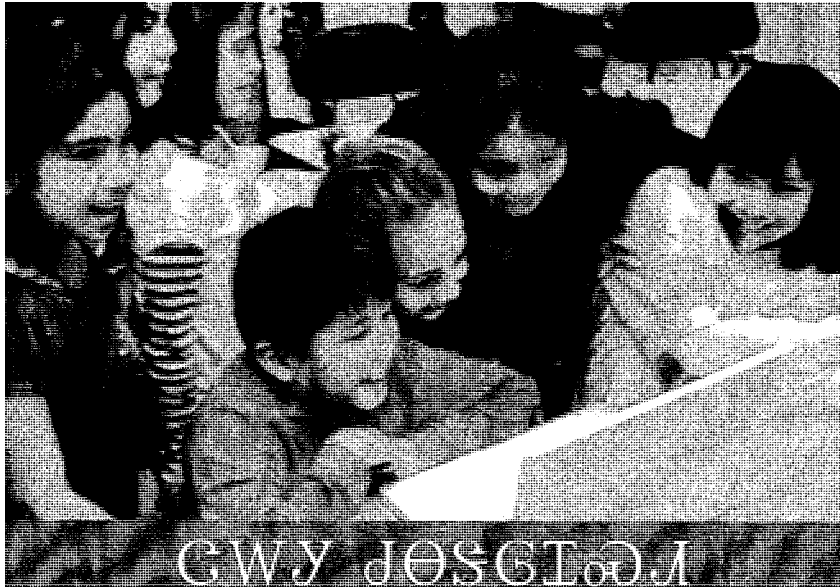
Teacher Quality should be defined in a way that captures tribal concerns for teacher development and certification. The blueprint sets forth the modified requirement for "effective" teachers, mandating that states define effectiveness based on student performance. No Child Left Behind standards that require a Bachelor's Degree or its equivalent have eliminated the ability for many teachers in rural areas and tribal communities to achieve state certification. Tribes should be involved in the process of defining requirements for "effective" teachers, as the needs for teachers in tribal communities will differ from metropolitan areas. The definition of "effective" should take into consideration the unique barriers facing rural and tribal communities, and should allow creative solutions that encourage teacher development and student performance, while increasing accessibility for tribal teachers to enter the classroom.

Programmatic changes necessary to smooth the way for certification and classroom teaching should be implemented to address when defining "Highly Qualified" status. Access to technology and additional tribal specific grants are needed for tribes to assist their citizenry bridge between those having and those not having access to technology and internet within Indian Country. We request appropriate funding for carrying out all mandates of the reauthorization of ESEA.

It is imperative that tribes are enabled to function in a governmental capacity, on par with state and local authorities in developing education systems. The Cher-

okee Nation has the necessary expertise to address the unique needs of Native American students as evidenced by the success of our schools. Active tribal input into the development of standards, curricula, and protocol is absolutely necessary if the United States wishes to see successful, culturally relevant education for Native students. Furthermore, Indian education is not a one-agency issue. Tribes need inter-agency collaboration to adequately plan for the future of Indian education.

In closing I would like to thank the Committee for conducting this hearing on an issue that is of utmost importance to the Cherokee Nation and Indian Country as a whole. Indian education is a labor intensive issue that requires continual solidarity between tribal, state, local, and the federal government. The Cherokee Nation is optimistic that, as we move forward, the fruits of our labors and the inclusion of tribal concerns will lead to effective education policy that addresses the specific needs of American Indian students. Should you require further information, I invite you to contact the Cherokee Nation Washington Office.

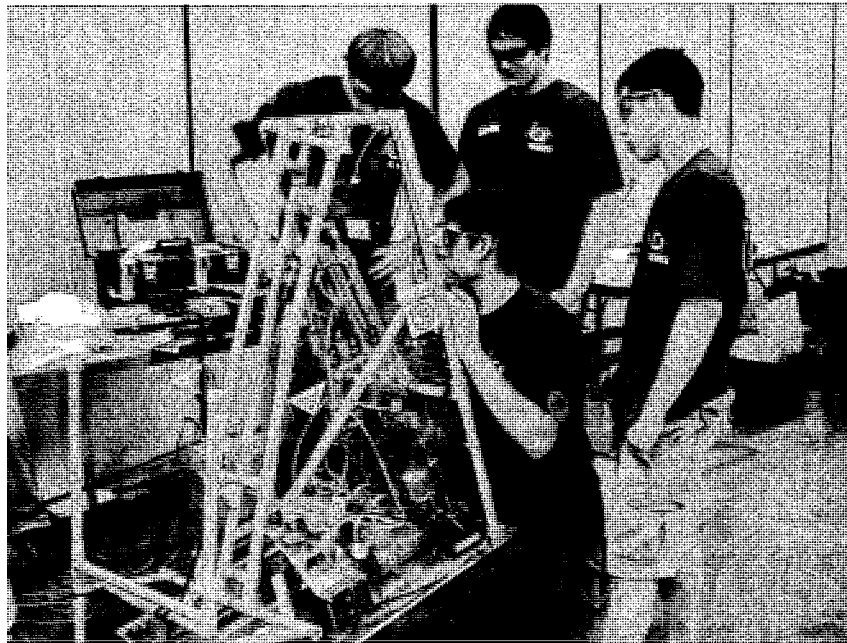












The CHAIRMAN. Next, we will hear from Ms. Mary Jane Oatman-Wak Wak, who is the President-Elect of the National Indian Education Association here in Washington, D.C.

You may proceed. Thank you for being with us.

**STATEMENT OF MARY JANE OATMAN-WAK WAK, PRESIDENT-ELECT, NATIONAL INDIAN EDUCATION ASSOCIATION**

Ms. OATMAN-WAK WAK. [Greeting in native language]. Thank you for the opportunity to be able to present to you on behalf of the National Indian Education Association, the oldest and largest Indian education non-profit in the Country.

I don't really feel the need to give you the background on the organization. You are all very familiar with NIEA and the work that we do. But I would like to take this opportunity to thank Chairman Dorgan for your ongoing relationship and for your great staff members and a special shout out to Denise Desiderio for maintaining direct contact with our organization and for allowing the opportunity for the rest of you and your staffers to be able to interface at high levels at NIEA to drive forward education reform for Indian Country.

As stated, I am Mary Jane Oatman-Wak Wak. I am an enrolled member of the Nez Perce Tribe of Idaho and serve in the capacity or in the counterpart for Keith Moore's former position in South Dakota. I am in leadership and oversee the Indian education programs for the Idaho State Department of Education, which allows the opportunity to serve as a liaison for all of the Idaho tribes and provide support systems, technical assistance to public, charter and Bureau-funded schools within the State of Idaho.

I have two beautiful young sons, eight years old and two years old, and so I am fully vested in the innovative approaches that we take for education not only as a product of public schools within the State of Idaho, but because of my responsibility as a parent and hopefully future grandparent as well, of our children that will be going through these schools.

We all concurred, and there was a general consensus that Indian children were left behind with the No Child Left Behind Act. However, like Senator Tester brought up, the great things that were highlighted through that was shining the light on those dark corners where Indian children were hiding and where through a lack of disaggregated data, they were allowed to hide.

When we talk about turnaround policies that were brought up earlier, I would like to highlight one of the practices, and I was very grateful to hear Charlie Rose with the Department of Education bring up the approach. I guess it reiterates that the Department of Education is also listening to the priorities that National Indian Education brings forward.

Since 2005, NIEA has been in the field, has been holding our own field hearings to talk with our Indian constituencies, our members, our youth that are in these schools, about the problems, not so we can focus on those deficits, but so we can collaborate and provide different models and approaches for that kind of turnaround.

One of those falls right in line with the first component of strengthening tribal education through ESEA, through the policy of respecting Indian self-determination and tribal sovereignty is just that, tribal sovereignty. The protection of natural resources throughout Indian Country is the mainstay of tribal governance. And throughout Indian Country, you will hear unanimously that we feel our greatest natural resource is our native children.

Through allowing and authorizing and appropriating funds for support for tribal education departments as well as tribal education authorities, we feel that we will be able to move forward in that direction of providing the support, as well as the investment by and through Indian Country for that education reform and turnaround.

The sustainability of Indian Country depends upon a well educated tribal citizenry of our children, so we feel it is imperative that the more effective government to government relations do occur in regards to the education of Indian children.

There was also something that was brought up as well earlier about the ban of native languages. That is also another one of the priorities of the National Indian Education Association that we desire to see strengthened, not only through the policy language, but as well the funding and support for the revitalization of native languages within our communities.

Charles Rose cited that through those past federal policies that there was a ban on native languages, and so we feel that there is a moral obligation from this Country to help restore those native languages, because it was those Federal policies that directly had the impact in the language loss throughout Indian Country.

We also have as one of our priorities, and just to backtrack just a little bit, through the authorization of tribal education departments and tribal education authorities, prime opportunity to provide innovative models for potential research to look at what those outcomes are to see if they are worth extending. One of those is the authorization for TEDs and tribal education authorities to be able to act as a State education agency or authority.

Through that model, we really feel that we will be able to, again, not only have that tribal community investment with education reform, but also it works at strengthening tribal sovereignty as a whole.

Now, many of our tribes throughout the Nation are prepared to scale up projects where they have assessment systems in place, but far too many of our Indian nations throughout the Country are not at that point yet. So we feel that this would be a critical time to reauthorize, to provide that language and support so that we can find out what those proven effective practices are throughout Indian Country regarding the elevation of tribes and tribal education departments as a State education agency.

One of the other areas that I would really like to briefly touch upon, as I see the clock ticking away, is that we have also brought forward on many occasions the elevation of an Assistant Secretary of Indian Education at the U.S. Department of Education.

Chairman Dorgan, as well as Senator Tester, you might recall that NIEA was here in February. We were here during the heart of the largest historic blizzard ever in this beautiful town. And NIEA was here. And I know that that spoke volumes to our congressional leaders to see that we are very passionate about the work and the advocacy that we do for Indian Country.

The reason I bring up that point is during our meeting with Charles Rose, that question was brought forward to him. And so it gives a lot of great optimism for NIEA to hear not only through the levels of consultation between the Department of Education and Department of Interior, that those communications are taking

place at that level, but Mr. Rose also spoke to the fact that the Department of Education is exploring the elevation of that Title VII Director to a position of, or elevating it back to an Assistant Secretary position.

Again, I would just like to take the opportunity to provide some closing remarks to you, Senator Dorgan, again for your support for Indian education and native students as the current and future leaders of Indian Country.

[The prepared statement of Ms. Oatman-Wak Wak follows:]

PREPARED STATEMENT OF MARY JANE OATMAN-WAK WAK, PRESIDENT-ELECT,  
NATIONAL INDIAN EDUCATION ASSOCIATION

Chairman Dorgan and Members of the Senate Committee on Indian Affairs, on behalf of the National Indian Education Association (NIEA), thank you for the opportunity to submit testimony about the No Child Left Behind Act (ESEA) and Native students.

Founded in 1970, NIEA is the largest Native education organization in the nation representing American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, elders, parents, and students. NIEA is dedicated to advocating for the unique educational and culturally-related academic needs of Native students and to ensuring that the Federal Government upholds its unique trust responsibility to these students and their communities.

In examining the lessons learned from the last decade of NCLB, it is important to focus on the task before us. The task of making certain that the reauthorization of ESEA recognizes and supports the unique cultural, social, and linguistic needs of Native students in ways that ensure that no Native child is ever left behind.

**No Child Left Behind Act (NCLB) and Native Students**

Since 2005, NIEA has been actively preparing for the reauthorization of NCLB, including conducting 11 field hearings with over 120 witnesses in Native communities across the country and the development of *NIEA's Preliminary Report on NCLB in Indian Country* and its NCLB Policy Recommendations. NIEA continued to conduct numerous listening sessions and meetings with Native students, educators, school administrators, Native parents, and tribal leaders to learn about the challenges Native people encountered under NCLB.

What emerged through this extensive dialogue was an appreciation for the goal of Title VII of NCLB to meet the unique cultural and educational needs of Native children. However, it was clear that many areas of concern existed about how NCLB/ESEA was unable to fully address the educational needs of Native students and communities, along with ideas about how NCLB/ESEA could and should be improved.<sup>1</sup> These areas of improvement included the need to:

- improve and expand the ability of Title VII to address the unique cultural and educational needs of Native children.
- increase flexibility and Native control over the selection and implementation of programs and services supporting the learning of Native students.
- improve consultation, collaboration, and cooperation among tribes, states, and the Federal Government.
- strengthen support for instruction in Native languages.
- improve support and development of effective teachers of Native students.
- improve opportunities for the maximum participation of parents, families, and tribes and Native communities in the education of Native children.
- improve and develop appropriate systems of assessment and measurement of academic progress.
- support the development and collection of comprehensive data and research about the education of Native children.
- increase funding for NCLB (ESEA), especially Title VII.

<sup>1</sup>Please see NIEA's *Preliminary Report on NCLB in Indian Country*; 2007–2009 Briefing papers on the Reauthorization of NCLB/ESEA; and NIEA's 2007 Testimony on the Reauthorization of NCLB in Indian Country for more detailed descriptions of these concerns. All are available at [www.niea.org](http://www.niea.org)

Also clear was the deeply held commitment of Native communities for ensuring that Native students receive the highest quality education through instruction and methods that reflect an understanding and affirmation of their unique strengths and needs as Native people. While high standards and expectations for achievement, accountability of schools for the results of the education they provide, and access to rigorous curriculum are key components of this vision of high quality education, Native Ways of Knowing, or knowledge that is unique to Native tribes and cultures, are equally critical cornerstones for providing the kind of relevant and high quality instruction and education that ensures Native students attain the same level of academic achievement as students nationwide.

In addition, Native parents, communities, educators, and tribes also spoke about the need to see the education of Native children beyond the context and content of schools. As stated in NIEA's 2005 testimony before this Committee,<sup>2</sup> there is a need "to focus comprehensively on the needs of Native Children in light of the long and growing health and overall needs of Native children. Mental health issues including high levels of substance abuse, suicide rates, poor housing and health conditions all impact the capacity of Native children to learn and schools to be responsive to their principal education purposes. The future of Indian tribes and Native communities is not only dependent upon effective and meaningful educational programs but also upon healthy self confident and reliant young people growing and developing in strong families and communities. We must comprehensively develop strategies that engage families, communities, and tribes in every aspect of the care and education of Native children and young people."

Based on this extensive input from Native communities, educators, parents, and tribes, NIEA has developed a set of recommendations to address the shortcomings of NCLB and to improve the ability of ESEA to meet the needs of Native students.

#### **Recommendations for the Reauthorization of the Elementary and Secondary Education Act (ESEA)**

##### *Strengthen Native American and Tribal Control of Education*

ESEA should reflect the modern federal policy of respecting tribal sovereignty and the self-determination<sup>3</sup> of Native peoples, and the protection of Native American<sup>4</sup> languages. Greater Native American control over the education of Native American students will lead to better results and healthier Native American communities.

Over 90 percent of Native American children attend public schools throughout the nation. Native American students, who attend these schools often reside in economically deprived areas and are impacted by general programs for disadvantaged students, including Title I grants used for school improvement, state assessments, Pell grants to assist in accessing higher education, and funding to support English language acquisition.

However, Native American students have unique educational needs that can only be met through increased Native American sovereignty and self-determination in the education of these students.

- Restore the position of Director of Indian Education, now a Title VII grant manager position, to Assistant Secretary for Indian Education, with authority to engage in various titles of the ESEA that touch Native education. The Assistant Secretary of Indian Education also should be authorized to facilitate ED and DOI collaboration and implement the role of Tribal Education Departments and Agencies (TEDs/TEAs) within various titles.
- Respect the sovereign status of Indian tribes by elevating the authority of Tribal Education Departments and Agencies (throughout various titles in ESEA that touch Indian Country, giving TEDs the same access to federal funding and education planning resources as State Education Agencies (SEAs) and Local Education Agencies (LEAs). As mandated in many treaties and as authorized

<sup>2</sup>Testimony of David Beaulieu, Ph.D., then President of the National Indian Education Association, before the Senate Committee on Indian Affairs on Indian Education on June 16, 2005. Available from NIEA.

<sup>3</sup>In understanding tribal sovereignty, it is important to understand that Native Americans are not a minority, ethnic, or diverse population, nor are they a racial group. Judicial decrees, federal statutes, executive orders and most importantly treaties distinguish American Indians and other Native Americans from any other group of people in the United States. Native Americans have a unique political status; they are a political classification, not a racial one, with unique guarantees in the United States constitution affirming their inherent right to sovereignty and self-determination. Unfortunately this political anomaly is misunderstood by federal officials who often times treat Indian education as a special interest constituency group.

<sup>4</sup>"Native American" is defined in the Native American Languages Act (NALA) as "an Indian, Native Hawaiian, or Native American Pacific Islander." P.L. 101-477 (October 30, 1990).

in several federal statutes, the education of Indian children is an important role of Indian tribes. Tribal Education Departments (TED) provide tribes with the opportunities to become actively involved in the education of their children. Despite this authorization and several other prior statutes, federal funds have never been appropriated for TEDs. The use of TEDs would increase tribal accountability and responsibility for their students and would ensure that tribes exercise their commitment to improve the education of their youngest members.

- Require federal agencies and states to collaborate with Indian tribes to ensure adequate planning and support for Native learners and Native education providers. Require Department of Education (ED) and Department of the Interior (DOI) cooperation that opens greater ED financial and technical support for DOI Indian schools, including the opportunity for alternative measurement assessments and the development of tribal measurements of academic progress.
- Support and fund programs and practices that ensure the maximum participation of Native parents, families, and tribal communities. Resources should be specifically designated to tribal communities to support parent and family involvement in schools, including evening activities, funding for transportation, and support groups for parents of children with disabilities.
- Support the development and collection of comprehensive data and research about the education of Native children, including improved data collection and sharing of data with tribes. Specific resources should be allocated to conduct Native driven and Native focused research on culturally and linguistically based education and best practices in order to determine research supported ways to improve Native student achievement and how to develop and determine appropriate academic measures of school success. In addition, there should be resources to support data collection about the migratory nature of Native students, Native students with disabilities, and assist with the need for proper enrollment and placement of Indian students. This should include targeted efforts at building capacity in Native education systems to develop, implement, collect and analyze systematic data on the educational status and needs of Native students. Support for partnerships between Native educational school systems and the Departments of Education and Interior that would support initiatives focused on Native education program services and program accountability.

#### *Ensure Consultation and Collaboration*

A unique government-to-government relationship exists between federally-recognized Indian tribes and the Federal Government. This relationship is grounded in numerous treaties, statutes, and executive orders as well as political, legal, moral, and ethical principles. This relationship is not based upon race, but rather is derived from the legal status of tribal governments. The Federal Government has enacted various regulations that establish and define a trust relationship with Indian tribes. An integral element of this government-to-government relationship is that consultation occurs with Indian tribes. President Obama recently re-affirmed this relationship with an Executive Memorandum, which requires each federal agency to develop a plan to implement consultation and coordination with Indian tribal governments as required by Executive Order 13175.

Therefore, the reauthorization of the ESEA must:

- Include specific language requiring the Department of Education to consult with tribal governments. Whenever the Department of Education consults with States or local education agencies, tribes should also be specifically included.
- Engage in meaningful consultation with Native American tribes and communities as outlined by President's Obama's promise to tribal leaders. This can be accomplished through the following recommendations:
  1. Tribes should define, in coordination with Department of Education officials, where consultation is expected and important.
  2. Tribes and the Department of Education should agree on a consistent consultation schedule, including agreeing on locations and time considerations for consultations.
  3. The Department of Education must give advance notification of consultation hearings and coordinate topic areas with tribes. Recently Secretary Duncan announced pending consultation hearings throughout Indian Country; it is not too late for the Department of Education to include tribal stakeholders in the planning of these hearings.

4. Tribes must have an opportunity to call for consultation on matters that are of high concern rather than the Department of Education holding exclusive authority to call for consultations.
  5. Tribes should control who speaks for them and what the ED considers to be the official tribal view.
  6. The Department of Education should disclose what weight is being given to tribal views and report back to tribes in a timely manner.
  7. The Department of Education should justify its promulgation of rules, regulations and policy when they are advanced in opposition to tribal views acquired through consultation.
  8. The Department of Education should take advantage of existing tribal gatherings where a critical mass of elected tribal leadership will be present to build consultation venues, one such venue should be the annual NIEA convention.
- Establish a tribal advisory committee to advise the Secretary of the Interior on policy issues and budget development for the BIE school system. There has never been a formal, established mechanism for tribally-operated schools to raise issues and provide substantive advice to the Secretary on an on-going basis—especially on development of the budget request for programs serving BIE schools. Since the schools in the BIE system are the sole responsibility of the Federal Government, the Secretary of the Interior should be consulting closely and regularly with representatives selected by the tribes and the tribal school boards who operate those schools to learn directly from them about their needs and hear ideas about how to fill those needs.

*Support Instruction of Native American Languages and Culturally Based Education*

NIEA supports and appreciates the commitment to immersion schools, Native language instruction, and culture in the education of Native American students expressed in the *A Blueprint for Reform: Reauthorizing the Elementary and Secondary Education Act*.

Both the Blueprint and Title VII of ESEA<sup>5</sup> recognize that Native children have unique educational needs due to their cultures and backgrounds. The purpose of Title VII<sup>6</sup> of ESEA is to provide culturally based educational approaches for Native students and to support the Native language. These approaches have been proven to increase student performance and success as well as awareness and knowledge of student cultures and histories. In general, these approaches include recognizing and utilizing Native languages as a first or second language, pedagogy that incorporates traditional cultural characteristics, and involves teaching strategies that are harmonious with the native culture knowledge and contemporary ways of knowing and learning. It also includes curricula based upon Native culture and language that utilizes legends, oral histories, songs and fundamental beliefs and values of the community. In addition, it involves parents, elders and cultural experts as well as other community members' participation in educating Native children utilizing the social and political mores of the community.<sup>7</sup>

Current research demonstrates that culture and language can be successfully integrated into the classroom in a manner that would provide Native students with instruction in the core subject areas based upon cultural values and beliefs. Math, reading, language arts, history, science, physical education, music, cultural arts and other subjects may be taught in curricula instilled in Native traditional and cultural concepts and knowledge. The National Science Foundation funded Native Science Connections Research Project at Northern Arizona University, is a research model that successfully integrated native language, culture and traditions into BIA funded schools' science elementary curriculum. On-going analysis of data revealed increased student mastery of science and math concepts, deeper levels of student engagement in science and math and increased student achievement in math and science.<sup>8</sup>

<sup>5</sup>Part A of Title VII deals specifically with the education of American Indians and Parts B and C address the educational needs of Native Hawaiian and Alaskan Native students.

<sup>6</sup>Title VII of the ESEA incorporates the Indian Education Act of 1972.

<sup>7</sup>Demmert, W. G. & Towner, J. C. (2003). A Review of the Research Literature on the Influences of Culturally Based Education on the Academic Performance of Native American Students. *Northwest Regional Educational Laboratory*, Portland OR.

<sup>8</sup>The Reauthorization of No Child Left Behind in Indian Country: Hearing before the U.S. House of Representatives Education and Labor Committee, 110th Cong., 1st Sess. (2007) (testimony of Dr. Willard Sakiestewa Gilbert, President-Elect, National Indian Education Association).



NIEA believes ESEA should reflect the policy mandates of the Native American Languages Act (NALA), which encourages Native American languages as a medium of instruction to increase overall Native student achievement.

- Title I should (1) include schools using a Native language as the medium of instruction similar to those of Puerto Rico; (2) Allow for alternative measurement assessments, AYP standards, and teacher qualifications relative to the teaching of Native American students based in unique linguistic, cultural, and political status considerations. Include federal assistance and recognition of meeting tribal AYP standards as an alternative to meeting state AYP standards for schools enrolling Native American students; (3) authorize the credentialing of Native language teachers under the definition of highly qualified and upon recommendation by a tribal government or other Native governing entity; (4) accommodate limited Native language proficient students in Native language medium schools (Sec. 1111) similar to Limited English Proficient (LEP) accommodations.
- Authorize a formula grant program in Title VII to support immersion schools, including tribally-operated, private, and Bureau-funded schools.
- Establish a Part D in Title VII that authorizes early childhood immersion infant-kindergarten learning centers.
- Title III amendments should include provisions and funding to support Native language instruction and remove barriers to full fledged instruction in Native languages, acknowledging that most Native learners enter school with limited English proficiency, even if they are English only speakers.
- Restore Culturally Based Education Technical Assistance and Resource Centers, technical assistance centers that would provide regional support to Title VII programs, advance Culturally Based Education (CBE) best practices, and promote teaching strategies that integrate Native traditional and cultural concepts into curricula.
- Give preference to Tribal Colleges and Universities and the Hawaiian Language College in receiving funding to develop Native American language resources and skills for community members, which would provide greater support for learning and using Native American languages in local schools, similar to the support for district language needs of young immigrant school community members.

#### *Improve Support for Teachers of Native Students*

NIEA supports Administration efforts to increase the number of effective teachers and principals, including an initiative to increase the number of teachers for low income and minority students.

More than any other community in America, Indian Country suffers from a paucity of highly skilled teachers. Regardless of success in other schools or academic credentials, highly effective teachers do not necessarily see their success as educators transfer to tribal settings. For this reason and a host of cultural differences, specialized training for teachers and other education practitioners serving Native American students is critically important and should be a part of any ED initiative to elevate and strengthen quality of instruction.

Teaching in schools serving Native American students needs to be incentivized through a combination of quality housing, financial compensation, loan forgiveness, upward mobility, and professional development. Currently with the vast majority of Bureau funded and public schools on tribal lands classified as failing or in need of improvement there is little incentive for highly qualified teachers to work in these schools. Combined with extreme and persistent poverty, ongoing social problems, lack of housing, isolated rural settings, and dangerously poor facilities, the majority of schools serving Native American students are at a deep disadvantage in recruiting and retaining a critical mass of highly qualified teachers.

NIEA believes ESEA should authorize greater support of teachers of Native students, utilizing the particular expertise of the tribal colleges, universities, the Hawaiian Language College and the School of Hawaiian Knowledge. Tribal Colleges and Universities should be the primary training campuses for both Indian educators and non-Indians who are working with Native learners.

- Require set asides for the training, recruitment and retention of teachers of Native students. This should include a *Tribal Priority Allocation* under the proposed initiative to increase the number of teachers for low income and minority students within the Department of Education to ensure that Indian Country is fully vested in this initiative and receives a fair apportionment of the requested 3.9 billion.

- Support Tribal Colleges and Universities, the Hawaiian Language College, and the School of Hawaiian Knowledge should to be supported through Title II and VII provisions so that they can play a central role in developing a critical mass of educators for Native learners.
- Authorize a tribal “Teacher Preparation Initiative” geared towards educators who are working in schools serving Native American students and educators who are interested in working at schools serving Native American students. This should also include provisions for improved and appropriate teacher evaluation systems and support for more effective career advancement systems.

*Adequate Funding for Native Education Under ESEA*

When NCLB was enacted, Congress promised to provide the resources necessary to meet its many requirements, provide school improvement funds to schools that failed AYP, provide increased resources especially for disadvantaged students and to help close achievement gaps by improving teacher quality, student achievement, and program accountability. However, NCLB was never funded at the authorized levels.

Title VII, especially, provides critical support for culturally based education approaches for Native students and addresses the unique educational and cultural needs of Native students. It is well documented that Native students thrive academically in environments that support their cultural identities while introducing different ideas. Title VII has produced many success stories but increased funding is needed in this area to bridge the achievement gap for Native students.

Therefore, NIEA supports the:

- Adequate funding of Title I programs.
- Adequate funding for the following programs within Title VII: Indian Education, Alaska Native Education Equity, and Education for Native Hawaiians.
- Improved oversight of the allocation and use of Title VII resources so they cannot be supplanted to meet the shortfalls in other Titles of ESEA or of public school budgets.

**Conclusion**

Mr. Chairman, on behalf of NIEA thank you and the Committee for the tremendous efforts on behalf of Native communities. With your support we are hopeful that the reauthorization of ESEA will help ensure that Native students receive the high quality education that they need and deserve.

Chairman Dorgan, we especially thank you for your personal commitment in championing the cause for all Native Americans, but especially for your unwavering dedication to improving the education and well being of Native children. We extend our best wishes as you move on to new endeavors. We will greatly miss your leadership and friendship.

The CHAIRMAN. Thank you very much for your testimony. We appreciate that.

Next, we will hear from Mr. David Beaulieu from Milwaukee, Wisconsin.

Dr. Beaulieu?

**STATEMENT OF DR. DAVID BEAULIEU, PROFESSOR OF EDUCATION POLICY AND DIRECTOR OF THE ELECTA QUINNEY INSTITUTE FOR AMERICAN INDIAN EDUCATION, UNIVERSITY OF WISCONSIN**

Dr. BEAULIEU. Mr. Chairman, Members of the Committee, my name is David Beaulieu. I am an enrollee of the Minnesota Chipewewa Tribe from the White Earth Indian Reservation, and I currently serve as a Professor of Education Policy and Director of the Electa Quinney Institute for American Indian Education at the University of Wisconsin, Milwaukee.

I have testified before this Committee before in former positions a number of times as Director of the Office of Indian Education during President Clinton’s second term when we worked on the Executive Order for American Indian Education, and as President of

the National Indian Education Association in 2005 as we began to understand and try to figure out a response to our constituencies' significant concern about NCLB and what was occurring in Indian Country.

I appreciate the invitation to testify on NCLB and the education of American Indians.

I believe we need a new approach. Any comparison of the intentions of Congress as stated in the Indian Education Act and a broader intention of NCLB to make a significant difference with the current statistics describing the performance of State and Federal school systems with American Indians would strongly indicate that what is in place is not working.

We may have actually lost ground with what is essentially one entire school generation of American Indian learners from elementary through high school in the nine years since NCLB has been passed in 2001. Though education achievement issues have received a focus through NCLB with the emphasis on testing, the larger issue for Indian communities is the extent to which the student constituents of schools, both State schools and Federal schools, reject schooling altogether.

An education leader and a very old friend from Rosebud, Lionel Bordeaux, just told me and reported that approximately 75 percent of all the students that entered the ninth grade in the local high school did not graduate this year. The same was true last year. And that is a statistic that is believed to be representative of other similar areas and school systems.

In answer to the question posed by the Committee, NCLB has left Indian students behind. I believe NCLB has left Indian students behind essentially because the Indian Education Act, Title VII within NCLB, has been left behind. That is a pearl within an oyster. The provisions affecting Congress' intentions, as well as the strategies for the education of American Indians and Alaska Natives is stated in Title VII, have been de-emphasized or disregarded by the Department of Education, the Bureau of Indian Education, State education authorities and local education agencies in lieu of the operating principles or purposes of NCLB.

There are a number of areas I would suggest that we need to take a look at and consider. I think we need to align the purposes of Title VII in the Indian Education Act with Title I. There is an incongruence between the purposes and requirements of Title VII and the basic program requirements and consequently the implementation of NCLB by State public schools and the BIE for Federal and tribal schools for American Indian students. This incongruence is significant and needs to be changed so that NCLB works in the best interests of American Indian students.

The Indian Education Act requires a comprehensive plan for meeting the needs of American Indian students by local education agencies based on a comprehensive local assessment of needs of those students, the actual needs of the students, which we don't ever really see. These comprehensive plans must be consistent with State and local education plans submitted under NCLB.

There is no articulation of that intention to have these comprehensive plans related to State and local plans as required in

NCLB in Title I. Consequently, it is not considered anything anybody wishes to accomplish.

I think we need to enable tribal governance in education. There is a statement in the Indian Education Act which tribal governments actually cheered when it occurred with the passage of NCLB, that says it is the policy of the United States to fulfill the Federal Government's unique and continuing trustee relationship with Indian people for their education. It includes education for the first time as an aspect of the trustee relationship written into statute.

The current input and advice structures that do exist within NCLB for Indian parents and tribal governments for the education of American Indians are extremely ineffective, so limited in scope and in character, that school authorities rarely pay attention to them. I believe the Federal trustee relationship must become a viable and active relationship for tribal governments, which includes tribal authority determines the context and conditions for the education of American Indian students under a Federal framework.

I believe we also need to consider incorporating Federal native language policy into NCLB. There is existing incongruence with Congress' intention regarding the preservation and maintenance of native languages with our education statutes and I think we need to bring the principles and purposes of the Native Languages Act and the Esther Martinez Native Languages Act into NCLB and consider the way in which those policies could be made to work with our education statutes.

Lastly, I think we need to very significantly focus on coordinated programs to focus on the well-being of Indian children and youth in Indian communities. I think this is vital and I think it must be a part of the way in which we plan for education improvement.

Lastly, I think we need a new Indian Education Act, one which brings the purposes of the existing Indian Education Act fully to the forefront of the purposes of ESEA and NCLB; an Indian Education Act which recognizes tribal government authority in the context of the Federal trustee relationship for the education of American Indians.

We need a system of education which makes sense to American Indian people and Indian students who all desire to be actively engaged in creating their own future, while maintaining their continuity with their unique language and cultural heritage.

Thank you very much, Mr. Chairman.

[The prepared statement of Dr. Beaulieu follows:]

PREPARED STATEMENT OF DR. DAVID BEAULIEU, PROFESSOR OF EDUCATION POLICY AND DIRECTOR OF THE ELECTA QUINNEY INSTITUTE FOR AMERICAN INDIAN EDUCATION, UNIVERSITY OF WISCONSIN

My name is Dr. David Beaulieu. I am a Minnesota Chippewa Tribe—White Earth enrollee. I currently serve as a Professor of Education Policy and Director of the Electa Quinney Institute for American Indian Education at the University of Wisconsin—Milwaukee. It is my pleasure to testify before this committee concerning Indian Education and the No Child Left behind Act considering the question: Did the No Child Left Behind Act Leave Indian Children Behind.

I have testified before this Committee in the past concerning Indian education as Director of the Office of Indian Education in the U.S. Department of Education during President Clinton's second term and the implementation of the President's Executive order on American Indian and Alaska Native Education and as President of

the National Indian Education Association (NIEA) in 2005. It was in 2005 that the American Indian, Alaska Native and Native Hawaiian constituents of NIEA became increasingly concerned about the implementation of NCLB, Title VII. NIEA determined to conduct hearings on NCLB in Indian Country in 11 different Native American communities from Northern Wisconsin to Hawaii to better understand and represent the views of NIEA constituents which are the constituents of Title VII. The Report NCLB in Indian Country is available on line at NIEA.

#### **NIEA Hearings: NCLB in Indian Country**

Despite the variety of locations at which hearings were held on NCLB by the NIEA and the number of witnesses who testified, the overall nature of testimony showed remarkable consistency in viewpoint. What emerged from the testimony were strongly held positive views about the public purposes of education for Native peoples against which NCLB and Native education was positioned. Witnesses strongly believe that a public education with broad public purposes focused not only for the world of work but for citizenship that was also reflective and supportive of their unique cultural and historical experience would provide well educated and contributing tribal citizens to the local tribal community as well as the broader community. In that regard the American Indian witnesses who testified were not that different than other American citizens.

Those who testified strongly supported the need to hold schools accountable for results but were very concerned about the negative impacts of NCLB upon the education of Native American students. Many of the views were similar to a growing chorus of negative views such as the impact upon the breath of the curriculum given the focus on testing, the inappropriate use of AYP, particularly in American Indian communities where the mobility rates of students were very high. Some comments were very specific to the Indian Education Act within NCLB itself in terms of NCLB's negative impact upon Native language and cultural programs in schools and the development of instructional and curricular approaches believed to be effective and meaningful for accomplishing and enriching the education programs for Native American students as well as the required input of parents in the development and approval of Indian education programs.

Significant to what was happening tribal leaders, Indian parents and educators focused attention on the realization of the extent to which changes were occurring that did not reflect much less consider their voice. Since then there has been a growing strong voice for increasing tribal government involvement beyond school operations to include determining the context and conditions for the education of American Indian students within the jurisdictions of tribal governments as well as influencing the federal interest for the education of American Indian students in other areas within the states. The development of a broader role for tribal government to determine the context and conditions for the public education of American Indian students seems apparent.

Witnesses were very concerned that Indian education programmatic effort uniquely supported by formula grant programs in Title VII. These efforts that were supported by a relatively small approximate \$300 per student were being supplanted by efforts that were clearly allowable in Title I. In many cases the Indian education formula grant was becoming a Title I program with little focus on its purposes as stated in statute. The NIEA Report NCLB in Indian Country is located on the NIEA web site's education issues page <http://niea.org/issues/policy.php>.

#### **New Approach Needed**

Any comparison of the intentions of Congress as stated in the Indian Education Act and the broader intention of NCLB to make a significant difference with the current statistics that describe the performance of the State and Federal school systems with American students would strongly indicate that what is in place is not working. We may have actually lost ground with what is essentially one entire school generation of American Indian learners from elementary through high school in the 9 years since NCLB passed in 2001.

As early as 2003 the Council of Chief State School Officer (CCSSO) representing the state school officers with large American Indian student populations began to meet first in Denver to express concern and consider ideas on how to approach what was a significant and growing issues to them concerning the education of American Indians in their states, particularly within reservation area state public schools. An education leader and old friend from Rosebud, Lionel Bordeaux, reported that approximately 75 percent of all students that entered the 9th grade did not complete high school this past year. Such a statistic is believed to be representative for other areas. Though educational achievement issues have received focus through NCLB with its emphasis on testing, the larger issue for American Indian communities is

the extent to which the student constituents of schools reject schooling all together. There is a belief that the operational reality of NCLB in schools contributes high dropout rates.

I would like to offer my insights concerning issues with the Indian Education Act and its implementation within NCLB for the purpose of suggesting a new framework for considering changes that would strengthen the ability of the Elementary and Secondary Education Act and the Indian Education Act to accomplish the intentions Congress regarding improving the effectiveness, and meaningfulness as well as the quality of educational programs for American Indians.

In answer to the question posed by this hearing it is my view that the No Child Left behind Act has left Indian students behind. I believe NCLB left Indian students behind essentially because the Indian Education Act within NCLB has been "left behind". The provisions affecting Congress' policy intentions for education of American Indians and Alaska Natives have been de-emphasized or disregarded by the Department of Education, the Bureau of Indian Education, and state education authorities.

#### **Issues and Needs**

1. *Alignment of Title VII purposes with Title I:* The NCLB has a number of issues which are structural in character with the relationship of Title VII with in NCLB. The implementation of the intentions of Congress for the education of American Indians as identified by the purposes of the Indian Education Act have no identifiable linkage within the basic program requirements in Title I. There must be an alignment of the required comprehensive Indian education plans required in Title VII with the requirements for state and local education plans by states and the BIE.

2. *Enable tribal education governance:* The advice and input structures put into place for American Indian parents and tribal governments within statute are impotent to the task of creating positive local education change. What is available, however, is of limited scope, advisory and often not paid any attention. The avenues available to express a parental and tribal government voice are essentially irrelevant for generating local positive education change within the existing federal education framework provided by NCLB. The federal trustee relationship must become a viable and active relationship for tribal governments which includes tribal authority to determine the context and conditions for the education of American Indian students under a federal framework for all school systems within a tribal jurisdiction and for the federal interest for the education of American Indians in state school systems elsewhere. Create a tribal-state compact or agreement for the education of American Indians under a federal framework which allows the context and conditions of the education American Indian students consistent with comprehensive education plans. For proposes of ESEA this would include BIE acting as a "state" for purposes of education.

3. *Incorporate federal Native language policy into NCLB:* There exists incongruence with federal laws related to protecting and preserving Native American languages such as the Native American Languages Act and the Ester Martinez Native Language Preservation Act with the NCLB. Theses efforts include support for a number of Native language immersion schools and programs operating in state public schools and BIE funded schools. School time is prime time that can be spent in the learning of a Native language. Title VII supports native language and culture programs; other areas of NCLB particularly Title I and Title III need to reference to the Federal Government's support for the preservation and maintenance of Native American Languages as well as accommodating the needs of Native language immersion efforts with regard to allowing assessments in the language of instruction in the early years for student in Native language medium school based programs.

4. *Coordinated tribal government focus on the wellbeing of Native children and youth:* There is a need to significantly improve the well being of American Indian children and youth in concert with revitalized efforts to improve the education of American Indian students. These concerns are inseparably linked and require a coordinated response of tribal government as suggested with all school systems, state and BIE within a tribal jurisdiction. The need is to recognize schools as more then places of schooling put as places of community. Efforts generally allowable in NCLB such as Promise Neighborhoods, 21st Century Learning Centers, and Successful, Safe and Healthy Students efforts need to become models for school development utilizing a coordinated tribal education involvement along with coordinated human service delivery efforts focused on school communities.

## Expansion of Recommendations

### 1. *Alignment of Comprehensive Indian Education Plans (Title VII) With State and Local Education Plans (Title I)*

Since the passage of NCLB there has been a growing incongruence between the purposes of Title VII and the general operating principles and consequently the implementation of NCLB by state public schools and the BIE for federal and tribal schools for American Indian students. This incongruence is significant and needs to be changed so that NCLB works in the interests of American Indian students.

The broad purpose of Title VII (section 7101) is stated as follows "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.

The Indian Education Act not only seeks to assist schools to improve the achievement of Indian students in academic subjects and in ways that uniquely involve culturally based educational approaches and the expansion of educational opportunities; it also seeks to ensure that schools with Indian students reflect the cultural heritage of those students directly.

The goal of improving the academic achievement of American Indian students is not the sole responsibility of Title VII and is shared by the other titles of NCLB; consequently it is vital that the expression of purposes for the education of American Indian students have a vital influential connection with the basic program requirements of NCLB. Looking to the Indian education Act there exist language to address that need but it is not paid any attention.

The Indian education Act is not only comprehensive in its scope in terms of what programs can be offered through funds but most importantly it also intends to be the statutory vehicle that focuses reform of schools as it affects Indian students uniquely through the required development of a comprehensive program design required of schools that engages other federal efforts within NCLB particularly Title I and state resources and as well as efforts offered specifically through the Indian Education Act to meet the comprehensive needs of Indian students.

The recognition that education is an aspect of the trustee relationship of the Federal Government to American Indian tribes, included for the first time in NCLB; the propose of meeting the unique educational and culturally related academic needs of American Indian and Alaska Native students as a distinct concern and through teaching and educational approaches appropriate to the accomplishment of required standards; the requirement for a comprehensive plan for meeting the education needs of American Indian students by a local education agency based on comprehensive local assessment and prioritization of the unique educational and culturally related academic needs of the American Indian and Alaska Native students; the requirement for a description of how the best available talents and resources, including individuals from the Indian community will be used to meet the needs of Indian students, finds no voice in the statute except in Title VII and despite the fact that Title VII programs are in nearly every State public school with American Indian students and all BIA funded school in the country both the States and the BIA in reliance of the operating principals and state and local plans of NCLB increasing disregard or do not pay attention to the principles and purposes of Title VII.

The formula grant program which contains the requirement for local education agencies to develop comprehensive education plans for the education of American Indian students is currently funded at approximately \$300 per eligible student in a local LEA. Those funds are used entirely to offer programs for Indian students within schools for the purpose of meeting the unique education and culturally related needs of American Indian students.

It is impossible and unreasonable to consider that the approximate \$300 available through the formula grant program should be the sole basis for meeting the educational needs of American Indian students and improving the education ability of schools with American Indian students to meet those needs through a comprehensive program design. It is also impossible and unreasonable to assume that \$300 per student is sufficient to accomplish the development of a comprehensive plan as required in the statute and as it should be accomplished to meet the educational needs of American Indian students as defined in the statute.

There is a linkage in Title VII to the rest of NCLB in the section that requires that comprehensive plans be *consistent* with the State and local plans submitted under NCLB including academic content and student academic achievement goals for American Indian students, and benchmarks for attaining such goals, that are based on the challenging State academic content and student academic achievement standards adopted under Title I for all children how Federal, State, and local programs, especially programs carried out under Title I, will meet the needs of American Indian students; the professional development opportunities that will be provided, as needed, to ensure that teachers and other school professionals who are new to the Indian community are prepared to work with Indian children; and that all teachers who will be involved in programs assisted have been properly trained to carry out such programs and describes how the local educational agency will periodically assess the progress of all Indian children enrolled in the schools of the local educational agency, including Indian children who do not participate in programs assisted under this subpart, in meeting the goals described in paragraph. The requirement that comprehensive plans be consistent with state and local plans does not mean that they must be the same. They can be aligned and incorporated within state and local plans.

Though these requirements are in Title VII there is no comparable language in the basic program requirements of NCLB for state and local plans which would provide the guiding light for the long term development of educational programs for American Indian students nor is there a viable mechanism to accomplish an American Indian State and local education plan. This needs to change.

## 2. Tribal Government Involvement

The statement "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" in Title VII requires greater definition and viability in the ESEA. The current input and advice structures in ESEA for Indian parents and tribal governments for the education of American Indians are extremely ineffective, so limited in scope and advisory that school authorities rarely pay attention to them.

Parent advisory committees have little impact on the long term development of school education programs and tribal government involvement in Impact Aid is limited to complaining that policies and procedures for parent advisory input have not been developed. The NCLB recognizes the ability of tribes to seek a waiver of AYP and develop their own standards, use state standards or use BIE developed standards for BIE funded schools but support for this was withdrawn as the BIE moved BIE funded schools to the state standards and assessment systems where the school was located.

Nonetheless alternative definitions of AYP are allowable for tribal governments in the case of tribal schools and tribal governments could potentially develop these alternative standards and assessments systems including developing state and local education plans which are incorporated into state and local education plans required by NCLB consistent for all schools within a tribal jurisdiction, federal and state.

The current political legal structure of Indian education, the relationship of state, federal and tribal governments in the education of American Indians was put in place with the original Johnson O'Malley program that withdrew significant federal involvement in the education of American Indians in favor of increased state public school involvement under certain conditions. The Federal Government attempted to see that the unique needs of Indian students were met in these state schools initially in state contracts for JOM and funds provided the state for this specific purpose. Minnesota's original contract with the Federal Government had language where the state agreed to meet the unique needs of Indian students, ensure that Indian students were not denied that provided other students and to maintain schools in distinctly Indian villages for Indian students.

It can be argued that the Indian Education Act of 1972 that passed approximately 35 years after the negotiation of the JOM contracts was an attempt to continue to have states uniquely focus on the needs of American Indian students in state public schools irrespective of location.

It is this arena of the interrelationships of federal, state and tribal government involvement in Indian education that needs to be impacted in a positive manner for Indian education. This arena is among the most complex imaginable with each government providing schools for Indian students often in the same community with overlapping programs, regulations and services that have little coordination or common purpose and with very little or no coordinated effort.

Issues concerning the complexity of the intergovernmental arena with Indian education were identified as the first JOM contracts were being negotiated in the 1930s



though recent attention was focused through the Education Commission of the States Indian education Project in 1980 and President Clinton's executive order which specifically required the development of ideas that would improve inter-governmental cooperation in Indian education.

We have tried everything within the current intergovernmental framework and we have particularly since 1972 grown significantly in our knowledge of Indian education and what works, but we have not impacted the performance of schools. We could say that we have outgrown the intergovernmental "suit of pants" we have worn and need something larger and brand new.

We have as it were, out grown the current intergovernmental framework of federal, state and tribal government relationships. Tribal government needs a greater role which expands from limited school operations to include a role in determining the education conditions and context for the education of American Indian students in all school types within a tribal jurisdiction.

In nearly every area of intergovernmental relationships between state and tribal governments there has developed some form of negotiated contract or agreement except in the area of education. These intergovernmental relationships range from compacts for gaming, the collection and distribution of sales taxes, hunting and fishing rights and enforcement, including cross deputation of sheriff's deputies, police and game wardens but hasn't so far included education.

Tribal government consultations exist with federal agencies particularly the Interior and Education, but tribal governments within their tribal jurisdictions, currently do not have a framework for negotiating the specific conditions and contexts for the education of American Indian students in BIE schools or state schools consistent with the requirements for state and local education plans and comprehensive education plans required in NCLB.

Within the jurisdiction of tribal governments it makes sense that the political legal "center stage" needs to be tribal government and authority in education where the context and conditions for the education of American Indians could be negotiated with state governments and the BIE under a federal framework as discussed. Other tribal governments collectively could develop similar plans and agreements with states for what essentially represents the federal interest in the education of American Indians where the state government and its education authority would provide the political legal "center stage" such as in urban areas. In each situation I believe it is important to maintain Indian parent involvement and input.

The requirements for the development of state education and local education plans in Title I, the development of comprehensive education plans should be a major aspect of the negotiation of tribal governments with state governments as well as the BIE under a federal framework for this purpose.

Moving in this direction further allows for the development of congruent tribal education ordinances and programs in a number of areas that affect the well being Indian children, their families and communities.

### *3. Improve the Well Being of Indian Children and Youth*

Improving the education of American Indians students requires more than just a consideration of what we can do to positively impact education programs. It requires that we consider the whole range of needs of Indian children and youth that impact on their well being and focus on these holistically at a local level.

As President of NIEA, I initiated the Native American Children's agenda to focus interest and concern of the well being of Indian children and youth as well as its relationship to education performance and progress. I thought then that a significant aspect of this agenda needed to be locally conceived and coordinated and that schools simply because Indian young people and their families were present for significant periods of time could be instrumental as places to coordinate services and to build the community of the school away from the school building through providing coordinated services among members of the community of school.

Issues which impact the well being of Indian children and youth have a direct impact upon their ability to participate and respond educationally within schools. Educational issues and issues of wellbeing are linked and require a coordinated response of tribal government as suggested with all school systems within a tribal jurisdiction.

The need is to recognize schools as more than places of schooling but as places of community. Efforts generally allowable in NCLB competitively such as Promise Neighborhoods, 21st Century Learning Centers, and Successful, Safe and Healthy Students efforts need to become models for school development utilizing coordinated tribal education involvement along with coordinated human service delivery efforts focused on state and school communities. Because exiting programs are competitive with very little opportunity for Indian reservation communities to participate to the

extent needed providing tribal governments with planning and coordination funds through any number of possible authorities including ESEA grants to bring together available community services as provided by existing state, federal and tribal agencies and focused in school communities similar to the purposes of these other programs may have significant promise.

Schools, the one place today where children and their families are most represented can be more than a place just for education but also a community and community building and developing place. As the community is involved so the community develops and grows and the well being of children is enhanced.

#### *4. Incorporate Federal Native Language Policy Into NCLB*

There is policy incongruence between federal Native language policy and the implementation of NCLB. The federal policy focused on revitalizing and maintaining Native languages needs to find a viable functional reference within NCLB so that federal education policy enables rather than stunts existing school based efforts such as immersion schools and programs, language nests and other such efforts in state and BIE schools. The Native American languages such as the Native American Languages Act and the Ester Martinez Native Language Preservation Act with the NCLB should be referenced in alignment with Title I, Title III, and Title VII so that federal language efforts supported by the Federal Government in State and BIE schools are supported with education requirements appropriate to their purpose.

#### **Summary**

We need a new Indian Education Act within ESEA, one which brings the purposes of the existing Indian education act fully to the forefront of the purposes of ESEA now NCLB, an Indian education act which recognizes tribal government authority in the context of the federal trustee relationship for the education of American Indians. We need a system of education which makes sense to American Indian people and Indian students who all desire to be actively engage in creating their own future while maintaining a continuity of their unique language cultural and historical experience.

All school systems that provide education need to be focused on a vision that places Indian children and youth at the center of it attention. American Indian students need to see a personal future that connects to the education mission of the schools they attend. It is vital to their improved achievement, continued education and to a future their uniquely their own.

The CHAIRMAN. Dr. Beaulieu, thank you very much. We appreciate your testimony and your service and previous experience as the Director of Indian Education.

We have Ms. Mariah Bowers from Klamath, California, the Yurok Tribe. She has actually been on Skype, but is now off of Skype. She has been able to see this hearing, and if we are able here to have her back. I think the audience perhaps cannot see.

Could you turn it so the audience can see it as well? You can turn it a little more. That is right, so that the audience might see who we are talking about.

Mariah Bowers is an Indian youth from Klamath California. Mariah, you have been listening to the testimony here. You are joining us via Skype technology. Why don't you proceed? You have prepared some thoughts, I understand, for us and I would like you to proceed. Thank you for being with us.

#### **STATEMENT OF MARIAH BOWERS, MEMBER, YUROK TRIBE; SOPHOMORE, SOUTHERN OREGON UNIVERSITY**

Ms. BOWERS. Good afternoon, Chairman Dorgan and Members of the Committee. [Greeting in native language]. My name is Mariah Bowers and I am Yurok. I am 18 years old and a college sophomore at Southern Oregon University. Thank you for inviting me to testify about my experience as a Native American student in the No Child Left Behind Act era.

Between kindergarten and my freshman year of high school, I attended public schools in Oregon where I never did very well in school. However, that changed with my chance at the Klamath River Early College of the Redwoods School. This school is located on the Yurok Reservation in Northern California. At KRECR, I thrived and I am now a successful college sophomore because of the education I received there.

During my freshman year of high school, I started having problems in school. At that time, I was with my family in Eugene, Oregon where I attended Churchill High School. My class schedule was divided into blue and white days. On blue days, I had math, reading, humanities and science, and on white days I had art, P.E. and a free period. I had perfect attendance and always did my homework.

As the year progressed, I began to not understand the material in the harder classes. I would ask questions during class. I spent time studying, but I still struggled with the material. Also, I felt isolated like I was the only student who didn't understand the material. My teachers weren't very helpful. They didn't have time to meet with me. They barely knew who I was. They didn't seem to care about me and they seemed more concerned about teaching to the test and getting through the curriculum.

By the end of mid-terms, I was on the verge of flunking out of school, even though I did my homework and had perfect attendance. I got bad grades. I realized that now part of the problem was I didn't understand what was going to be on the tests.

Soon, I stopped going to school on the hard days because I was too nervous and anxious and I felt lost. I started getting into trouble and hanging out with other kids who weren't going to school. My mom got really concerned and enrolled me into Klamath River Early College of the Redwoods on the Yurok Reservation.

I loved going to school at Klamath River Early College. The school is attended by Yuroks, non-Natives and Native American students from other tribes. It teaches grades nine through 12 and has a partnership with the College of the Redwoods to enable students to graduate with A.A. degrees. It uses Yurok language and culture to teach all subjects. The class size ranges from 12 to 20 students.

The biggest difference between the public school and KRECR was how I was tested and how I was taught. At KRECR, test standards were described in a book that was given to each student. In order to advance, the student could obtain proficient, emerging or advanced grades. The book laid out what students had to do to get good grades. This worked well for me because I knew exactly what I had to do to get an advanced grade and it made me more accountable.

The teachers were available and I felt that they cared about me. The curriculum used to meet the academic standards required the same amount of work as I had done in the public schools and it was just as academically challenging. We learned math, science, history and reading in a way that related to my life. For example, we learned the history of Yurok people and about the ecosystems of the Yurok Reservation that supported traditional foods I had grown up eating, such as salmon and acorns.

The school offered Yurok language classes which is how I learned to introduce myself in Yurok. We learned Yurok songs and made flash cards to learn the vocabulary. Yurok culture is taught in each class, but specifically every Wednesday afternoon we did a cultural activity.

On my first cultural day, we started the process of making Indian baskets. The tribal Fisheries Department took us up the Klamath River to pick the roots and plants required to make the baskets. The next week, an elder came into the school to teach the girls how to make the Indian baskets. I was glad I paid attention to geometry in class because we used the math skills to make the baskets.

At KRECR, in every classroom an elder from the community would sit in the class. They did not teach, but they were just there to sit in. The elders helped the students behave because no one wanted to get in trouble in front of the elders.

Also, the school uses the process of settling up to resolve disputes between students, teachers and administrators. Settling up requires that people who are in an argument meet with a neutral third party and the person in the wrong has to pay the injured party. Usually in the public schools, students are suspended if they get into a fight with a student or a teacher. Settling up allows kids to stay in school and hold them accountable for their actions.

At KRECR, we also met our tribal leaders. The Yurok Tribal Council helped us find internships with the tribe and local businesses. We used the tribal facilities and computers. It was good for us to have a relationship with our political leaders because they are our role models.

At KRECR, I understood while school and education is so important. Through all of these activities, I learned standards for life, not just math or science or how to take standardized tests. I learned how to be a Yurok. I learned how to be a good friend, student and professional.

Learning about my culture gave me and the other students something to believe in and something to do. The reservation is rural and most kids are poor, so there aren't many activities and a lot of the kids turned to drugs and alcohol. This school taught us about our people and to be proud of our heritage and culture.

I did very well at KRECR. My grades went up and I learned a lot about who I am, my community and traditional academics. I graduated from KRECR in June of 2009 with one year of college credits finished. I got a scholarship to Southern Oregon University where I am currently a sophomore. I was lucky to have a family that cared about me and I had access to a school that had the tools I needed to succeed. All children deserve to have a good education experience like I had.

For Native American students, a good education means they grow up understanding who they are, where they are from, and how to be successful in life.

Thank you.

[The prepared statement of Ms. Bowers follows:]

PREPARED STATEMENT OF MARIAH BOWERS, MEMBER, YUROK TRIBE; SOPHOMORE,  
SOUTHERN OREGON UNIVERSITY

### Introduction

Good afternoon Chairman Dorgan and members of the committee. My name is Mariah Bowers. I am 19 years old and a college sophomore at Southern Oregon University. I am an Alaska Native and was adopted into a Yurok family when I was a baby. Thank you for inviting me to testify about my experience as a Native American student in the era of the No Child Left Behind Act.

Between kindergarten and my freshman year of high school I attended public schools in Oregon, where I never did well in school. However, that changed when I transferred to the Klamath River Early College of the Redwoods Charter School (KRECRC), a culture based charter school operated by the Yurok tribe and community, located on the Yurok Reservation in Northern California. At KRECRC I thrived, and I am now a successful college sophomore ultimately because of the education I received there. Today I will discuss my experiences in public and charter schools. I will also make recommendations about how we can improve the educational process of Native American students.

#### A. Public School

During my freshman year of high school I started having problems in school. At that time, I lived with my family in a rural area outside of Eugene, Oregon where I attended Churchill High School. Every morning I had to catch the school bus at 7 a.m. to be on time for 8 a.m. classes. My class schedule was divided into blue and white days; on blue days I had math, reading, humanities, and science, and on white days I had art, PE, and a free period. I had perfect attendance and always did my homework for all my classes. But as the year progressed, I began to not understand the material in the hard classes, like math, and science. I would ask questions during class, I spent time studying, but I still struggled with the material. Also, I felt isolated, like I was the only student who didn't understand the material. My teachers weren't very helpful. They refused to meet with me and barely knew who I was. I asked them about my grades but they didn't know what I had in the class. They didn't seem interested in my success as a student.

By the end of mid-terms I was on the verge of flunking out of school. I did not perform well on my mid terms exams. Again, I tried to arrange meetings with my teachers to figure out why I was struggling, but they didn't have time and wouldn't meet with me. Instead, they told me to do extra credit to pass their classes. I did the extra credit, which improved my grades to Cs, but I still didn't understand the material.

Reflecting back I realize that part of the problem was I didn't understand what was going to be on the tests. Even though I did the homework and went to class, I didn't know what I was expected to learn or what I was going to be tested on. Nobody told me! It was never clear to me what I was expected to know. I grew more and more frustrated because even though I went to class and did the work—I still didn't perform well on the tests. I became more anxious and nervous about my classes and going to school. The teachers seemed more concerned about “teaching to the tests” and getting through all of the curriculum that would be on the test as opposed to actually teaching the students and making sure the students understood the material.

By the middle of my freshman year, I understood less and less of the material and my grades began to suffer even more. I stopped going to school on the hard days because I was too nervous and anxious and I felt isolated. With extra time on my hands, I started getting into trouble and hanging out with other kids who weren't going to school. My mom got very concerned and pulled me out of school. Since most of our family lives on the Yurok Reservation in Northern California they suggested I try going to the Klamath River Early College of the Redwoods Charter School (KRECRC) located on the Yurok Reservation that focuses on Yurok culture and language as the foundation to learn other subjects. My family suggested I just try it on a temporary basis to see if I liked it better then public school. So I temporarily moved to the Yurok Reservation to attend the school.

#### B. Charter School

I loved going to school at KRECRC and I ended up graduating from the school three years later. The school is attended by Yuroks, non-natives, and Native Americans from other tribes. It has grades 9 through 12 and has a partnership with the Early College of the Redwoods to enable students to graduate with AA degrees. It uses Yurok language and culture as the foundation to teach all subjects. The class sizes range from 12 to 20 students. I did well at this school, finally! Honestly, if

it wasn't for this school, the teachers, staff, elders, and students, I wouldn't be in College today.

### 1. Standards, Teachers, and Elders

The biggest differences between the public school and KRECRC were how I was tested and how I was taught. First, the testing standards were completely different. At KRECRC test standards were described in a book that was given to each student. Students could obtain "proficient," "emerging" or "advance" as grades. The book laid out what type of student product was required for each grade. This worked well for me because I knew exactly what I had to do to get an advanced grade. I understood what was expected of me and I never had to guess like I did in the public school. The teachers gave me materials to master, the testing standards were clear, and I knew what I needed to do to get good grades. This made me more accountable—I knew what I had to do to get a good grade. In the public school, I didn't know what was expected and I didn't know what was going to be tested, so it was hard for me to get good grades. But at KRECRC, I knew exactly what to expect and how to perform well on tests.

The curriculum used to meet the academic standards required the same amount of work as I had done in the public school and it was just as academically challenging; only now I knew what was expected of me. The curriculum was also interesting because we learned math, science, history, and reading in a way that related to my life. For example, we learned the history of the Yurok people and we learned about the ecosystems on the Yurok Reservation and how they supported traditional foods that I had grown up eating, such as salmon and acorns.

The teachers also worked with me to determine how I was going to meet the academic standards. This worked well because I knew what I needed to do to get good grades. The teachers were very involved in my classes and were very accessible. They always knew what my grades were and how I was progressing. They also knew the areas where I was struggling and offered extra instruction. They were kind and understanding. They knew who I was and were willing to work with me. This helped me feel less nervous about the hard subjects. It helped me feel like I could learn.

Also at KRECRC, in every classroom an elder from the community would sit in the class. The elders were community members or sometimes students' family members. They didn't teach but were there to "sit in." The elders helped the students behave because no one wanted to get in trouble in front of the elders. Most of the students understood that the elders came in from town to spend time with the students and they were community leaders—both demanded respect so the kids paid attention to the teachers and were polite. The presence of elders controlled behavior—even when the elders feel asleep in class, proving that geometry is boring at any age!

### 2. Culture

Yurok language and culture was part of every day at KRECRC. We went to school to become contributing members of the Yurok community. Learning our culture became an incentive for me and other students to come to school.

The school offers Yurok language classes which is how I learned how to introduce myself in Yurok. We learned Yurok songs and made flash cards to learn vocabulary. Yurok culture is taught in each class, but specifically, every Wednesday afternoon we did a cultural activity. Students looked forward to this throughout the entire week. For the culture activity, boys and girls are separated into groups and community leaders and elders taught each group.

On my first culture day, we started the process of making Indian baskets. The Tribal Fisheries Department took us up the Klamath River to pick the roots and plants required to make baskets. We spent the day picking the roots and plants and preparing them to make baskets. The next week a community leader came to the school to teach us girls how to make an Indian basket.

Meanwhile the boys were learning how to make eel hooks to catch eels, a very popular traditional food, and later they went "eeling." After the boys caught the eels, the elders taught us girls how to prepare them and we cooked the eels for the school lunch. The following month the boys learned how to make a canoe. Everyone loves these activities because we learn how to be Yuroks.

Also, the school uses the Yurok process of "settling up" to resolve disputes between students, teachers, and administrators. "Settling up" requires the people who are in the argument to meet with a neutral third party, discuss and determine who is in the wrong, and that person has to pay the injured party. After the payment is made, the parties can't hold grudges or speak of the event again. The school uses this process to resolve all disputes that may arise, from student-to-student bad

mouthings to student-to-teacher behavioral problems. The process has been very effective in managing student behavior. The students respect this process because the community has used it for several generations.

Usually, in the public school that serves the Yurok Reservation, students are suspended if they get in a fight with a student or teacher. If you get suspended, you have free time, and in most cases, kids will start drinking or doing drugs and a lot of times you get in trouble with the law before you make it back to school. The public school offers no guidance about how a student should behave. Instead they just push you through the system. As a result, kids feel unattached to the school and they don't learn there.

In contrast, the settling up process allows kids to stay in school and it makes them accountable for their actions—they have to pay if they harmed someone and they have to talk with that person about why they did something harmful. It also provides guidance about how a person should behave.

### 3. Tribal Control

At KRECRC we also met our tribal leaders. The Yurok Tribal Council helped find internships with the Tribe and local businesses. They helped us develop resumes and served as references for jobs. We were able to use the Tribe's facilities and technology for school activities. The Tribal newspaper frequently reported about the school's activities and accomplishments. It was good for us to have a relationship with our political leaders because they are our role models; it gave us something to work toward.

After a few weeks of school at KRECRC I understood why school is so important; through all of these activities I learned standards for life—not just math or science class or standardized tests as was my experience in public school—I learned how to be a Yurok. I learned how to be a good friend, student, and professional. Learning about my culture gave me, and the other students, something to believe in and something to do. There are a lot of drugs and alcohol on the Yurok Reservation. The Reservation is rural and most kids live in poverty so there aren't many activities available. Sometimes kids turn to drugs and alcohol because they have nothing better to do. But we are proud of our culture and traditions and we want to learn more about it. The school taught us who we are and to be proud of our heritage and culture. We identify with our culture. Teaching culture in the school and involving the community gave us a reason to go to school; to learn how to be Yurok.

I did very well at KRECRC. My grades went up and I learned a lot about who I am, my community and traditional academics. I graduated from KRECRC in June of 2009. I got a diversity scholarship to Southern Oregon University, where I am currently a sophomore.

### C. Recommendations

I was lucky. I have a family that cares about me and I had access to a school that had the tools I needed to succeed. All children deserve to have a good educational experience like I had. For Native American students a good education means they grow up understanding who they are, where they are from, and how to be successful in college and as professionals.

Based on my experiences I recommend the Committee do four things in the reauthorization of the Elementary and Secondary Education Act to improve Native American education:

- *First, give students a clear understanding of academic standards.* If we are moving toward national standards, make those standards clear to students and provide the students with tools to meet those standards.
- *Second, increase the role of tribal governments and communities in education, in all schools serving tribal students.* We respect our tribal leaders and elders. We want to learn from them. Put them in our classrooms. Plus, the tribal government has resources that will help us succeed. The schools need help; they can't provide us with all the resources we need and the tribal governments working with tribal education departments/agencies can help.
- *Third, incorporate language and culture into curriculum, standards, and assessments.* In order to be ready for college or careers we have to understand where we come from and our culture. We get excited to learn about our culture. Our excitement motivates us to learn other subjects and it gives us a reason to come to school.
- *Fourth, make curriculum, standards, and tests flexible enough to provide a well rounded education that prepares Native American students to be tribal leaders, professionals, mothers, fathers, and community members.*

### Conclusion

Thank you for allowing me to testify on these very important issues. I hope that my comments today will help the committee create a better educational experience for all Native American students.

The CHAIRMAN. Mariah, thank you very much. We are inspired by your story, and congratulations to you for finishing your first year and being enrolled and having hope for the future, and investing in yourself. We really appreciate that.

Actually, your testimony was better than the technology because your image was wavering in and out, but we could hear your voice just fine. So thank you very much. Stay with us, if you will, just for a few moments.

Let me ask a couple of questions and then I will call on my colleague Senator Udall as well.

Let me ask Mr. Smith, if I might, you stressed the language immersion program. Tell us again what noticeable difference have you seen in the academic performance of students that participated in the immersion program for language?

Mr. SMITH. We have had the immersion class, one class each year, so we started out with pre-K, next year first, second, third. We are up to the fourth grade. What we find is that kids not only speak Cherokee and think Cherokee and act Cherokee, but their composure, their collection, their ability to communicate with other folks in English and other languages is tremendously improved. They just have a confidence that you can tell that they have a sense of solid identity.

The CHAIRMAN. Is there evidence in their grades and I should say, all portions of their academic experience?

Mr. SMITH. We are at that juncture now where we are learning English literacy. So the testing mechanisms are not fully perfected.

The CHAIRMAN. All right.

Ms. Oatman-Wak Wak, you talked about recommending Congress support and fund programs that ensure maximum participation of parents and families and so on, community members, in education. I think that there is nothing more important than having parents involved in education. I have always felt that the three things that are essential for education to work well are, number one, a teacher that knows how to teach; a child that wants to learn; and a parent involved in that child's education. If those three things are present, almost inevitably it works.

But I think what we find so often, and it is not just on Indian reservations or with Indian education, it is across the Country, we find so often that a couple of those things are present, but not the parent involvement. And the lack of parent involvement is just devastating.

So when you talk about these things, I agree with you. What kind of incentives do you think Congress can develop with respect to parent involvement?

Ms. OATMAN-WAK WAK. I appreciate that question, Chairman Dorgan. We do know that parental involvement, not just in native communities, but all communities, is an issue. However, within Indian Country, it is a lot of those traumatic experiences and those past Federal policies that kind of worked to decreasing of valuing education throughout Indian Country.



We are seeing that change. It is changing. We are on the impetus of that change where educational attainment is becoming a high priority within Indian Country. We still have a ways to go. We still actually have a long ways to go to get that Indian parent involvement.

We do have some of those parameters like within the Federal Impact Aid Program which requires Indian policies and procedures for school districts on-reservation that are receiving the impact aid dollars due to a large presence of those Federal lands.

However, many times we experience that it is just a process. It is let's develop an Indian parent committee so that they can sign up on these Indian policies and procedures. We need stronger correlation and strengthening the language within those different titles.

So for Title VIII for impact aid, instead of stating that local education authorities should or may, we need to strengthen that language, shall and must collaborate with Indian tribes. And through that language, we will also strengthen the role of Indian parent committees under impact aid or the parent committees under Title VII that are required under those different titles.

It is the soft language that is killing us, quite honestly, in that the local education authorities know that they are not required to do so. It is just more of a suggestion.

The CHAIRMAN. Thank you.

Mariah, I am going to ask you a question before your image disappears on us again. Let me ask your self-assessment. Go back four years. You described your sense of what was going on in your life about four years ago, flunking out, not doing well. Your self-assessment of you four years ago versus now and what made the difference, do you think?

Ms. BOWERS. Like with my education?

The CHAIRMAN. Yes, okay, I mean, you described a period where you felt like you couldn't do the work. You weren't motivated. You didn't care very much because things weren't working in your life. You kind of described to me a period where you kind of felt hopeless. All of a sudden, you come here to us and say, you know what? I am feeling really good about things. I have just gotten through my first year of college. I am in a place that I care about.

So, is that a pretty good assessment of what has happened to you? And what was it that triggered it, do you think?

Ms. BOWERS. I think because I was living off of the reservation while I was going to school in Eugene, Oregon, and I was kind of discouraged because I kind of had a feeling of I didn't really know who I was or where I came from. And when people would ask me, they would always mistake me for being Asian or Mexican. Not a lot of people know that Native American people were still living and doing things.

I kind of felt like I was falling into this statistic of the students who aren't going to graduate and who fail out of school and this and that. And I kind of became discouraged, not only with school, but just knowing that I wasn't going anywhere with my life.

And moving back home with having my cousins going to school with me and friends from when I lived on the reservation, with people who looked just like me and are doing the same things, it

motivated me because I wasn't an outsider and I wasn't a nobody. I was actually just one of every other one of the students who was at the school. And then I became more motivated and I became more motivated to be more of the statistics of those kids who graduate and the kids who go to college, and the kids who don't fall into the drugs and alcohol. I wanted to be the better statistic than the not as good statistic.

The CHAIRMAN. And Mariah, what do you want to be?

Ms. BOWERS. I think I am going to major in criminal justice and I want to be maybe like a probation officer for youth, or something. I am not really sure. I am still working it out.

The CHAIRMAN. But there is no doubt in your mind you can be what you want to be. Is that correct?

Ms. BOWERS. Yes. I can be whatever I want to be as long as I try and work hard, do the homework, go to class.

The CHAIRMAN. Good for you. The only limits on you and your life are the limits you put on yourself. And there are a lot of barriers, but I am talking about limits now. You can get over the barriers, but your life is going to be in many ways a set of opportunities that are defined by the limits you describe for yourself.

And really, there aren't many limits if you put your mind to it. You have just discovered that, changing environment, all of a sudden deciding I am not failing, I am succeeding. Big difference.

Ms. BOWERS. Yes.

The CHAIRMAN. You are good to be with us. I thank you very much for being willing to spend a little time with us.

Let me call on Senator Udall for his comments.

Senator UDALL. Thank you, Chairman Dorgan.

Mariah, just to follow up on what Senator Dorgan asked about, you were saying what allowed you to do better was being surrounded by other native students. And it seems like that gave you an inspiration. Were there teachers? Were there other things that inspired you to learn?

Ms. BOWERS. Yes, there were teachers.

Senator UDALL. Was there a favorite teacher or somebody there that took you under their wing and really tried to give you advice and lead you down the right path?

Ms. BOWERS. I wouldn't say a favorite teacher, but having the elders come into the school and sit there was really motivating. One of the elders who came most of the days was actually my great uncle. And so it actually really excited me because he was there and he was always telling me to behave and to not always look at the boys and to just focus on school.

[Laughter.]

Ms. BOWERS. So having him sit there and be behind me, it kind of made him seem like he was always standing behind me, supporting me. And he was there probably three times all of the week. So I think that was really good.

And we also had people come over from the tribe who would just come in and just make sure that we were on task, big people like Tribal Council people or the tribal Chairperson or something. So knowing that they would come in and give us the support that we needed, it made me feel really good because they were really important people for the tribe, for them to come over and to say that

we were doing a good job and just to keep it up and stay motivated. That is what really helped me.

And the teachers, I don't really have a favorite teacher. They were all really supportive and helpful. I don't have a least favorite teacher, so they were there for me.

Senator UDALL. Thank you very much for your testimony. I think you have given us a good example of the kinds of things that can help native students to achieve and to really move forward.

I agree with Chairman Dorgan that if you really put your mind to it, you are going to get everything done that you want to do in your dreams. So thank you for being with us today.

Ms. BOWERS. Thank you.

Senator UDALL. You bet.

A question to the panel. You watched the previous panel and the individuals talking about how they were going to turn around the schools. Do you have any thoughts on their testimony? Do you disagree with anything? Do you think their approach is a solid one? Is there anything that stands out from that testimony you would like to comment on?

Dr. BEAULIEU. Senator, there is one thing that comes to mind at the moment. One is that longevity is important. I was involved during the 1990s in the school evaluation monitoring teams with the Bureau of Indian Affairs in those days where we visited schools.

The single most important factor for improving test scores was the longevity of a principal, a school leader who had a vision and a plan for the education of that school community. It matters that there are people that are hanging in there working on plans and so forth, and we need to sustain that leadership, not constantly move them from place to place and changing an already bad situation. People come and go fast enough already.

I think that sort of speaks to also the need for broader vision within the local community for what is education, and to engage parents, tribal governments and others in what is that vision and how do we all work together on it.

Senator UDALL. Thank you.

Mary Jane?

Ms. OATMAN-WAK WAK. It was mentioned earlier about the need for highly effective teachers, highly effective leaders. There is no doubt about that. But one of the other scenarios and one of the other caveats that has not been brought up in this forum today or during the hearing is I guess the lack of sustainable school board models within Indian Country, through our bureau schools as well as through our public schools, is the role and the lack of assistance or support for school boards.

They are the governing bodies over these schools, and yet there is a disconnect between their role and the lack of student achievement within those schools. It is always the fingerpointing on the principal, or in the case here, that we have seen throughout Indian Country. And I have heard it throughout my work as the Coordinator of Indian Education at the State. Is it is the Indian kids, or it is the ineffective teacher, or it is the principal?

And so I think that we need to also really look at and assess the role that school boards have not only with their fiduciary respon-

sibilities over schools, but the role that they can play in student achievement and governance of the schools, because they are the ones that are working to help retain the superintendents, that are assisting in getting the teacher contracts, as well as the principal contracts.

And so for a more holistic approach, we need to also look at addressing the governance of the schools through school boards.

Senator UDALL. Thank you. Thank you very much.

Chief Smith, if you have a brief comment? I have run out of time. Thank you very much.

Thank you, Chairman Dorgan. Thank you for the hearing.

The CHAIRMAN. Senator Udall, thank you very much.

This is the first hearing and the opening hearing to lead us to work on this education issue in a more focused way. As you know, we have worked on Indian healthcare improvement in this Congress and have that now signed into law. We are very, very close to getting done, hopefully in a matter of days in the Senate, the Tribal Law Enforcement Act that we have introduced. Senator Udall and I and others have worked very hard on that. We are very close. That is going to get done, I believe. So those are two big issues.

And now we turn to education and begin the work on trying to determine how to address specific Indian education needs within the context of other authorization bills that are going to be passed, including No Child Left Behind and its modifications.

So let me thank the three of you for being willing to be with us today and to provide testimony. We are going to keep this hearing record open for two weeks, and we would invite anyone from not only the National Indian Education Association that wishes to provide supplemental information, but anyone else who wishes to submit formal comments for our record. We will accept them for two weeks from today's date.

I thank all of you very much.

This hearing is adjourned.

[Whereupon, at 4:02 p.m., the Committee was adjourned.]

# A P P E N D I X

PREPARED STATEMENT OF THE MONTANA OFFICE OF PUBLIC INSTRUCTION

## **Title III—Native American Languages and Students Identified As Limited English Proficient**

The current NCLB reorganization of bilingual education to English language acquisition has a confining and restrictive effect on Native American Languages in schools. That is not the Title III population we serve in Montana. The majority of Title III students served in Montana are American Indian, which do not fit well with current definitions, processes, procedures, and methods by the Office of English Language Acquisition that administers the Title III programs. Their current focus is new immigrant language issues.

Our children served through Title III are subjected to assessments designed to determine progress for English learners moving from no English to English literate.

*Recommend:*

- Native American Language programming be moved from Title III to Title VII with appropriate funding to implement native language revitalization efforts in schools.
- The Native American Language Act and the Esther Martinez Native American Languages Preservation Act of 2006 should be reflected in NCLB assessment, programming, and policy.

## **Title VIII—Impact Aid and Turnaround Process**

The 8003 Indian Lands component of Impact Aid requires tribal review of eligible “federally impacted students”. Impact Aid creates a connection between Tribal Education Departments (TEDs) and schools where the counts are verified, parents submit demographic information and land descriptions, and parent committees approve (informally or formally), the Indian Policies and Procedures to schools. This section ought to formalize a role to address tribal community participation, but it seldom does. Tribal government and school boards would benefit from increased communication.

Impact Aid dollars are a significant contribution to a school, but without tribal or SEA monitoring roles, they rarely receive scrutiny as they are absorbed into a school’s general fund. Some of the schools who struggle the most with academic achievement the greatest receive such funding.

*Recommend:* Impact Aid consultation be a formal process with annual tribal signature.

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PREPARED STATEMENT OF GLORIA O’NEILL, PRESIDENT/CEO, COOK INLET TRIBAL COUNCIL (CITC)

Chairman Dorgan, Vice Chairman Barrasso, and Members of the Committee, I am grateful for the opportunity to present this testimony to you.

My name is Gloria O’Neill and I am the President and CEO of Cook Inlet Tribal Council (CITC), an Alaska Native tribal organization which serves as the primary education and workforce development center for Native people in Anchorage. As I have explained before to the Committee, CITC has been designated its tribal authority through Cook Inlet Region Inc., organized through the Alaska Native Claims Settlement Act and recognized under Section 4(b) of the Indian Self-Determination and Education Assistance Act. CITC builds human capacity by partnering with individual Alaska Native people to establish and achieve both educational and employment goals that result in lasting, positive change for our people, their families, and their communities.

I will address these comments specifically to the effect of No Child Left Behind and our recommendations for the reauthorization of the Elementary and Secondary

Education Act, incorporating by reference my comments to this Committee on March 31, 2010 (attached hereto).

Over the past decade, as CITC has implemented innovative programs in partnership with the Anchorage School District, Alaska Native student performance has lagged behind other students' performance, in a state with one of the lowest performance rates overall. The Alaska experience tracks with American Indian experience elsewhere in the United States, with the added issue that all Alaska Native students receive their education only from the state and local school districts.

### **Recommendations**

1. As explained below, CITC recommends that the ESEA *maintains and expands the flexibility and creativity for bold innovative partnerships between tribal and state organizations to leverage federal funding offered through the Alaska Native Equity Program (ANEP), the main source of federal funds available for Alaska Native education in Alaska.* This program allows the creativity to develop strengths-based, culturally appropriate flexible programs that promote the learning and success of Alaska Native and American Indian students through effective schools, comprehensive services and family supports.

2. In order to ensure that all Alaska Native and American Indian students are well-served under the recommendations submitted by the National Indian Education Association and other experts, the reauthorization should use the Indian Self-Determination and Education Assistance Act definition of tribe (25 USC 450b: Indian tribe "means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

3. The Blueprint suggests expanding eligibility to school districts and public charters under the Alaska Native and Native Hawaiian programs. CITC does not agree with expanding Alaska Native targeted funding to school districts without partnership with Alaska Native tribes or tribal organizations. School districts and charters already receive Department of Education funding.

4. ESEA must ensure that academic intervention and case management for student success are high priorities for funding; other supportive services and cultural activities are also critical to student success and should be well-funded as part of a continuum of service.

5. ESEA should remove the 5 percent cap on administrative costs and allow indirect recovery at the rate negotiated with the tribe or tribal organization's cognizant agency.

6. ESEA should lower 50 percent match requirements, and permit use of non-federal public funds for match.

Finally, CITC recommends that the Department of Education take full advantage of opportunities to reduce administrative burden and to coordinate with other agencies working with American Indian and Alaska Native tribes and tribal organizations offered through such statutory structures as P.L. 102-477. While the current efforts of the DOI and Department of Education to coordinate about Indian education are important steps, the 477 mechanism allows tribes and tribal organizations to combine sources of funding to best serve our people.

### **1. Maintain and Increase Flexibility Under the Alaska Native Education Equity Act**

With the exception of limited Johnson O'Malley funding, there is no Bureau of Indian Education funding in Alaska. However, federal funds from the U.S. Department of Education support Alaska Native education through the Alaska Native Education Program (ANEP), also known as the Alaska Native Education Equity Act. These funds, alone, provide critical resources for creative solutions to the problems of Alaska Native student performance. Funds go to school districts, tribes and tribal organizations across the state, and to the University of Alaska, to assist with individual and systemic change. For example, CITC's education pipelines through the Partners for Success program is an innovative and comprehensive program dedicated to growing college and career-ready graduates from kindergarten through twelfth grade. As is clear from the research, in order for our at-risk students to succeed, intervention must occur early, both within and outside the classroom, and continue throughout the school years with both academic and other wrap-around services.

Efforts to reform the existing educational system in Alaska are not working, and graduation rates for Alaska Native/American Indian (AN/AI) students are discouraging:

- During the 2006–2007 school year, AN/AI students in Anchorage had the lowest graduation rate of all No Child Left Behind disaggregated subcategories at 42.72 percent.
- In 2007–2008, AN/AI Anchorage students' graduation rates dropped to 33.26 percent—a decrease of more than 22 percent.
- In 2008–2009, their graduation rate increased again to 48 percent, while the overall graduation rate for the Anchorage School District reached 70 percent.
- In-migrating students become lost in schools that are often larger than their entire home village.
- Academic success is hampered by a high level of homelessness and family instability among Alaska Native students, who move to Anchorage from the village to stay with relatives.

Due to Alaska's historical idiosyncrasies, for the past 25 years the State of Alaska has been responsible for Alaska Native education. Given the challenges of teaching in small, extremely remote villages accessible only by boat or airplane as well as in the larger communities, Native children have been severely neglected and the result has been the shocking disparities noted above. Recently, the State has failed to insure that each school district's curriculum is aligned to state standards, as well as other limitations including inadequate consideration of pre-K and other intensive early learning initiatives, not addressing the specific strengths and weaknesses of each chronically underperforming district and a failure to address high teacher turnover and teacher inexperience.

In short, the lack of active federal oversight, involvement and funding for Alaska Native education has produced dire results for Alaska Native children and young adults. Alaska Native students have indeed been left behind by NCLB.

## **2. Use the Indian Self-Determination and Education Assistance Act Definition of "Tribe"**

The complex array of tribes, tribal organizations and other entities that provide services to Alaska Native and American Indian people across the country are appropriately reflected in the ISDEAA, 25 U.S.C. 450b. Because of the unique Alaska landscape, federal programming and funding operates via several channels: tribes at the village and hub level, regional non-profit tribal organizations, and often through state contracts with tribes or regional tribal organizations. As a result, tribes and tribal organizations in Alaska have implemented federal Indian programs for over thirty years. There are over 40 statutes and regulations that use this definition, and thus ensure that services can be provided to Alaska Native people through all of the vehicles available, both federally recognized tribes and tribal organizations such as regional non-profit organizations. For example, CITC supports the recommendations bring Tribal Education Agencies on a par with state and local education agencies, so long as the ISDEAA definition of tribe is applied to the provision.

## **3. There Is no Need to Expand ANEP to Include School Districts and Charter Schools, as They Already Receive Funding From the Department of Education**

The Blueprint for Education recommends expanding ANEP eligibility to school districts and charter schools for the few federal dollars that are expressly directed Alaska Native student education. As several others have testified, tribal involvement in reaching solutions for Native students is critical to the success of programs for Native students; therefore, CITC supports continuing to require linking the funds with required partnerships with tribes and tribal organizations.

## **4. Academic and Case Management Must Be High Priorities for Native Education Funding**

Combating the disparate achievement of Native students can only be achieved through both focus on the academic achievement and the case management of attendant issues that face Native students. CITC's experience has shown that a different pedagogy as well as wrap around services are both key to improving grades and graduation rates. Most importantly, this intervention needs to start early and remain consistent throughout the K–12 years. For high school students without stable home lives, or who are aging out of foster care, attendant case management and services are essential to success. For this reason, CITC is taking the Partners for Success program to the next level, planning a stable, dormitory-style program that will coordinate with its school-within-a-school program at the local high school.

**5. ESEA Should Remove the 5 Percent Cap on Administrative/Indirect Costs**

It is both unrealistic and unhealthy for administrative costs to be limited to 5 percent; well-run programs need adequate resources to maintain, improve and grow. Tribes and tribal organizations have negotiated indirect rates with their cognizant federal agency (usually BIA or IHS), and other federal agencies should honor that administrative rate when contracting for services.

**6. ESEA Should Lower the 50 Percent Match Requirement and Allow Non-Federal Public Funds to Be Used as Match**

CITC understands the importance of leveraging dollars and encouraging private and public support for education nationally. However, otherwise eligible and available programs are often excluded by the heavy burden of the match requirement, thus limiting flexibility and lowering local capacity for initiating necessary innovation.

*CITC Program Opportunities—Tribal/Public School Partnership*

The needs of our Native community grow every day due to the current economy and the persistent disparity in educational achievement. On behalf of Cook Inlet Tribal Council and the community we serve, I urge this Committee to expand funding for Indian education, and in particular the Alaska Native Equity Act, so that Alaska Native children can experience the quality of education they deserve. For example, continuing the ability to leverage funding on innovative demonstration projects, such as the CITC Partners for Success, is essential to sustaining success at the local, state and national level. It is of paramount importance that the re-write of the Elementary and Secondary Education Act maintain and expand the flexibility and opportunities for these unique tribal, state and federal partnerships that make possible real change and achievement for Alaska Native students, promoting effective schools, comprehensive services and family supports. It is now, at this critical juncture, as Congress sets a new course for American education, that we ensure that Alaska Native students—who have been left behind for so long—truly have the opportunity to succeed. We know what needs to be done, and we have proven strategies that require your support. We ask for the partnership and resolve of Congress, to work with us to close the persistent achievement gap for Alaska Native students, and allow our young people—our future generation of adults—to fulfill their unlimited potential.



## PREPARED STATEMENT OF THE MONTANA INDIAN EDUCATION ASSOCIATION

The Montana Indian Education Association is organized as a statewide non-profit organization to represent and advocate for Indian Education. We are in our 29<sup>th</sup> year of operation in Montana and thank you for this opportunity to provide testimony on No Child Left Behind.

We believe that American Indian students must have the opportunity to succeed in new economies and the global market place. This cannot be accomplished without equity in educational achievement for American Indian students. Education is the “great equalizer” and is a cornerstone for success. When Indian students succeed in our schools, our tribal communities are strengthened and our respective states are strengthened. Regardless of who we are or where we come from, we all want our children to succeed in school and have a better quality of life than we do, but this is not happening for many American Indian families and American Indian children are being left behind.

We often reflect back on the Meriam Report of 1928 and the Kennedy Subcommittee Report of 1969 in Indian education issues, but it was interesting to look at a quote of 42 years ago made by President Johnson in his 1968 Message to the Congress on Goals and Programs for the American Indian:

*There are 600,000 Indians in American today...the most striking fact about the American Indians today is their tragic plight....The unemployment rate among Indians is nearly 40%...Fifty percent of Indian school children, double the national average dropout before completing high school...Indian literacy rates are among the lowest in the nation; the rates of sickness and poverty are among the highest... No enlightened Nation, no responsible government, no progressive people can sit idly by and permit this shocking situation to continue.”*

We certainly agreed then in 1968 and we are still facing many of the same challenges 42 years later in 2010. It is time to find solutions!

**We must remember that 90% of American Indian students in the United States attend Public Schools and in Montana that percentage is approximately 97%.** Therefore, the federal programs that are made available to public schools in Montana as well as other states, are of utmost importance to providing quality educational services for American Indian students. Of course, it is important to include the BIE schools, but the major emphasis in targeting programs to strengthen Indian Education needs to be public education – this is where the Indian students are.

**Also, we must include all Indian students in our efforts, those that attend schools both on reservation and off reservation.** Urban Indian students face many of the same achievement issues as those on reservation and a little more than half of Indian students live in urban communities.

Following are recommendations we would ask your support and advocacy in your work on No Child Left Behind:

1. **It is important that American Indian students be reflected in the data provided through ESEA assessment strategies. Indian student achievement was not a priority until the accountability and disaggregation of data was required under NCLB.**

The accountability of NCLB has had many vocal opponents, but this accountability has given American Indian students visibility in our schools. It has created a new awareness of at risk students and the achievement gap and some funding has been made available here in Montana because of the growing concerns for at risk students. We encourage accountability that provides this continued “visibility” of American Indian student achievement.

Our state and local educational leadership needs good accurate data to make decisions on funding and resources. We need to ensure that we have good data to support our work on Indian education in our respective states, especially in our states that are facing financial reductions. We must be able to clearly demonstrate that funding is needed for academic support services for Indian students.

2. **Eliminating the achievement gap between American Indian students and their non-Indian peers must be a priority. Adequate resources are needed by our schools to insure that American Indian students are not left behind academically. We recommend a minimum of \$200 per Indian student to go to schools that have a demonstrated achievement gap of at least 10% between Indian and white students to develop educational services designed to close the achievement gap for American Indian students.**

*(Note: The \$200.00 comes from Montana's program called Closing the Achievement gap for American Indian students which is state funded at \$200.00 per Indian student in all the state's public schools).*

Estimated costs at \$200.00 per Indian student:

644,000 Indian students in public schools x \$200.....\$1,288,000  
 48,500 Indian students in BIE schools x \$200.....\$ 97,000

Data from Montana as an example of the Gap:

- 6.2% of Montana's population is Indian – (16,502 students - 11.4% of the states K-12 enrollment is Indian)
- 36 of 37 schools in Montana identified as being in restructuring phase of NCLB, all are schools with 50-100% American Indian populations.
- 2007-08 CRT Statewide Proficiency Scores (Grades 3-8 & 10 combined)

	<u>Reading</u>	<u>Math</u>	<u>Science</u>
American Indian student state average	58	36	25
White student state average	84	67	58

3. **Increasing the high school completion for American Indians must also be a priority. The current rate of 50%, as reported by Diplomas Count 2009, is unacceptable. We recommend the inclusion of a new federal grant program for high schools with an enrollment of at least 25 Indian students in high school that have a documented high school completion rate of 75% or less for its American Indian students (this completion rate would be based on a 4-year cohort Freshman –Senior). Included in this program would be options for schools to include preparation and study for the high school equivalency as a part of the programs.**

**We recommend a \$20.0 million grant program to fund approximately 100 schools both on and off reservation, to include a strong assessment component to develop best practices at the conclusion of a 3-year funding cycle to share. If successful, this funding would be expanded and best practices could be implemented in other schools utilizing this program as well as state/local funding.**

The National Indian Education Association is working on a project called “Native High School Policy Initiative” in collaboration Campaign for High School Equity to strengthen high school education for native Students. NIEA’s website is [www.niea.org](http://www.niea.org)

The economic impact of completing high school both for the student and his or her family as well as for our states and nation is well documented, so allocating adequate resources when a child is in school, makes sense. It makes sense to support programs that will help students graduate from high school or to secure their high school equivalency.

The High Cost of High School Dropouts: What the Nation Pays for Inadequate High Schools, Alliance for Excellent Education, Issues Brief, August 2009

Most high school dropouts see the result of their decision to leave school very clearly in the slimness of their wallets. The average annual income for a high school dropout in 2005 was \$17,299, compared to \$26,933 for a high school graduate, a difference of \$9,634.

If the nation’s secondary schools improved sufficiently to graduate all of their students, rather than the 69% of students who currently graduate annually, the payoff would be significant. For instance, if the students who dropped out of the Class of 2009 had graduated, the nation’s economy would have benefited from nearly \$335 billion in additional income over the course of their lifetimes.

Data: Per Diplomas Count 2009, see Page 28 [www.edweek.org/go/dc09](http://www.edweek.org/go/dc09), "Graduation in the United States, Recent Gains at Risk of Eroding:" Graduation Rates for Class of 2006

	American Indian	Rank of these States (1-highest)	White
US (all)	50.0%		76.1%
Alaska	45.2%	8	72.4%
Arizona	45.6%	7	74.0%
California	49.6%	3	77.1%
Colorado	46.3%	6	80.1%
Hawaii	57.6%	2	59.0%
Maine	40.5%	9	76.1%
Minnesota	39.8%	11	84.2%
Montana	48.3%	5	79.5%
New Mexico	49.5%	4	67.8%
North Dakota	39.9%	10	83.7%
Oklahoma	64.1%	1	73.2%
Oregon	39.1%	12	73.1%
South Dakota	33.5%	14	81.7%
Washington	37.9%	13	66.8%
Wyoming	25.8%	15	76.7%

**4. Educational instruction should include content about American Indian knowledge/culture. We would like to offer the model of Indian Education for All that has been developed by the state of Montana since 2005. There has been a great deal of work done by the state of Montana and the public schools in Montana to implement what is known as "Indian Education for All." We have constitutional language that other states do not have to support this, but we also have state statutes, state accreditation standards, and state policy as well as local school policies that could be used by other states and schools.**

With funding provided by the State of Montana since 2005 to both the state educational organization and to all public schools in Montana, there have been major efforts to integrate into all curricula areas content knowledge about American Indians and Montana Indians. Cultural programs cannot be "stand alone" programs in schools as they are often ignored and are sometimes the first to go in times of budget cuts. With the integration of cultural content throughout the curriculum the instruction is more likely to be sustained. More information is available at the Office of Public Instruction's website [www.opi.mt](http://www.opi.mt).

Funding could be a combination of both federal and state to help establish similar models throughout public schools in America. Costs would be less as states could utilize the Montana Model that could be replicated, which would be a savings.

**5. On-going research is needed to support policy decisions by local and state lawmakers on what is working in terms of closing the achievement gap and increasing the high school graduation rate for American Indian students in grades K-12. We recommend funding for research on these issues be made available.**

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PREPARED STATEMENT OF DR. ROGER BORDEAUX, SUPERINTENDENT, UNITED AUBURN INDIAN COMMUNITY SCHOOL; EXECUTIVE DIRECTOR, ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS INC. (ACTS)

Chairman Dorgan, Ranking Member Barrasso, and members of the Senate Indian Affairs Committee, my name is Dr. Roger Bordeaux; I serve as the Superintendent of the United Auburn Indian Community School in Auburn, California and the Executive Director of the Association of Community Tribal Schools Inc. (ACTS). I have been a Superintendent for 20 years and the Executive Director for 23 years.

First I would like to thank the Chair and the Committee for this opportunity to submit testimony for the record. The tribal school movement started in 1966 with Rough Rock Demonstration School. Now there are over 28,000 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. ACTS represents a significant number of the over 124 tribally controlled elementary and secondary schools. The schools have over 27,000 tribal children enrolled in k-12 programs. ACTS's 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."

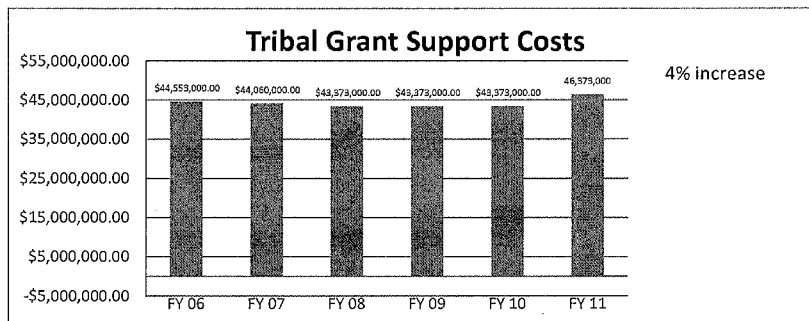
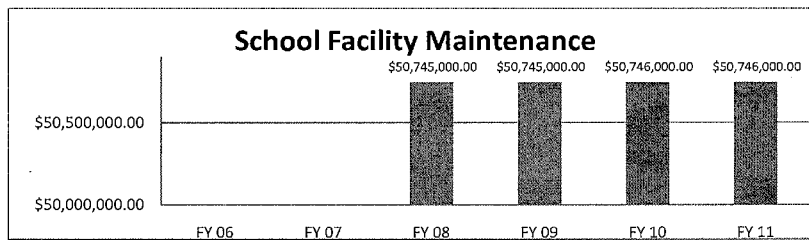
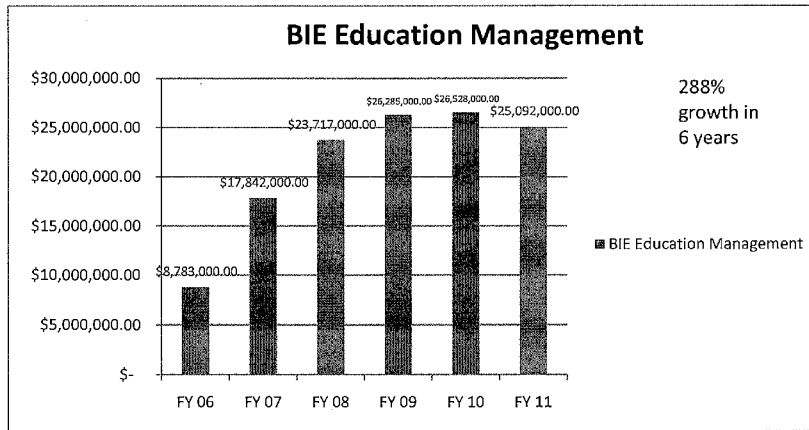
However, over the last six years, the budget for the Bureau of Indian Education has bloated while the appropriations to school based programs have remained relatively stagnant. Since FY 2006, the BIE Education management has grown 288 percent, and no, that is not a type-over. During that time: Tribal Grant Support Costs grew 4 percent; School Facility Operations, 6 percent; ISEP Formula, 11 percent; Student Transport, 20 percent; and from 2008 School Facility Maintenance, less than 1 percent. My question would be: where is the money that the BIE is getting going if not to the students and the schools?

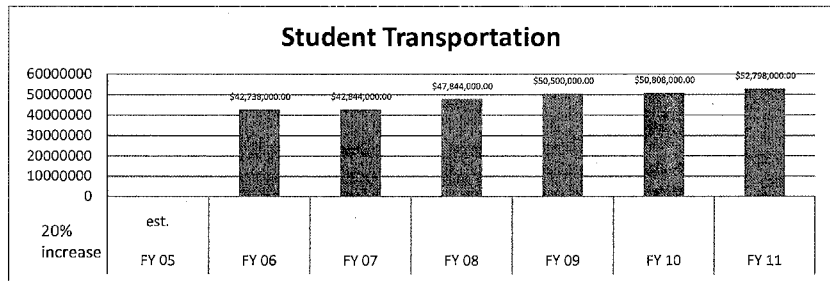
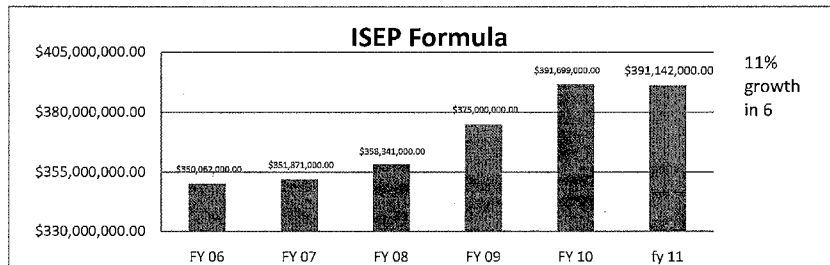
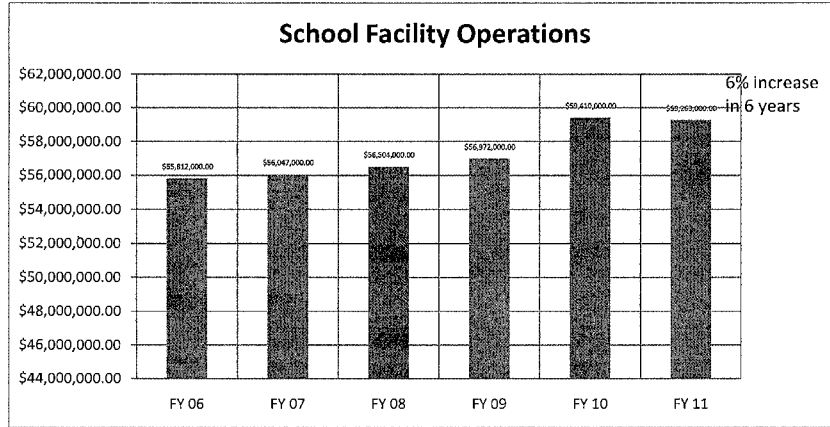
This *mismanagement* of funding illustrates the need for more local and tribal control that can respond to student and community needs rather than more bureaucracy. As part of the House Education and Labor Committee's request for public comments going into the reauthorization of No Child Left Behind, I have submitted legislative language that will give more control at the local level where it is needed, which I have passed on to your staff. Also in that language, are changes to the adequate yearly progress (AYP) system for Native American students to reflect the unique and individual needs of our children. As you are no doubt aware, currently under the law tribes can already create their own AYP, but it has been documented by the GAO that the process to do so is unclear and without proper guidelines. Additionally, in some cases the BIE has worked with states to create standards without receiving tribal input, and has not followed established guidelines for consulting with tribes. This has led to few tribes being able to take advantage of the existing provisions in NCLB that allow the creation of their own AYP. That so few schools have the ability to take advantage of this creates a situation where in much of the country, Native students are participating in schools where their tribal governments have no say at all.

Finally, starting in 1996 there was a moratorium placed on new schools entering the Bureau school system or from expanding an already existing program. This was done at the request of the Bureau so that they could "clear their backlog". Fourteen years later, that backlog still exists and schools are handcuffed into existing programs that don't reflect the reality of the current situation. The only schools and programs that have had a chance to enter the system or add ISEP funding in this time have been schools that have been politically favored by the BIA or BIE, rather than schools that have an educational need.

I thank you again for this opportunity to submit testimony and I look forward to working with each of the members of the Committee to find a comprehensive solution to the needs that face our students. I can tell you with absolute certainty that no one is willing to work harder for our children's future than our tribal members and governments and we look forward to proving this through our actions. Our students are among the best and brightest in the country and we all need to make sure that they have the same opportunities to succeed that the rest of the country has.

**Attachments**





PREPARED STATEMENT OF RYAN WILSON, OGLALA LAKOTA; PRESIDENT, NATIONAL ALLIANCE TO SAVE NATIVE LANGUAGES

Mr. Chairman and Members of the Committee: I am Ryan Wilson, an enrolled member of the Oglala Sioux Tribe and President of the National Alliance to Save Native Languages (NASNL). On behalf of the Alliance, I would like to thank you for the opportunity to submit written testimony to the Senate Committee on Indian Affairs on the importance of the Elementary and Secondary Education Act reauthorization. Specifically, I would like to address the importance of Native languages, culturally based education and their vital importance to the academic success of Native learners.

**About the National Alliance.** The National Alliance to Save Native Languages was founded in October of 2006 for the exclusive purpose of promoting the revitalization of Native languages. Creation of the Alliance was precipitated by broad-based concern in Indian country that the rapid decline in Native language acquisition by Native children and youth was hurting our Native learners academically, culturally, socially and physically.

The National Alliance to Save Native Languages is a coalition of stakeholders who share a desire to see the revitalization of Native languages. The Alliance is comprised of tribes, schools, individuals, regional and national organizations. It is the only National Indian organization dedicated solely to the recovery of Native languages.

**Indian Education.** Funding for Indian education and Department of Defense schools is the sole responsibility of the Federal Government while public education is a combination of state and federal resources. Local Education Agencies (LEAs) and their surrounding communities have the ability to pass bond initiatives in order to build or repair local school facilities. Tribal and Bureau of Indian Affairs (BIA/BIE schools), on the other hand, must rely on the federal government to ensure their academic and construction needs are being met. The extent to which the federal government has assumed this responsibility can be exemplified in the backlog of construction and repair / renovation needs which exceeds \$1 billion. The area of school construction and repair remains problematic even more troubling is the fact that Native learners continue to rank at, or near, the bottom of every educational indicator. Both the Department of Interior and the Department of Education serve as trustees in executing the federal governments trust relationship in Indian Education. Native learners are the beneficiaries of this trust relationship. By all measurable trust standards the federal government has failed in its trust duty to Indian education. The reauthorization of the ESEA provides an opportunity to improve drastically the federal governments investment and coordination of Indian education programs.

**Reauthorization of the Elementary and Secondary Education Act** The Elementary and Secondary Education Act (ESEA) of 1965 is due for reauthorization. The Alliance has developed recommendations for consideration by the authorizing committee(s), the Department of Education and Indian Country. NIEA and NCAI along with numerous other organizations have adopted in principle the recommendations of the Alliance concerning Native Language provisions.

Empirical foundations of educational research have traditionally experienced challenges in measuring cognitive growth in Native learners. Indian educators have long expressed apprehension towards high stakes testing or singular growth models as well as packaged curriculum. Several days ago the Institute of Educational Sciences released its Native American data from the National Assessment of Educational Progress from a 2005-2009 study. The results have sent shock waves throughout Indian Country. Despite the loadable goals of NCLB, packaged curriculum such as "Reads First" and all of the punitive sanctions for underperforming schools test scores in math and reading for fourth and eighth grade students has remained stagnate. The published results also indicated that 43% of eighth grade students had no plans on attending college and that one in five Native students intended on joining the military. Combined with epidemic dropout rates and the continued mass graduation of Native learners who do not possess the



academic skills to compete in mainstream universities the only conclusion any law maker, parent, educator, tribal leader can make is that No Child Left Behind has completely left Indian students behind. NCLB however cannot be held singularly culpable, it is symptomatic of a deeper malice within the federal governments' approach to Indian education. Beneficiaries' (Native students) of the federal trust responsibility for Indian education have been subjected to constant policy shifts within each changing administration and Congress. The cumulative effect has been inconsistent funding, lack of leadership in key positions and incoherent promulgation of rules, policies and initiatives surrounding Indian education. NCLB itself is antithetical to President Bush's Executive Order on Indian Education, the Indian Education Act, PL 638, PL 561, and PI 297. The ESEA reauthorization will allow a unique opportunity to address this incongruence and align crucial Indian education statutes with the overall ESEA.

#### **Recommendations Surrounding Native Languages in the ESEA Reauthorization**

##### **PROPOSED NEW SECTION TO TITLE VII, ESEAFOR EARLY CHILDHOOD EDUCATION (Proposed Part D)**

Early Childhood Education, a priority of President Obama, is also a primary focus of the Native American community. There are two elements in this priority that are of particular interest to Native parents and educators. The first element has to do with saving and continuing to build the Native language as a way of strengthening a person's cultural identity (as part of a strategy to help foster general well-being of Native students) and second, to use the development of languages (both indigenous and English) as a way of improving the academic the academic achievement levels of Native American students (Demmert & Towner 2003). There is a third element that should foster a large base of U.S. support, saving the indigenous languages of the Americas (found in no other part of the world) as a national treasure.

We propose a new section to the Indian Education Act known as Title VII of the ESEA that would establish a Part D for funding for early childhood education programs for American Indians, Alaska Natives and Native Hawaiians. A formula grant that allowed \$5,000 per student , for students in existing early childhood educational programs and communities that want to launch programs that focus on a tribe's or Native community's indigenous language in the context of a culturally –based learning environment. The focus on indigenous language development, improved academic performance, social & cultural development, and general well-being of young Native children (Demmert &Towner, 2003).

Current legislation supporting the development of indigenous languages used by American Indians, Native Alaskans, and Hawaiian Natives are short-term opportunities usually limited from 1 to 3 years duration (Demmert, 2008). Once a project is terminated under current legislation it becomes a difficult task to find alternative funding to continue such programs. A formula grant program for Native American pre-schools (early childhood education programs) that focused on language development and that strengthened cultural and other social, spiritual, cultural, and physical environments would set the stage for changing the current status of Native students as having the worst statistics on education (DeVoe, Darling-Churchill, et al., 2008) and health (DHHS, 2003; UIHI, 2008; Naimi, et al., 2008) related information to higher levels of academic accomplishments and general well-being. Current legislation for planning, development, and implementation of language and culturally-based early childhood education programs could continue to fund start-up programs for planning and development. Once these projects had established themselves they could qualify for and be funded under the proposed new Part D to the Current Title VII of the No Child Left Behind Act.

#### **Native Languages and Culturally Based Education**

The Alliance is enthusiastically supportive of the Administrations commitment in the ESEA Blue Print for Immersion schools and Native Language instruction. We are equally impressed with the following comments

recently offered by Department of Education General Counsel Charlie Rose “*Native American Language and Cultural preservation has to be a priority in the ESEA reauthorization*”. Here are some of our recommendations for making real the promise of Native language use in Indian education.

The ESEA should reflect the policy mandates of the Native American Languages Act (NALA), which encourages Native language as a medium of instruction to increase overall Native student achievement.

- Authorize a formula grant program in Title VII to support immersion schools, including tribally operated, private, and Bureau funded schools. Approximately 5 million annually should be appropriated for formula grants to existing immersion schools that operate through traditional and non traditional school systems. This would include public, private, Bureau funded, charter, non-profit, tribally operated and other tribally supported school systems.
- Establish a Part D in Title VII that authorizes early childhood immersion infant-kindergarten learning centers.
- Support as Pilot Projects Immersion school initiatives in Bureau funded school systems. These are either full school initiatives or schools within schools that are advancing immersion efforts. The Alliance has identified 7 Bureau funded sites that are either immersion schools now or are attempting to become immersion schools. Public Law 65-95 the Snyder Act of 1921, Public Law 93-638 Indian Self Determination and Education Assistance Act, Public Law 95-561 Education Amendments Act of 1978 and Public Law 100-297 Tribally Controlled Schools Act of 1988 give tribes and Indian school boards broad discretion in developing heritage language instruction opportunities. NCLB has had a corrosive effect on these laws and the application of meaningful tribal control of Indian education.
- Title III amendments should include provisions and funding to support Native language instruction and remove barriers to full fledged instruction in Native languages. Should also acknowledge that most Native learners enter school with limited English proficiency even if they are English only speakers.
- Title I should (1) include schools using a Native language as the medium of instruction parallel to those of Puerto Rico; (2) Allow for alternative measurement assessments, AYP standards, and teacher qualifications relative to the teaching of Native American students based in unique linguistic, cultural, and political status considerations. Include federal assistance and recognition of meeting tribal AYP standards as an alternative to meeting state AYP standards for schools enrolling Native American students. ]; (3) allow Native languages teachers to achieve “highly qualified teacher” status (Sec. 1119); (4) accommodate limited Native language proficient students in Native language medium schools (Sec. 1111)) parallel to LEP accommodations.
- Restore Culturally Based Education Technical Assistance and Resource Centers, technical assistance centers that would provide regional support of Title VII programs, advance Culturally Based Education best practices, and promote teaching strategies that integrate Native traditional and cultural concepts into curricula.
- Establish support for Tribal Colleges and Universities & Hawaiian Language College, School of Hawaiian Knowledge, and other parallel Native American institutions of higher learning to develop Native American language resources and skills for the family and community members that allows further support to the learning and using Native American languages in local schools parallel to the support for district language needs of young immigrant school community members.

## Appendix

**A Review of the Research Literature Prepared by the Late Dr. William Demmert**

More recently the U.S. Accounting Office (GAO) and the U.S. Department of Education have released a number of reports that show Native American students are not doing as well as other students academically in most, if not all, academic subject areas (GAO, 2001; Rampey & Taslima, 2006). Information on Native students leaving school early shows a high number of drop-outs with a 50 percent graduation rate in 2003-2004. Further, only 13.3 percent of Native Americans have an undergraduate college degree compared to a national average of 24.4 percent (DeVoe, Darling-Churchill, & Snyder, 2008). These statistics are presented to emphasize that the current systems of Federal and State schools serving Native American students have not developed programs that meet the current or future needs of the Native American communities they serve (Tharp, 2006).

It will be about 28 years this coming June, 2009 that the Indian Education Act of 1972 (now Title VII of NCLB) was passed and just over 17 years since the Indian Nations At Risk report was released. In reviewing these, as well as earlier reports, we find a change in focus with the addition of indigenous language and culturally-based education as a growing priority among many Tribal and Native American community groups.<sup>1</sup> The discussion has changed from "Indian control of budgets and programs"<sup>2</sup> to improved academic performance and the general well-being of Native American students through indigenous language learning and a culturally-based education curriculum.<sup>3</sup> In a comprehensive review of the research literature regarding the education of Native American students (Demmert, 2001; Demmert & Towner, 2003), and additional reviews of the literature concerning influences of culture (Bruner, 1966; Gardner, 1995; Vygotsky, 1944), cognitive development (Mechelli, 2004; Pugh et al., 2006); and the practical experiences of a number of schools that have a record of success (Yap, 2005) we have developed a better understanding of the connections between cognitive development (including language), cultural influences, practical experiences, the environments in which a person grows and develops, to a student's academic skills, and general well being (Demmert, 2005).

The most recent information from the U.S. Department of Education obtained from the Early Childhood Longitudinal Study tells us that young Native American children are as physically and cognitively well-developed as all other children. The report also tells us that by age two vocabulary and language skills tend to be lower than other children and that by age four their ability to recognize letters by their shapes or sounds, and their ability to properly identify numbers and shapes are significantly below other children (DeVoe, Darling-Churchill, & Snyder, 2008).

According to findings from the National Institute of Child Health and Human Development (NICHD, 2004), two of the most accurate predictors of a young person's ability to succeed in school are reading readiness

<sup>1</sup> See Attachment I for the original Joint Policy Statement signed by a consortium of Indian and other Native American organizations regarding the establishment of a national priority for the development and use of indigenous languages and the creation of schools that included a "culturally-based" education curriculum.

<sup>2</sup> This is based on the major focus of discussions among Native American educators in the late 1960's and 1970s, my personal experiences as a teacher, school administrator, and my experiences in the U.S. Senate while working on the development of the Indian Education Act of 1972 (P.L. 92-318).

<sup>3</sup> See Attachment II, the NIEA platform for the Obama administration and the policy statement regarding Native language and culturally-based education programs of all of the National Native education organizations.

(phonemic awareness, vocabulary, alphabet naming, and listening comprehension) and the two dimensions of a youngster's social behavior:<sup>4</sup>

1. Interpersonal skills (the quality of social relationships with peers), and
2. Work-related social skills (a child's degree of independence, responsibility, and self-control) at 54 months of age (5 ½ years of age).

The NICHD report identifies three environmental influences linked to levels of academic performance among young children. These influences include the following:

1. *High quality parenting*: the degree to which a youngster is provided with an enriched warm and responsive learning environment (which includes appropriate control and discipline over children, each closely associated with both higher first grade reading and mathematics skills).
2. *High quality child-care environments*: stimulating activity and nurturing as reflected in high quality parenting.
3. *High quality first-grade classrooms*: with a focus on literacy instruction, evaluative feedback, instructional conversation, and encouraging child responsibilities.

From the research information provided above we can be fairly confident that early learning environments, the development of language skills as well as age appropriate social skills and behavior, are necessary requisites for young children if they are to do well academically in formal school settings. In addition, the limited but growing research data base mentioned earlier on culturally-based education; and additional information on kinesthetic activity; on environmental influences and understanding and supporting the cultural make-up of children, tells us that these are all critical factors influencing the development and motivation of young children; that all of these factors influence a person's future academic, cognitive, and general development. Finally, academic progress of students must be monitored with assessment tools that are linguistically and culturally appropriate and can be developed in the various Indigenous languages for locally developed learning priorities.<sup>5</sup>

<sup>4</sup> We have found this to be consistent with our own practical experiences in working with Native students when developing their indigenous language skills.

<sup>5</sup> The development of curriculum-based education assessment tools, in the language of instruction have been developed for Hawaiian, Yupik, Navajo, and Ojibwe languages and meet high levels of validity and reliability. These projects have formed a research partnership with Professor Demmert of Western Washington University; the Northwest Regional Education Laboratory; the Center for Research on Education Diversity, and Excellence; the Haskins Institute; and the Kamehameha Schools.

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Attachment I: Joint Policy Statement

April 24, 2008

To Whom It May Concern:

The National Indian Education Association (NIEA), the National Indian School Board Association (NISBA), the Native Hawaiian Education Council (NHEC), the Alaska Federation of Natives (AFN), the Tribal Education Departments National Assembly (TEDNA), and the American Indian Higher Education Consortium (AIHEC), herein referred to as the *Consortium of Native Organizations* (or *Consortium*), believe that in order to honor and maintain Native America's unique heritage, promote cognitive development, maintain and develop mature healthy young men and women, the role of cultural influences on learning and general well-being, must be recognized and accommodated.

The *Consortium of Native Organizations'* decision to present a joint policy regarding indigenous languages and culturally-based education programs for American Indian, Alaska Native and Native Hawaiian students is based on the two following principles: the social, cultural, psychological, and intellectual well being of Native children will be enhanced by these programs; and indigenous languages and cultures are unique to the Americas and Hawaii and are an important part of our country's national identity. The following statement explains the rationale behind the Consortium position:

*"Issues of culture, language, cognition, community, and socialization are central to learning: primary socialization of infants and young children (as well as all later socialization into new communities of practice) is accomplished through joint, meaningful activity with guidance by more accomplished participants, principally through language exchanges or other semiotic processes. Language vocabularies and routines acquired by learners through these processes are the elements that account for community, linguistic, and cultural continuity, and are the primary cognitive tools for individual and group problem solving and adaptations (e.g., culturally-based secondary socialization processes like schooling can be facilitated by activating the learners' cognitive and linguistic tools laid down by community socialization). Primary to this understanding is that activity (primarily joint activity) is the setting in which language and cognition are developed, and that patterns of activity have a cultural basis."*<sup>6</sup>

The *Consortium of Native Organizations* position that language and culture play a significant role in influencing academic performance and general well-being of Native peoples was first reflected in the *Meriam Report of 1928* and reinforced in each of the following: (1) the U.S. Senate Report, *Indian Education: A National Tragedy, A National Challenge* (1969); (2) the *Indian Education Act of 1972* (Title VII, NCLB); (3) in the *Indian Nations At*

<sup>6</sup> For a more comprehensive explanation of this theory see Demmert & Towner (2003). A review of the research literature on the influences of culturally based education on the academic performance of native american students, Northwest Regional Educational Laboratory, Portland Oregon.

*Risk Report* (1991); (4) in the *White House Conference on Indian Education* (1992); (5) in Federal policy through the *Native American Languages Act* (1990); and (6) through two Presidential Executive Orders (Clinton, 1998 and Bush, 2004). This Consortium policy statement has also been reinforced legislatively and is currently promoted by policy in the states such as Hawaii, Minnesota, Montana, Washington, South Dakota, and New Mexico.

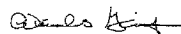
This broad based federal and limited state support, for both policy and programs, must be carried out and implemented by all federally supported schools serving Indian and Native communities, as well as by all State Public Schools serving American Indian, Alaska Native and Native Hawaiian students seeking the benefits of indigenous language development and culturally based education. Our interests in achieving high levels of academic performance require this support, and the requirements of a multi-cultural and multi-lingual world demand it. As the Original Peoples of the Americas and Hawaiian Islands, we are firm in our position that this policy be honored and implemented in all schools serving Native students where the students and parents request such programs.

We firmly believe that as the first and original peoples of these lands and the United States, we have a birthright for continued use and development of our various indigenous languages, cultures, and mores for our general well-being and identity as American Indian, Alaska Native and Native Hawaiian. In addition, we believe that there are significant cognitive, psychological, and academic benefits represented in this *Consortium of Native Organizations* priority.



Nāmaka Rawlins, Chair

Native Hawaiian Education Council (NHEC)



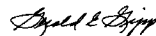
Willard Sakiestewa Gilbert, Ed.D., President

National Indian Education Association (NIEA)



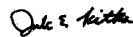
Carmen Cornelius Taylor, Executive Director.

National Indian School Board Association (NISBA)



Gerald E. Gipp Ph.D., Executive Director

American Indian Higher Education Consortium (AIHEC)



Julia Kitka, President

Alaska Federation of Natives, Inc. (AFN)



Christy Van Buren, President Tribal Education

Departments National Assembly (TEDNA)



## PREPARED STATEMENT OF DR. SANDRA FOX, OGLALA LAKOTA

I have been a critic of the Bureau of Indian Education's use of the Reading First direct instruction approach for reading. I am one of few American Indians with a doctorate in curriculum and instruction with an emphasis in the teaching of reading. I was glad to hear Senator Dorgan say that One-Size-Fits-All programs don't work and to hear Senator Tester say that the NCLB approach did not teach children to think. I begin my comments with a review of Reading First at the national level.

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**READING FIRST AT THE NATIONAL LEVEL**


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**Reading First** is a federal education program in the United States mandated under the No Child Left Behind Act and administered by the federal Department of Education. The program requires that schools funded by Reading First use "scientifically-based" reading instruction. In September 2006, an internal review by the Department of Education's Office of Inspector General found the Reading First program exhibited conflicts of interest in that some of the consultants hired by the Department of Education to train teachers and state department of education personnel also were coauthors of certain reading programs. The review also suggested the department repeatedly tried to dictate which curriculum schools must use. The U.S. Department of Education reacted to reports that some states believed that they should purchase certain reading programs with federal Reading First funds by publishing a statement for states that this was not the case and was not a requirement for federal funding. Still, the perception remained. A large-scale nationwide study of the program released in 2008 found that it does not improve students' reading comprehension, although it did improve decoding skills in some states. – Wikipedia

*Bush's Billion-Dollar a Year Reading Program Baset by Favoritism, Mismanagement* by Ben Feller, AP, Sept. 23, 2006

*Study Questions 'No Child' Act's Reading Plan* by Maria Gold, Washington Post, May 2, 2008

*Reading First Doesn't Help Pupils 'Get It'* by Kathleen Kennedy Manzo, Education Week, May 7, 2008

An investigation, conducted by the Department of Education's Inspector General, found that the Department of Education made states' funding under the federal Reading First program contingent on their using a reading curriculum developed by McGraw-Hill, Inc. or one from a short list of commercial reading programs. The report concluded that the Department of Education had stacked peer review panels, ignored federal statutes, and manipulated state and local reading curriculum selection procedures to steer grants to its favored vendors. Federal officials and contracts did not guard against conflicts of interest. *Culture of Corruption Once Again, Bush Administration Puts Cronies Ahead of Taxpayers and Schoolchildren* – Press Release, 2006

*The Education Issue* by Michael Grunwald, Washington Post, October 1, 2006

Five Years later, an accumulating mound of evidence from reports, interviews and program documents suggests that Reading First has had little to do with science or rigor. Instead, the billions have gone to what is effectively a pilot project for untested programs with friends in high places. Department officials and a small group of influential contractors have strong-armed states and local districts into adopting a small group of unproved textbooks and reading programs with almost no peer-reviewed research behind them.

*The Promise and Perils of Federal Leadership* by Shepard Barbash, Education Next, June 1, 2008  
Not only does the law require that districts use curricula that rely on “scientifically-based reading research,” it further instructs the Department of Education to assist and hold states accountable in meeting this rigorous requirement. But it leaves in place older language that prohibits the department from endorsing programs or dictating local decisions about curricula.

Press Release *Examples of Waste: An Obama administration will eliminate wasteful programs, such as:*

- Eliminating “Reading First,” originally a \$1 billion-a-year reading program that doesn’t have much impact on the reading skills of the young students it’s supposed to help

#### **READING FIRST IN THE BIE**

Even though it has been deemed ineffective and there are no more Reading First funds, the BIE uses other funding to continue the program and calls it BIE Reads and also utilizes it as the BIE’s Title I System of Support to schools.

The BIE makes schools choose from a short list of programs including the McGraw-Hill materials. All of the programs on the list follow a content-centered, direct instruction, one-size-fits-all approach based on a deficit view of children of different cultural backgrounds.

Schools that do not choose to utilize one of the mandated programs do not receive funding or system of support services. A school that requested funding to utilize another approach was told to become a charter school if they weren’t going to go along with the program. The BIE schools are also given a list of approved vendors/trainers (those that promote the philosophy of Reading First) that they are to choose from.

The BIE’s director of the Reading First program was found to be a member of a national Reading First organization. When this was found, it was reported that she was removed from being the Contracting Officer’s Representative or Contracting Officer’s Technical Representative (COR/COTR) for RF contracts.

She was allowed to be the COR/COTR for the contracts again and just recently it was reported that her contracts and selection of vendors were found to be in violation of contracting regulations. She has been removed from being the COR/COTR again. Vendors attended a training session in Portland even though they knew their contracts had been terminated and they were promised that they would be paid anyway. The contractors and participants were sent home and funds were wasted. In recent years officials in BIA/BIE were fired or downgraded for doing less than this, but nothing has happened to her.

Certain vendors get the contracts year after year and when some Indian vendors applied, the RFP’s were canceled or moved from the announcement sites. At least one of the vendors was reported to be both a trainer and evaluator of the BIE’s Reading First program. Special education teachers in BIE schools report that they are not following IEPs because students are required to be in Reading First programs whether or not they would be prescribed for students in their IEPs.

The director of the BIE’s Reading First program was preselected when she was hired to work at the Albuquerque office. The requirements for the job were written so that only she would qualify to keep an Indian candidate from getting the job.

If No Child Left Behind requires schools to utilize scientifically-research based programs, why doesn't the BIE adhere to the findings of the Department of Education's own study on Reading First which found it to be ineffective especially in regard to comprehension?

If the Department of Education has issued a statement that schools do not have to adhere to the use of certain programs and also regarding the fact that Reading First no longer exists, how can the BIE continue to require the use of certain programs and vendors?

The forcing of BIE schools to use certain programs is in opposition to federal law applying to all schools and in opposition to Tribal Self-Determination and the provisions of 100-297. Giving schools a choice from a list of programs that follow only one approach is not giving them a choice. The fact that Reading First is the BIE's system of support to schools and has never been consulted on with tribes and schools is also against law and policy. The Code of Federal Regulations states:

In carrying out its Education mission, the Assistant Secretary for Indian Affairs through the Director shall:

Assure that no new policy shall be established nor any existing policy changed or modified without consultation with affected Tribes.

Be guided in policy formulation and funding priorities, including the proposing and awarding of contracts and grants, by periodic and systematic consultation with governing bodies of Tribes.

Ensure that Indian Tribes fully exercise self-determination and control in planning, priority-setting, development, management, operation, staffing and evaluation in all aspects of the education process.

Provide for a comprehensive multicultural and multilingual educational program including the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve and maintain Indian languages, cultures and histories.

The acting BIE director supported Reading First because it produces gains on test scores for decoding, but the gains are not lasting. In general, students who make these short-term gains do not go on to become good readers. The BIA used this same approach in the 1970s. Reading is not just sounding out words. Reading First is based on the lowest form of learning - memorizing. Students are deprived of higher order skills such as comprehension and critical thinking which should start in the early years.

Under the Obama administration, information about new programs is emerging. In the Race to the Top information, the criteria include an emphasis on problem solving and critical thinking. This is opposite of Reading First practices. Why is the BIE promoting RF when the new administration is promoting something that is opposite of it and also happens to be in line with the research on teaching Indian children to read?

Further, the approach utilized by Reading First was developed in the 1970's as a way to teach minority children who were considered not as intelligent as white students. Haven't we learned more about teaching children to read since then, and why would Indian people want Indian students to be subjected to being taught as if they are animals with the snapping of fingers and responses required?

Some teachers in BIE schools are reported to like the RF program. Using it takes the responsibility off of them, they don't have to plan lessons because they just follow a script, and students learn to sound out words. BIE believes that teachers in their schools can't teach, thus the scripts. But think of what good training could have been provided to them with all the money used for RF.

Furthermore, it has been reported that teachers have been told by the non-Indian trainers that it is because of their cultural and language backgrounds that Indian children have a hard time learning to read and thus need special education approaches. How can this be tolerated in the Bureau of Indian Education? No wonder there is little attention being given to providing culturally relevant instruction.

And why is the BIE promoting one approach in the early grades that is of the exact opposite philosophy of the exemplary early childhood FACE program? **And schools must have real choice in the matter.**

An article entitled *The Promise and Perils of Federal Leadership* writing about the BIE included the following:

(Lynn Ann) Barbero has two advantages. First, while state laws often prohibit SEAs from encroaching on district autonomy, because Barbero's office in effect is a district, she has been able to intervene directly in schools where the core curriculum was not working. The new director of BIE, Kevin Skenandore, has decided to use \$2.3 million from a congressional Education-enhancement appropriation to expand Reading First to all Bureau schools serving K-3 students.

An article about Reading First entitled *Complaints filed against BIE Handling of Reading First* stated:

Two Native American education consultants have complained to federal investigators that the Bureau of Indian Affairs failed to follow "Indian preference" guidelines in federal Reading First contracts and that non-Native American consultants and those with little experience working in BIA schools earned the lion's share of the contracts for working with participating schools. Under the federal Indian Self-Determination and Education Assistance Act, contracts or subcontracts with American Indian organizations or others that benefit Indians require "that, to the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of such contracts" be given to Indian organizations and Indian-owned businesses. The requirement applies to many BIA programs, but it was not included in the request for proposals for Reading First. Contractors applying for grant money, however, are required to hire Native American subcontractors whenever possible. Several unsuccessful attempts have been made in legislative proposals in Congress and in court cases to suspend the requirement in the past few years, and observers say the BIA has tried to limit a Native American set-aside in contracting. The Native American vendors who filed the complaint received only minimal work.

An article on Reading First and Indian students by Dr. Jon Reyhner and Denny Hurtado states:

NCLB has been especially detrimental to Indian students with regard to its Reading First provisions. The report of the National Reading Panel, on which Reading First was based, did not take into account the specific research on teaching Indian children to read. Indian students are being asked to pronounce lists of words (and nonsense words) from reading programs that include many words that have no meaning for them. The research on teaching Indian children to read stresses that students must have a student-centered, meaning-based approach that teaches them to read using words in context-words that they know and care about first. The What Works Clearinghouse, responsible for determining what programs are "scientifically research-based," listed 129 programs that lacked scientific evidence to support their efficacy, including Direct instruction/DISTAR and Direct Instruction/SRA. Furthermore, of the six programs that the Bureau of Indian Affairs' Office of Indian Education Programs listed on their Web site as meeting Reading First Grant criteria, only Success for All was listed as meeting any of the What Works Clearinghouse's criteria for being scientifically research based.

An article on culturally responsive teaching by Bryan Brayboy states:

The pervasive introduction of Reading First in schools serving Indigenous youth also brought a significant reduction in culturally responsive schooling for them. In other words, students' scores appear to not be rising and they are being deprived of access to their home language and culture in schools. This is a "double whammy" against them.

PREPARED STATEMENT OF THE WASHINGTON STATE TRIBAL LEADER'S CONGRESS ON  
EDUCATION

Thank you for holding an Indian Education hearing on the reauthorization of the Elementary and Secondary Education Act. It is so important because the system has failed our children and it is time to turn things around. We are grateful that you have kept the hearing open and that we have this opportunity to submit testimony.

The Tribal leaders of Washington State agree in principle with most of the recommendations submitted by the NCAI/NIEA entitled, "National Tribal Priorities for Indian Education." The Tribal Leader's Congress on Education met in Tulalip in May and recommended adding the following regional clarification to their recommendations:

## Strengthen Tribal Control in Education

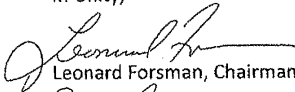
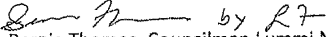
- We support all efforts to strengthen Tribal Control in Education including the empowerment of Tribal Education Agencies.
- We support mandatory negotiation between States and Tribes to transfer funding, data and programs. For example, Tribes should have the opportunity to develop the plans for school improvement grants.
- There needs to be disaggregated data to reflect the challenges our students face, including:
  - Gifted student data
  - Discipline and behavior issues such as suspensions, etc.
- A process is needed to determine Tribal best practices at the local level to allow for effective programs in schools with Native American students.
- Funding for technical assistance for teacher training in Tribal history and culture, etc. on a regional basis must be included. For example, Washington State could have six regions: Peninsula, North Puget Sound, South Puget Sound, Spokane, Yakima Valley, and Central Washington.
- Parent and family engagement is essential for Native American student achievement. Department of Education must fund Tribes to provide culturally-relevant out of school programs. The definition of parent must be defined within the cultural context of the Tribal community; e.g. grandparents are raising grandchildren.

## Invest in Cultural and Language Revitalization

- We support the use of culturally based education and request more federal funding for the development of curriculum, standards and assessments and for language revitalization efforts. In the Pacific NW Tribes have initiated the following promising programs and could benefit from Federal Funding:
  - Marysville Tulalip Campus for Education and Dynamic Arts (Tulalip, WA – The Tulalip Tribes)
  - Totem Way (Totem Middle School, Marysville, WA – The Tulalip Tribes)
  - Wolfe Elementary (Kingston, WA – Port Gamble S'Klallam)
  - Toppenish School District (Toppenish, WA – Yakama Nation)
  - Port Angeles School District (Port Angeles, WA –Lower Elwha Klallam Tribe)
  - Sovereignty Curriculum (Office of the Superintendent of Public Instruction – WA Tribes)
  - Suquamish Tribal Early College High School (Suquamish, WA – Suquamish Tribe)
- Tribes have the following fears regarding assessment:
  - They narrow curriculum
  - They don't measure multiple ways of knowing
  - They are standardized and force assimilation
- Assessment should be:
  - You don't fail; it just shows you have more work to do.
  - Based on needs relevant to Tribal communities; e.g. demonstrate ability to work on a team, complete projects as a team member, respect elders
  - To assess the system and not penalize the student
- Tribal governments must be given the authority to create Tribal Charter Schools.
- We DO NOT support the implementation of Common Core Standards.

Thank you again for your interest in our recommendations for this important reauthorization. We look forward to the opportunity to review and comment on the legislation as drafts become available.

In Unity,

  
 Leonard Forsman, Chairman Suquamish Tribe  
 by LT  
 Bernie Thomas, Councilman Lummi Nation

**Consultation on Reauthorization of ESEA**

Anchorage, Alaska

April 16, 2010

**Testimony submitted by The Tulalip Tribes of Washington State**

Thank you for the opportunity to share with you thoughts from The Tulalip Tribes on your proposed blue print for the reauthorization of the Elementary and Secondary Education Act. My name is Mel Sheldon and I am a member of The Tulalip Tribes in Washington State. I currently serve as the Chairman of our Board of Directors. I have been a board member for 11 years. I hold a B.A. in Political Science from the University of Washington. I am also a Viet Nam veteran and have worked as a commercial fisherman in Puget Sound and Bristol Bay, Alaska.

The Tulalip Tribes are located about 30 miles North of Seattle Washington on the Puget Sound. The reservation includes 22,000 acres rich with natural resources. There are close to 4,000 Tribal members with over 1,600 under the age of 18. Historically, our Tribal people have suffered many injustices: extreme poverty due to lack of employment; lack of high quality education service availability on reservations; racism; intergenerational trauma from the impact of the boarding school era on families, parenting models, and culture and language repression.

Beginning with the Meriam Report of 1928, five studies have reached the same conclusions regarding Indian Education. There is/are a lack of parenting skills, low academic achievement, a lack of high expectations, a lack of attendance, behavioral issues, and a lack of culturally relevant curriculum, to name a few. Most recently President Clinton added to this list low math skills and little availability to technology. These same challenges face Tulalip Education today.

Tulalip Tribal members receive their education through the Marysville School District and most are able to attend elementary and high school on the reservation. Three public schools and one public school program serve primarily Native students: Tulalip Elementary, Quil Ceda Elementary, Heritage High School and Home School Partnership 9-12. Totem Middle School is located off the reservation but serves the majority of Tribal members.

The Marysville school district feels the impact of low education, single parent families, poverty and language/culture needs as the numbers of students struggling to meet state standards increases and the numbers of students graduating from high school decreases. They also feel the impact through the attendance and behavior of many students who are ill prepared for success in school because their families had little success in school and are unsure of how to support their students' success.

2008-2009 School Year	Enrollment	Free and Reduced Lunch	Native American Population	Reading (4 <sup>th</sup> , 7 <sup>th</sup> or 10 <sup>th</sup> )	Math (4 <sup>th</sup> , 7 <sup>th</sup> or 10 <sup>th</sup> )	Writing (4 <sup>th</sup> , 7 <sup>th</sup> or 10 <sup>th</sup> )	On-Time Graduation
Tulalip Elementary	227	82.8%	74.8%	52.5%	25%	42.4%	NA
Quil Ceda Elementary	306	65.7%	44.8%	50.0%	16.7%	22.7%	NA
Totem Middle	640	45.9%	23.7%	52.7%	24.0%	61.9%	NA
Heritage High	113 - Fall 75- Spring	80.0% - Spring	98.2% - Fall	36.8%	4.8%	60.0%	26.6%

### **Partnerships between The Tulalip Tribes and the Marysville School District**

#### Youth Services/Education and Activities Department

The Tulalip Tribes has worked closely with the Marysville School District in providing education to Tribal children for the past several years. Although long before the relationship took seed, we had developed a comprehensive reservation based program for our Tribal members from Birth to adult. The Youth Services/Education Department provides support, services and positive activities to all Tulalip Tribal youth and other Native American students who reside on the Tulalip reservations, students who are placed in foster homes residing off the reservation and students who attend school within the Marysville School District and their families. Our program goals are to improve school performance and attendance, promote healthy habits, create empowerment, offer prevention alternatives and positive activities and promote student participation.

One of the programs under Tulalip Education is the Advocate Program. This program coordinates community education for prevention and wellness of youth by supporting students and families in school and beyond the classroom. They partner with parents, are a persistent presence in the school, help students and parents navigate the bureaucracy of education, build strong relationships with the school district, and track student progress in academics and social-emotional well-being.

Last year we served more than 1000 Native students with six advocates. This isn't enough. We need to broaden the advocate program to include not only more advocates but also incentive programs: attendance, behavior, leadership, academics, community involvement, and language and culture. Our goal is to expand the program using a case management approach to the whole child in order to overcome the mismatch between institutions and student needs to provide the continuity of services so critical for struggling youth.

#### Turning Struggling Schools Around

This year we are working closely with the Marysville School District on a School Improvement Grant because two of our schools - Tulalip Elementary and Totem Middle - have been identified as Tier I and Tier II schools respectively. The district has chosen to implement the transformation model. We are excited about the possibility of bringing over 2 million much-needed dollars into our schools. In our grant we wanted to do many of the things the education reports are discussing, but there are no systems in place to do them. There is a misunderstanding of equity and equality. School boards think in terms of equality rather than equity. They distribute funds equally rather than putting extra resources towards supports for struggling students.

We are resigned to having to lengthen the school day, but we have discussed that we cannot simply do more of the same thing with that time. Working with the district to change the culture in our struggling schools has already begun to show in academic achievement. It has been important to work closely with the district on the grant. However, we would have liked to have restarted the schools with Charter Schools under Tribal control. There is no State law allowing for this, so we continue to work with the district and hope that our input will make a difference.



## Recommendations to the Reauthorization of the Elementary and Secondary Education Act

### Trust Responsibility

Education is a trust responsibility between The US government and Indian Tribes. However, trust responsibility in education for Native American students in public schools has never been fulfilled. Every report on Indian Education since the Meriam Report of 1928 has concluded that needs of Indian children in education are not being met. I want to emphasize trust responsibility as one of the most important concepts to include in the reauthorization of ESEA.

The United States Constitution does not authorize Congress to provide for education, leaving much of the legal control of public education with the States. The role of States in upholding trust responsibility must be defined in the reauthorization of the Elementary and Secondary Education Act because a majority of Indian youth attend public school. In fact, all Tulalip Tribal members attend public school.

In order to share responsibility in meeting the educational needs of their youth, Tribes must be fiscally empowered. Tribal Governments must be given full opportunity to apply for discretionary grants in all areas of education. Tribal Governments should have full authority to create Tribal Charter schools in School Restart. Finally Tribal Governments should have the support to work in collaboration with districts to build innovative school models.

### Accountability

The theme of accountability threads its way throughout the blueprint for reform. The needs for States to use comparable assessments which measure similar standards as well as for children to have easy transitions to new schools underscore the importance of accountability.

How can we meet the needs of states, districts and transferring students without excluding the needs of Native American students? My native language, Lushootseed, is dangerously close to dying. Our Tribal youth don't know where they come from. Our Tribal enterprises have very few high school graduates to hire.

We worry that the movement towards national standardization is going to further narrow curriculum. When reading, math and science content is standardized and assessed then used for accountability and withholding of funds, those become the focus of the curriculum to the exclusion of other important subjects. Moreover, the common standards are not responsive to diverse cultural perspectives.

The Tulalip Tribes wants to work with you to re-examine this approach to accountability so that the Goals of the Tulalip Tribes can be met while providing support for States, Districts and transferring students.

### Research and Data

Another theme which permeates the Blueprint is that of using data to guide instruction, evaluate teachers and choose best practices. I cannot agree more that decisions in education should be based on evidence and that research and data give us valuable information. Yet, what do you do when there is no or little research on Indian children? There are large data gaps on Indian students because the numbers are often hidden to protect individuals. There are large research gaps on best practices. We have to relook at our approach to data and research so that our students and their needs are not excluded in the decisions which impact their lives.

### Specific Recommendations to Blueprint for Reform

#### College and career ready students

- Rigorous standards
  - Common standards for English and Math developed by States and linked to college curriculum are NOT culturally inclusive and diminish culturally focused education and language revitalization efforts. One size does NOT fit all.
  - As we saw in No Child Left Behind, assessments linked to common standards for accountability narrow curriculum and promote teaching to the test, among other questionable educational practices. National standards will be no different, if not worse, than the State required standards were.
  - We don't need new standards. We need different teaching methodologies and relevant curriculum. Our students would benefit from a set of **RELEVANT CORE STANDARDS** interwoven through a large variety of culturally and linguistically responsive content.
  - Our world is changing rapidly and the knowledge students need to be successful is constantly expanding. It is more important for students to become lifelong learners and be open to new ideas and diverse perspectives than for them to be fed a rigid, inflexible, standardized curriculum.
  - Our students need to learn where they come from. Tribal history is crucial and should be part of Core Curriculum.
- Rigorous and Fair Accountability and Support at Every Level
  - The approach to data in this section is a vast improvement over the current ESEA approach. The inclusion of graduation rates, information on school climate and college remediation moves accountability to a new level.
  - In "From Where the Sun Rises" a 2008 report on Indian Education in Washington State, the researchers find that there are large data gaps for the Native American population. Out of 81 districts in Washington State, the researchers received data from 47-60 depending on grade and year. Research must be done in Indian Country to ensure that the data is complete so that the conclusions we reach on our students are fair and accurate.
- Measuring and Supporting Schools, Districts, and States
  - Measuring student growth and moving from punitive to reward accountability systems is important.
  - Reward districts will be able to add a fifth research-based intervention model for struggling schools. However, we don't have the research in Indian Country. Intervention models for schools with large Native American populations must be created in collaboration with the Tribal Government. Authority for determining best practices must remain with the Tribal Government and not a university.
  - Tribal Governments must be given the authority to create Charter Schools regardless of State statute.
  - Challenge schools or districts must have more options than extending the school day or school year. Doing more of the same and expecting different results is not good education practice. We have to change what is happening in the schools: teaching methods, curriculum, and student supports.

- School readiness must be redefined to mean that Schools are Ready for Children so that the sole responsibility is not on parents and babies.
- Ensuring the equitable distribution of effective teachers and school leaders is crucial.
- We commend your approach to fostering comparability and equity. We need a fair distribution of resources to high-poverty schools.
- Assessing Achievement
  - Measuring student growth and providing diagnostic information to teachers and families will be a crucial improvement to our assessment system
  - Assessments can narrow curriculum. Denying formula funding to States which do not implement a common assessment of common standards in ONLY English, Math and Science beginning in 2015 may have a critical adverse impact on Tribal Language Revitalization efforts.
  - The goals of standardized tests do not correlate in any way with students' life goals. Even if the standards measured correlated with college entrance requirements, there would still remain a very poor correlation with community goals for academic achievement and success.
  - We ask that you include consortia of Tribal Governments as grant competitors for development of high-quality assessments.
- School Turn Around Grants
  - We ask that Tribes be included as grant competitors for school-turn around.
  - We ask that Tribal Charter schools be an option under the restart model regardless of State Charter school law.

Great teachers and leaders in every school

- Effective Teachers and leaders
  - We ask that Tribal Governments be included in this list of those collaborating at the State level to define 'highly effective teacher' etc.
  - We ask that the current definition of 'highly qualified teacher' be amended to include Tribal determination for teachers of Tribal language, culture and history while we are waiting for new State definitions
  - We support new evaluations for teachers
- Teacher and Leader Innovation Fund
  - We ask that districts be required to include Tribal Governments in when applying for grants to reform identification, recruiting, preparation, development, retention, reward, etc. of effective teachers and leaders in high needs schools.
- Teacher and Leader Pathways
  - We ask that Tribal Governments be included as grant competitors for the recruitment, preparation, placement and induction of teacher candidates for high-need schools and subjects. We assert that Tribal Language, Culture and History are crucial subject matter and must be given equal status to other high needs fields.

Meeting the needs of English Learners and Other Diverse Learners

- Students with Disabilities - Assessments for students with disabilities must be culturally responsive. Tulalip Tribal members are over-identified as needing special education
- Homeless Children and Youths Education-We support your approach to strengthening grants for homeless children.
- Neglected and Delinquent Children and Youths Education – We support strengthening this program. We also want to remind you that there are youth in adult prisons who should be included in this section.
- Indian, Native Hawaiian, and Alaska native Education – We are grateful that funds under this program will be available for Native language restoration programs and the development of tribal specific standards and assessment. However, language restoration is urgent and should not be treated as an add-on to a standardized curriculum as it may be pushed out when districts feel the impact of testing requirements etc.
- Impact Aid
  - Strengthen the requirement for Tribal inclusion in district plans for Impact Aid dollars so that Tribes have a say in how these dollars are spent
  - Fund Indian youth at the same level as military youth

A complete education

- Literacy
  - Include Tribal Governments in literacy grants. Plans for literacy are to be evidence-based, but there is very little research on what works in Indian country. Include Tribal recommendations for literacy in place of the research requirement.
  - Require the common, state-developed, college-and career-ready standards to be culturally responsive.
- Science, Technology, Engineering and Math
  - Require the common, state-developed, college-and career-ready standards to be culturally responsive.
  - Include Tribal Governments in STEM grants. Tribes are rich sources of opportunities for students to learn science. In Tulalip we need a wide variety of natural resource scientists. We also have a goal to teach our youth how to honor and protect our resources so that they are available. We want our youth to learn our Tribal ways as they approach resource management.
- Ensuring a Well-Rounded Education
  - Include Tribal Governments as competitors in grants for teaching and learning of arts, foreign languages, history and civics, financial literacy, environmental education and other subjects. Change the language from 'foreign' to 'world' language; 'foreign' does not include Tribal languages and 'world' does.
  - Include Native languages in these grants.
- College Pathways and Accelerated Learning – Include Tribal Governments
- Activities to Strengthen a Complete Education – Include Tribal Governments

Successful, Safe, and Healthy Students

- Promise Neighborhoods – Include Tribal Government as grant competitors

- 21<sup>st</sup> Century Community Learning Centers – Include Tribal Governments as grant competitors
- Successful, Safe and Healthy Students – include Tribal Governments as grant competitors

Fostering Innovation and Excellence

- Race to the Top – Include Tribal Governments in the development of State and District plans
- Investing in Innovation – For Tribal communities there are no evidence based practices, programs and strategies which are based on research. This approach to funding will eliminate promising practices and programs in Tribal communities. Tribal Governments must be consulted regarding promising practices such as language and culture programs which keep students in school and increase achievement. Other programs such as our Youth Advocate program should also be included.
- Expanding Educational Options - Washington State does not have Charter School Law. We ask that the US Government create policy for Tribal Charter Schools by establishing cultural guidelines and high standards (with Tribal participation).



**The Elementary and Secondary Education Act Reauthorization  
Recommendations for TEDs / TEAs  
(June 26, 2010)**

**INTRODUCTION**

The Elementary and Secondary Education Act (ESEA) is currently up for Reauthorization and it is the most important federal law that applies to American Indian and Alaska Native tribal students. The ESEA currently has 10 Titles with multiple programs. Some are general programs, like the Title I Improving Basic Programs, and some are specific to Native Americans, like the Title VII Indian Education Act programs. Tribal students, whether they attend Bureau of Indian Education (BIE) funded schools or state public schools, are served by all of the ESEA programs. And, all of the programs could do more to help tribal students by recognizing a role, or by enhancing the role or roles, including in public school education, of tribal governments as sovereign nations. Tribal governments are a major untapped resource in education, and this ESEA Reauthorization needs to change that.

Over 200 of the over 560 federally-recognized tribal governments today have education agencies. Known as "Tribal Education Departments" (TEDs) or "Tribal Education Agencies" (TEAs), these tribal governmental agencies can help the non-tribal federal and state governments serve tribal students. TEDs / TEAs can assist with the most fundamental education improvement and accountability functions like data collection, reporting, and analysis. TEDs / TEAs can help in other areas as well, including the development of curricula, standards, and assessments; teacher training; research; and, specific local initiatives like truancy intervention, drop out prevention, and tutoring programs.

In particular, TEDs / TEAs are in a unique position to coordinate data on tribal students that is generated by various and sometimes multiple sources, including federal education programs, public school systems, states, and BIE-funded schools. For tribal students, this never has happened before; right now we can only imagine accurate and current tribe-wide, statewide, or nationwide data-based reports on tribal students. But if such reports were available, agencies and legislatures of all governments could make data-driven decisions regarding tribal students as they implement the next Reauthorization of the ESEA.

For the data roles of TEDs / TEAs to reach their full potential, the Family Education Rights and Privacy Act (FERPA) needs to be clarified by an amendment that includes TEDs / TEAs as being among the education agencies, authorities, and officials to whom protected student records and information can be released without the advance consent of parents or students. Such an amendment to FERPA would be consistent with the TED / TEA programs authorized by Congress since the ESEA Reauthorizations of 1988 and 1994 and thus would bring FERPA up to date and in accord with the ESEA.

**TEDs and TEAs in the ESEA**

Each and every ESEA Title needs to better connect TEDs / TEAs with states, public school districts, BIE-funded schools, and the various federal education programs that serve tribal students. In particular, the roles and responsibilities of TEDs / TEAs with respect to public schools (LEAs) – which nationwide serve 92% of tribal students – are very limited and outdated, especially with respect to LEAs located within tribal geographic territories. This ESEA reauthorization should rectify that situation by generally:

- *Authorizing and / or increasing tribal eligibility for all pertinent ESEA program and formula funding including state level formula funding.*
- *Authorizing intergovernmental agreements in education between tribes and states / LEAs.*

The following are TEDNA's recommendations for each title in the current ESEA, known as the No Child Left Behind Act (NCLB).

**Title I: TEDs / TEAs as SEAs; Increased State-Tribal Relations; and, Teaching Tribal Sovereignty**

Title I is and always has been the biggest ESEA program (over \$15 billion annually). State Educational Agencies (SEAs) can get Title I funds if they submit proper plans that address academic standards, assessments, and accountability; teaching and learning support; parental involvement; and reporting. In the development of these state education plans, which are a prerequisite for Title I funds; there is no specified role for TEDs / TEAs, which is a serious flaw because it has severely limited or impaired the ability of TEDs / TEAs to work with SEAs. To address this oversight the following three recommendations should be incorporated into Title I:

**1) TEDs / TEAs should be Authorized to Perform SEA functions within Tribal Geographic Territories**

TEDs / TEAs should be authorized to perform SEA functions within significantly large tribal geographic territories that include a high percentage of tribal students served by Title I.<sup>1</sup> This could be accomplished by authorizing TEDs / TEAs to be eligible for Title I funds, as well as state-level formula funding in other titles of the ESEA, and authorizing tribal-state compacts to co-administer the programs and services authorized by the ESEA within tribal geographic territories. In short, the model would work as follows:

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<sup>1</sup> There are 20 federally-recognized Indian reservations that are geographically larger than states such as Rhode Island and Delaware.

- TEDs / TEAs would be eligible to receive state-level formula funding in all ESEA titles, including Title I.
- ***A TED / TEA would submit a consolidated education plan*** to the Department of Education for such funding; the plan would include the same information and assurances as required for SEA consolidated education plans, including evidence of capacity to administer education programs and services.
- The Department of Education would approve the TED's / TEA's consolidated education plan using the same approval standards used for SEA plans and distribute the ESEA formula funds to the TED / TEA.
- The ***TED / TEA and SEA would enter into a compact agreement*** to determine how the ESEA formula funds would be used by LEAs with high percentages of tribal students within or near large tribal geographic territories. The affected LEAs would participate in the tribal-state compact agreement negotiations.
- The ***ESEA formula funding would be sub-granted to the LEAs***, according to the TED / TEA- SEA compact agreement.
- The compact agreements would specify which entity, the TED / TEA or the SEA, would perform the relevant services, such as data collection, technical assistance, and reporting. For example, the TED / TEA may provide teacher training, professional development opportunities, and develop curriculum (that would meet state assessments and standards), while the SEA may provide assessments and standards that would be implemented in LEAs with high tribal student percentages within or near tribal geographic territories.

This program would be limited to federally-recognized TEDs / TEAs *(1) with large tribal geographic territories; (2) with LEAs within such territories with high percentages of tribal students; and, (3) that the Department of Education has determined have the capacity to administer the relevant programs and services.* The goal is to provide a statutory mechanism for TEDs / TEAs and SEAs to combine and coordinate federal, state, and tribal resources, and develop partnerships to improve student academic performance and increase accountability. As federal reports including *The Indian Nations at Risk Task Force Report* (1991) and *The White House Conference on Indian Education Final Report* (1992) have recommended, the national government should play a leadership role in encouraging and providing for such intergovernmental partnerships.

Presumably, not every TED / TEA would immediately seek SEA status – some TEDs / TEAs are ready and willing to perform SEA functions immediately while others will take several years to develop the necessary capacity and infrastructure. But although the vast majority of TEDs / TEAs are not likely to seek SEA status in the immediate future, they should have support from the federal government to develop the necessary capacity to exercise that option when they are ready.



**2) States should be Required to Meet with TEDs / TEAs as a Condition of Receiving Title I funds**

In other instances, outside of or away from significantly large tribal geographic territories, where there are TEDs / TEAs located within states, the ESEA should, at a minimum, require the *SEAs of those states to identify the TEDs / TEAs, meet with them on a quarterly basis, develop joint strategies for improving education in schools with tribal students served by Title I, and jointly report* on the results of such meetings to the U.S. Education and the Interior Departments as a condition of receiving Title I funds.

**3) Encourage or Mandate the Teaching of Tribal Sovereignty as a Condition of Receiving Title I Funds**

Yet another suggestion for the Title I program would be to encourage those states receiving Title I funds that have TEDs / TEAs operating within their borders, if they do not already have one, and there are five states that do – California, Maine, Montana, Oregon, and Wisconsin – to enact state laws that mandate the teaching of tribal sovereignty in their K-12 curriculum on a regular basis. If a state chooses not to enact such a law, TEDs / TEAs with students served by Title I funding must be allowed to develop such a curriculum mandate that the LEAs must follow.

**Titles II and III: Native Language Curricula and Teacher Certification**

Twelve states – Arizona, Idaho, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Washington, Wisconsin, and Wyoming -- now have laws that address tribal language curriculum and the certification of teachers for these curricula in their LEAs. All of these laws acknowledge a role of tribes as sovereigns in the development and implementation of these laws. The *Reauthorized ESEA should require the SEAs and the TEDs / TEAs in these states to jointly track the progress made in implementing these laws and their impacts on students, and to jointly report on these matters to the Department of Education and Congress.* Further, the ESEA Reauthorization should authorize, at least on a nationwide pilot project basis, other states and tribes to enter into *compacts or agreements for tribal language curricula development and teacher certification*, and authorize appropriate funding to implement such compacts or agreements.

**Titles VII and VIII: TED / TEA Appropriations; Tribal Eligibility or Increased Eligibility as Grantees**

In the ESEA Reauthorization, the *funding level amount authorized for TED / TEA appropriations in Title VII should be reinstated and increased to support TED / TEA capacity building.* In addition, for the Title VII Indian Education Act Formula Grant programs, tribal eligibility to receive these funds directly should be increased. For Title VIII Impact Aid funding, TEDs / TEAs should be authorized to receive directly these funds under defined eligibility criteria and upon the condition of entering into a cooperative agreement with the affected LEA regarding management and administration

of the funds. These Title VII and Title VIII recommendations are in recognition of the increased number and capacity of TEDs / TEAs to whom these funds should go directly along with the responsibility of being accountable for the expenditure of the funds and correlative student performance.

**1) Reinstate and Increase and Title VII TED / TEA appropriation amount**

Title VII of NCLB, Section 7135, currently codified at 20 U.S.C. Sec. 7455, authorizes appropriations for TEDs / TEAs through the Department of Education.<sup>2</sup> In this authorization, Congress envisions TEDs / TEAs as coordinating education programs; developing and enforcing tribal education codes; and, providing support services and technical assistance to schools and programs. NCLB eliminated an amount for the authorization, but the original amount in the authorization in 1994 was \$3 million. **This authorization amount should be reinstated and increased to \$25 million.**

**Proposed Statutory Language:**

In NCLB Title VII, Part A, Subpart 3, National Activities, Section 7135, add a new Section 7135(e), that reads, "AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$25,000,000."

**2) Increase the Eligibility of Tribes for Title VII Formula Grants**

The Formula Grant Program was the cornerstone of the original Indian Education Act (IEA) in 1972, Pub. L. No. 92-318. Today the IEA Formula Grant Program is in NCLB at Title VII, Sections 7111 -7119, currently codified at 20 U.S.C. Secs. 7401-7546. Eligible applicants for the IEA Formula Grants program are primarily LEAs. BIE-supported schools are eligible under a Formula Grants special set aside allocation. Since 1994, tribes have been eligible to receive Formula Grants directly where they represent at least fifty percent (50 %) of the eligible Indian children served by an LEA and the LEA does not establish an elected parent committee under this program. *See* Section 7112(c) of NCLB, Title VII, codified at 20 U.S.C. Sec. 7422(c).

**Tribes should be directly eligible to receive Title VII Formula grants.** NCLB most recently has affirmed that the Formula Grants are intended to benefit the unique educational and culturally related academic needs of tribal students, and as between LEAs and tribes, common sense dictates that tribes are in the better position to identify, understand, and address these needs. Hence there is little reason to continue to by-pass or avoid so many TEDs / TEAs in favor of LEAs.

**3) Authorize Tribes to be Eligible for Title VIII Impact Aid Grants**

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<sup>2</sup> The Interior Department authorization for TED appropriations is in NCLB Title X, Section 1140, currently codified at 25 U.S.C. Sec. 2020(a).

The Impact Aid Basic Support Program for Eligible Federally Connected Children was originally authorized by the Act of September 30, 1950, Pub. L. No. 81-874. Portions of it are in NCLB Title VIII, Sections 801-805, and it is currently codified at 20 U.S.C. Secs. 7701-7714. Today, the annual appropriation level for Impact Aid is over \$1 billion. **This Reauthorization should allow TEDs / TEAs to receive Impact Aid funding at least where they represent at least one third (1/3) of the claimed children residing on Indian lands.**

Previous ESEA Reauthorizations have maintained that Impact Aid grants are available only to eligible LEAs; not to tribes. Impact Aid grants go directly into the general operating budgets of LEAs and are to be used for basic education programs. Since 1978, however, LEAs who claim children residing on Indian lands under this program must establish "Indian Policies and Procedures (IPPs)." The IPPs must ensure that there is equal participation by tribal students in; consultation with Indian parents and tribes regarding; and, opportunities for Indian parents and tribes to make recommendations about the LEAs' education programs and activities. A statutory administrative complaint process allows tribes a U.S. Department of Education hearing and determination if they feel the LEAs are not in compliance with the IPP provisions.

Over thirty years ago (1977) the American Indian Policy Review Commission recommended that Impact Aid funds go directly to eligible tribes. It is time for the Administration and Congress to act on this recommendation. TEDs / TEAs should be *authorized to receive Impact Aid funding at least where they represent one third (1/3) of the claimed children residing on Indian lands.* TEDs / TEAs could administer directly the Impact Aid funds, they could enter into cooperative agreements with LEAs to administer them, or, they could subcontract their administration to LEAs. Consideration also should be given to reasonable indirect cost amounts that would allow TEDs / TEAs to administer Impact Aid funds where LEAs choose not to receive such funds.

Under this arrangement, tribes would have leverage in addition to or beyond the underutilized (and therefore ineffective) Impact Aid administrative complaint provisions to achieve the goals of the law as stated in the IPP provisions. It would also bring this over fifty-year-old program in line with the modern federal policy of Indian self-determination and control over education.

Proposed Statutory Language:

In 20 U.S.C. Section 7704, Policies and Procedures relating to children residing on Indian lands, add a new Section 7704(g), that provides,

"(g) Indian tribes. -

(1) In General. -- an Indian tribe that represents not less than 1/3 of the claimed children residing on Indian lands for the purpose of receiving funds under section 7703 of this Title may apply for such funds.

(2) Special Rule.—The Secretary shall treat each Indian tribe applying for funds under Section 7703 of this Title as if such Indian tribe were a local educational agency for purposes of this Title, except that any such tribe is not subject to Section 7704 of this Title."

Additionally, add a new Section 7704(h), that provides,  
 "Section 7704(h) Cooperative Agreements.

(1) Where an Indian tribe receives funds under Section 7704(g) of this Title, the Secretary shall, if specifically requested by the tribe, implement any cooperative agreement entered into between the tribe and the LEA which meets the requirements of paragraph (2) and involves education matters for which the funds may be used. The tribe and the LEA shall determine the terms of the agreement.

(2) Each agreement entered into pursuant to the authority provided in paragraph (1) shall confer a benefit upon the parties commensurate with the burden assumed, though this requirement shall not be construed so as to require equal expenditures or an exchange of similar services."

**Title IX: Definition; Tribal Consolidated Plans and Reporting; Tribal Waivers**

**1) Definition**

The ESEA at present has several different definitions of TEDs / TEAs which has caused some confusion. For example, in the Title VII Department of Education appropriations authorization, they are referred to as "tribal administrative entities." NCLB Title VII, Section 7135; 20 U.S.C. Sec. 7455. As another example, Title III of NCLB (Language Instruction for Limited English Proficient and Immigrant Students), uses the term "tribally sanctioned educational authority." NCLB Title III, Section 2113; 20 U.S.C. Sec. 6822.

For clarity and uniformity, the term that should be used consistently throughout the ESEA is "Tribal Education Agencies (TEAs)." This would eliminate the unnecessary confusion already engendered by the various titles, and it would bring TEDs / TEAs more in line with their counterparts at the state level, which are defined consistently throughout the ESEA as "State Education Agencies. The following definition of TEDs / TEAs should be included in the next ESEA Reauthorization definitional section and be made applicable to all titles:

( ) Tribal educational agency

The term "Tribal educational agency" means the authorized governmental agency of a federally-recognized American Indian and Alaska Native tribe (as defined in 25 U.S.C. §450b) that is primarily responsible for regulating, administering, or supervising the formal education of tribe members. "Tribal education agency" includes tribal education departments, tribal divisions of education, tribally sanctioned education authorities, tribal education administrative planning and development agencies, tribal education agencies, and tribal administrative education entities.

**2) Tribes receiving ESEA funding should, like SEAs, be Eligible to Consolidate Administrative Funds eligible for Consolidation**

Currently, Part B of Title IX allows SEAs to consolidate administrative funds available in ESEA programs eligible for consolidation if the SEA can demonstrate that the majority of its resources are from non-Federal sources. TEDs / TEAs receiving ESEA funding should be able to consolidate administrative funds according to the same set of requirements.

Tribal students are served by programs funded from federal, private, tribal, and state sources. Potentially all of these programs contain funds to be used for administrative purposes. The authority of TEDs / TEAs to consolidate administrative funds received will reduce waste and ensure efficient program management at the tribal level.

**3) Tribes, Like SEAs, should be Eligible for all State-Level Formula Funding and Authorized to Submit ESEA Consolidated Plans and Consolidated Annual Reports**

Currently, Title IX Part C allows SEAs to submit ESEA consolidated plans and consolidated annual reports. Consolidated plans include general information about each program and a single set of assurances applicable to each program. Consolidated annual reports replace individual annual reports for each program included in the consolidated annual report. *TEDs / TEAs receiving ESEA funding similarly should be eligible for all state level formula funding and authorized to submit consolidated plans and consolidated annual reports.*

The purposes of Part C are to “improve teaching and learning, by encouraging greater cross-program coordination, planning and service delivery” and to provide greater flexibility through consolidated plans, applications, and reporting. *See* 20 U.S.C. §7841. For tribal students, the potential need for program coordination is particularly great. Authorizing TEDs / TEAs to submit consolidated plans and consolidated reports is consistent with the express purposes of Part C.

**4) Tribes should be Eligible to Request Title IX Waivers for LEAs within Tribal Geographic Territories**

Currently, Title IX Part D allows for waivers by the Secretary of Education of ESEA statutory and regulatory requirements. Tribes are among the eligible entities that may request a waiver for tribally operated schools. The ESEA Reauthorization should retain this option and extend the option for TEDs / TEAs that are approved by the Education Department to receive Title I funding directly (based on a tribal education plan covering a significantly large tribal geographic territory) to seek waivers of statutory and regulatory requirements for LEAs serving tribal students, and require the TED / TEA to work with the LEAs to implement the waiver.

Such waivers have the potential to allow TEDs / TEAs the flexibility and local control needed to improve the academic performance of tribal students. Specifically, many reports and research show that tribal students generally perform better when taught using tribal language and culture. The Navajo Nation has requested a Title IX waiver to

develop its own definition of AYP. Other Tribes could request waivers to develop their own standards, assessments, and curriculum to meet the unique cultural-academic needs and goals of their communities.

**Title X: Increase TED / TEA Appropriation Authorization Amount**

In 1988 Congress authorized appropriations for TEDs / TEAs within the Interior Department / BIE (Pub. L. No. 100-297, Section 5199). In this authorization, Congress envisions TEDs / TEAs as facilitating tribal control over education; planning and coordinating education programs; and, developing and enforcing tribal education codes, policies, and standards. This authorization is retained in NCLB in Title X, Section 1140, currently codified at 25 U.S.C. Sec. 2020(a). *The authorization amount should be increased to \$25 million to support TED / TEA capacity building to better serve tribal students.*

Proposed Statutory Language:

In NCLB Title X, Part D, Native American Education Improvement, Section 1140, delete "\$2,000,000," and replace with "\$25,000,000."

**CONCLUSION**

The dropout rate of tribal secondary and elementary students in some states remains an alarmingly high 50%. All stakeholders that are affected by this dire statistic and other troubling statistics regarding tribal student academic achievement, test scores, and college readiness, stand to gain from enhanced roles of TEDs / TEAs in the ESEA Reauthorization. The recommendations in this report will result in crucial structural and programmatic changes and support to develop TED / TEA roles and capacity to better-serve tribal students.

## ESEA Re-Authorization Considerations

### NARRATIVE:

The points discussed below attempt to express the struggle and need for change to the educational delivery system found in Indian Country. The Sitting Bull School is probably the only Indian school that is a real concrete example of a school that is implementing educational change for its students. All other Indian schools are following the path laid out by the ESEA, presently known as the No Child Left Behind. The issues presented for consideration in this testimony are the crux of the dilemma for change. If the new law is not changed, Sitting Bull School will be at odds with the system, and will probably be pounded into the pile of conformity mud, known as Indian education.

**Historical Premise:** In 1928, the Meriam Report came out and revealed Indian Education was nothing less than ordinary cruelty or abuse. The Report requested those in power to take a different point of view. In 1968, the Kennedy Report came out and declared Indian Education a tragedy and disgrace. This Report pleaded for relevant change. In February of 2010, some eighty years later, national drop-out rates for American Indians are at 53%, indicating Indian Education or the common education process being enforced on the First People of America is **STILL** continuing on a blundering path of ethnocentrism. The 1993 White House Conference on Indian Education begged for indigenous self-determination or empowerment, yet the most recent ESEA was called NCLB, and it is renowned for its strict accountability / conformity measures or no \$.

**Setting:** Sitting Bull School is a tiny village K-8 school on the Standing Rock Sioux Reservation. It serves Lakota children from extremely impoverished bilingual homes. This school was taken control of via local control law (P.L.100-297) because it has always been a less than cherished foreign system by the community since its inception. The Board completely undid the BIE's rhyme & reason to education and began making sovereign decisions that they wanted for their children.

The School has embarked on a refreshing educational journey for its students and community. Currently, the School is going into its fourth year of establishing a Montessori Lakota bilingual schooling process. This process is completely contrary to the educational notions put forth by

the standard K-12 process used in America. This being a "student directed" model vs. the "teacher directed" model used in BIE schools today. The reason for this action is only a few students from the community ever graduate from high school. Thus it is evident from drop-out statistics and a century of failing test scores that current and imposed schooling ideas being place on Indian students are inherently repulsive.

Keeping true to the principals and philosophy of a Montessori education, the Sitting Bull School believes testing should not be performed on students, rather each child must be seen as possessing unique talents and skills and as such, each child's abilities must be seen as the focus of the developmental effort, thus the School cares little as to how their capabilities compares to another child's, which is the real result of testing. Some students are better at certain academic activities and some not as good, however, with testing, children are duly labeled and usually they live out the label. Sadly, 85% of Indian children do not perform well in the testing practice and are stamped in various ways as inferior and they never realize their own wonderful attributes.

**Hunkpapa Lakota Premise:** The Sitting Bull School Board believes it is their inalienable right to decide what the educational program will be implemented for their students, and further, whatever is decide must be respected unconditionally, just as Indian people would not expect to tell white people how to educate their children, this Board believes white people should not tell them how to educated their children, as this is not their responsibility.

**Tribal Charter :** The Sitting Bull School is attempting to establish a Tribally Chartered School under the authority of the Tribe, which has the sovereign right and responsibility to enact tribal laws that are in the best interests of all tribal members. Charter Schools in America are innovative schooling programs that are created in lieu of a community's dissatisfaction with the traditional K-12 operation for not addressing the needs of the children or educational outcomes.

This Tribal Charter would set up another model to fund Indian schools. Currently, the federal government gives money to the Department of Interior to operate Indian Contract Schools, Indian Grant School, and BIE operated schools. A Tribal Charter School offers another method to fund Indian Schools in a more direct manner.

This new ESEA language, if adopted, would enable the Sitting Bull School to implement its innovative approaches and still be fully funded and eligible for all federal, state, and tribal funding.

This would not be a State charter, although the Tribal Charter School(s) would be responsible for interacting with the State for accreditation. If a Tribe or the school does not want to do this, this would be their option; however, the Sitting Bull School has already entered into historic negotiations with the State of South Dakota for teacher or Montessori certification and continues to look forward to future opportunities to work with the State of South Dakota.

**Hunkpapa Lakota School Funding Premise:** It is the stance of the Board of Control that the funding given the School by the federal government should come directly to the Tribe without any educational stipulations placed on the money by the federal government, as this money is authorized by the Constitution of the United States for the taking or stealing land and resources.

The Board further states any and all funding being made available to Indian students and schools by the federal government be understood as Treaty obligation money, which entitles the Tribe and its school(s) the right to all formula funding, such as Title programs, or any other funding that State(s) receive from the federal government for the Indian student population. And most importantly, stipulations be enacted in such a way as to allow Schools the ability to spend the revenue awarded for their Indian students in a generally appropriate manner without the puppet strings attached.



## **Re-Authorization Language for ESEA**

### **# 1. NO Testing**

Schools operating Montessori programs do NOT have to perform or submit to national or state testing. Alternative means of accessing progress will be initiated and implemented after consultation with State & BIE.

### **# 2. School Age ISEP Enrollment Funding**

Schools operating Montessori programs shall receive ISEP funding for any student that is enrolled in their 0-3 & 3-4 Montessori programs.

### **# 3. Tribal Charter School.**

Tribes shall be allowed to create innovative Tribal Charter Schools under the new ESEA. These schools shall have full standing in the educational community with the sole purpose of creating relevant and meaningful educational programs for their Indian children. Such Tribal Schools shall be governed and regulated by Tribal Charter School language that give the community schools the option of engaging and negotiating with State education agencies for accreditation purposes.

### **# 4. Tribal Treaty Education Payments**

Tribes were forced to give up their land and their resources, in return the United States government guaranteed educational compensation in Treaties. In the new ESEA, the federal government shall enact language that authorizes the Tribes to directly receive any and all educational funding for the Tribal Charter Schools that are created by their sovereign power. This new ESEA provision shall entitle Tribally Charter Schools to all and any federal funding, as well as any federal funding given to States for their Indian student population. Such funds shall be generally spent for the intent of the funding, so that the funding does not prevent or restrict the innovative implementation of a Charter School's goals and objectives.

The Tribe shall directly receive the funding for such Tribally Chartered Schools. Such funds shall have simple pass thru language to insure a Tribe does not use the funding for other purposes. This funding would not be channeled thru the Bureau of Indian Education bureaucracy.

### **# 5. Tribally Charter Schools & Accreditation**

Schools that are established under the provisions of a tribal school charter shall have the responsibility of entering into accreditation agreements with either the State where the school resides or the School may seek accreditation with a recognized accreditation agency, such as NCA. Schools that do not achieve proper accreditation are subject to certain sanctions and rules of engagement with other accredited schools by a State. Tribally chartered schools do not have to acquire accreditation, however, such tribally chartered school jeopardize their students participation in inter-school participation, as well endangering their students from matriculating into colleges or universities, military service, job training, etc.

**Standing Rock Sioux Nation Educational Enactment**

{ Draft / Example }

Entitled, An Act to provide for the establishment of a pilot charter school on the Standing Rock Sioux Reservation **if** the Sitting Bull School which is a Tribal Grant School is able to receive the federal school improvement funding.

BE IT ENACTED BY THE STANDING ROCK SIOUX TRIBE WHICH HAS THE SOVEREIGN POWER AND RESPONSIBILITY TO CREATE APPROPRIATE LEGISLATION IN BEHALF OF ALL TRIBAL RESIDENTS AND ENTITIES WITHIN ITS JURISDICTION, DOES HEREBY ESTABLISH PROVISIONS FOR A PILOT CHARTER SCHOOL, AS DESCRIBED HEREWITH:

**Section 1.** If the Sitting Bull School secures a School Improvement Grant, 1003 (g) under the Elementary and Secondary Education Act of 1965, Title I, Part A, Subpart 1, the Standing Rock Sioux Tribe shall initiate a pilot charter school ordinance that allows for the establishment a Tribal Charter School on the reservation. This being enacted it will allow the Sitting Bull School to submit for a "Restart" designation under the law. This will then allow for the implementation of a curriculum that shall emphasize Self-Directed and Computer Data Based Instruction.

**Section 2.** Any school on the reservation desiring this status to establish the tribal charter school shall submit a written plan to the Standing Rock Sioux Tribe. The written plan shall include the following:

- (1.) A mission statement for the school;
- (2.) A description of the school's organizational structure that shall include the school governance board of no less than five persons;
- (3.) A financial plan for the first three years of operation of the school;
- (4.) A description of the school's location and facilities;
- (5.) A description of the school's educational structure and plan;
- (6.) An assurance that state content standards or accreditation will be addressed;
- (7.) An assurance that academic accountability measures will be addressed; and
- (8.) An outline of the criteria that will be used to measure the effectiveness of the school alternative educational program that will be implemented.

**Section 3.** Any pilot charter school established pursuant to this Act shall exist as an independent local education agency within the framework of the Bureau of Indian Education. All students enrolled in the pilot charter school shall be counted for the purposes of determining an alternative adequate yearly progress status under the terms agreed to by the Bureau of Indian Education and State accountability systems.

**Section 4.** The charter of the pilot charter school shall:

- (1.) Document compliance with federal, state, and tribal rules, regulations, and statutes relating to health, safety, civil rights, and insurance;
- (2.) Assure that the pilot charter school is nonsectarian in its programs admissions policies, employment practices, and all other operations;
- (3.) Assure that the pilot charter school provides a comprehensive program of instruction for pre-school up to grade twelve or less depending on approved school designation for accreditation;
- (4.) Assure that the pilot charter school meets all federal BIE, state, and tribal administrative rules relating to schools, governing boards, and school districts;
- (5.) Assure compliance for audit procedures by the Bureau of Indian Education, or State;
- (6.) Document compliance with all federal, state, and tribal laws relating to the education of children with disabilities.

The charter of any pilot charter school established pursuant to this Tribal Act is effective for five years and may be amended at the request of the governing School Board if the amendments are approved by the Standing Rock Sioux Tribal Council. A plan for renewal of the pilot charter school must be made to the Standing Rock Sioux Tribal Council every five years.

**Section 5.** For the purposes of funding and enrollment, the student count provisions shall be held and honored as the funding agencies require in regard to BIE or State or Federal government.

**Section 6.** For the purposes of accreditation the charter school and the Tribe shall enter into a Memorandum of Agreement with the South Dakota State Department of Education and the Bureau of Indian Education that establishes the monitoring of the pilot charter school in order to insure creative compliance with any and all appropriate state, federal, and tribal law.

**Section 7.** The pilot charter school is allowed to formulate and implement alternative learning strategies and therefore be allowed to legally use all sovereign rights and responsibilities in creating and carrying out educational programs that address the special and unique circumstances found in the education of Tribal students.

**THEREFORE BE IT RESOLVED**, that the Standing Rock Sioux Tribe does hereby authorize by Resolution and does hereby provide for the establishment of a pilot charter school(s),

BE IT FURTHER RESOLVED, that the Sitting Bull School shall be authorized to submit for a School Improvement Grant, 1003 (g) under the Elementary and Secondary Education Act of 1965, Title I, Part A, Subpart 1, as a "Restart" designation under this law. This will then allow for the implementation of a curriculum that shall emphasize Self-Directed and Computer Technology Learning programs for the special circumstances and concerns for Tribal members and their children.

**CERTIFICATION**

We, the undersigned, Chairman and Secretary of the Tribal Council of the SRST hereby certify that the tribal Council is composed of [17] members of whom \_\_\_\_\_ constituting a quorum, were present at a meeting thereof, duly and regularly, called, resolution was duly adopted by the affirmative vote of \_\_\_\_\_ members, with \_\_\_\_\_ opposing, and with \_\_\_\_\_ not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

Date this \_\_\_\_ day of March \_\_\_\_ 2007.

\_\_\_\_\_  
Charles W. Murphy, Chairman  
Standing Rock Sioux Tribe

ATTEST:

\_\_\_\_\_  
Adele White, Secretary  
Standing Rock Sioux Tribe

[ Official Tribal Seal ]

Department of the Interior

**REPORT ON  
Haskell Indian Nations University  
Higher Education Workforce Project  
Bureau of Indian Education  
April 17 – 19, 2007**

**Department of the Interior  
Human Capital Accountability Review**

**Date of Report: June 29, 2007**

**Sharon Limberhand, Ethics and Accountability Officer  
Allison Beard, HR Specialist  
Kathy Fuchs, HR Specialist  
OPM Auditors George Flores and David Sumpter**

Department of the Interior

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## I. EXECUTIVE SUMMARY

### INTRODUCTION

The purpose of the review of Haskell Indian Nations University (HINU) was to determine its adherence to merit system principles and assess the effectiveness of its strategic management of human capital. In particular, we reviewed how agency programs and activities involving talent, including delegated examining (DE); and performance culture are preserving and promoting the framework of the merit system principles and veterans' preference at the Department of the Interior (DOI).

Our review coverage included a representative sampling of personnel actions and associated records. Structured interviews and focus groups were not utilized during this site visit since a recent evaluation along with employee and management surveys were conducted at HINU in mid-2006 by an outside consultant group. The team leader conducted one-on-one interviews with the Vice President for Administration, the President of the University, and the Human Resources Officer and staff.

The HINU Personnel System was established by Public Law 105-337 to allow Haskell Indian Nations University to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures, and for other purposes. The purpose of the project was to demonstrate that greater managerial control over personnel processes and functions at the worksite could enhance the effectiveness of a higher education workforce and, at the same time, expand the opportunities available to employees through a more responsive personnel system. The demonstration project would provide managers at the lowest practical level the authority, control, and the flexibility they needed to provide quality educational opportunities for American Indian students. The Higher Education Workforce Project (HEWP) was developed on the features of demonstration projects at the Department of Defense Acquisition, Air Force Research Laboratory, Department of the Navy (China Lake), and the National Institute of Standards and Technology (NIST). The alternative personnel system represented sweeping changes in the entire spectrum of human resources management for HINU that included initiatives designed to assist the institution in hiring the best people to fulfill mission requirements. Other initiatives focused on developing, motivating, and equitably compensating employees based on their contribution to the mission. It was anticipated that the HEWP would result in more satisfied employees as a consequence of the demonstration project's hiring procedures, classification accuracy, pay equity and fairness of performance management.

### SUMMARY OF FINDINGS

The demonstration project, as defined by the Public Law and Federal Register Notice, was never fully developed and implemented. Operating procedures were not established, qualification and classification standards were never developed, a Personnel Policy Board was not established, and the whole organization was evaluated

and found to be dysfunctional. The broadbanding portion of the demonstration project appeared to be the only part that was working to some extent. The rest of the human resources operations were based loosely on Title 5 procedures.

We found that the recruitment process failed to realize the intent of the demonstration project. Specific qualification standards for positions at HINU were not established at the start of the project. They chose to adopt the Office of Personnel Management's Qualifications Guide for positions used within the Federal service but then advertised with higher minimum qualifications requirements in both education and/or experience. The higher qualification requirements contributed to:

1. loss of consideration for candidates who applied for positions but were found ineligible;
2. numerous readvertisements of positions where candidates did not apply; and
3. a continued shortage of applicants.

When candidates were selected for positions, they were being brought on board before fingerprint checks were completed, which puts both HINU and students at risk.

The three-year probationary period that was required for new employees was not implemented properly. Some employees were placed on a one-year probationary period; others were placed on the full three-year probationary period. There was no explanation as to why some served shorter periods of time, which indicates a violation of Merit System Principles.

The performance system that was in place at HINU was not functioning. It was very difficult to understand the plan, how employees were rated, and no pay pools were established. Plans were not in place for all employees.

The Personnel Policy Board was never established and may have contributed to a lack of guidance and leadership in the development of policy and operating procedures as well as oversight for the demonstration project. In addition, the lack of oversight and/or guidance from Human Resources at BIA and OIEP, the Department of the Interior's Human Resources, and the Office of Personnel Management may have contributed to the current dysfunctional state of the demonstration project. HINU was its own worst enemy in not asking for assistance, guidance or oversight. The inconsistencies that were uncovered in the accountability review indicate that Merit System Principles were not followed and violations currently exist.

#### **PRELIMINARY RECOMMENDATIONS**

1. End the demonstration project and return the human resources function back to a Title 5 operation. Why:
  - Procedures and policies are established and can be applied to the HR functions so that Merit System Principles can be adhered to.



- Operations under Title 5 are established and are currently in place throughout BIA/BIE.
  - Recruitment could continue at HINU during the transition back to Title 5 operations.
  - Current staff at HINU is experienced with Title 5 operations and transition would be quick/easy.
  - Staff from BIE and BIA HR can be available to help with the transition and training.
  - New initiatives, such as the Indian Excellence Program, could be utilized by HINU for hiring candidates into positions.
2. Any other recommendations to make changes to the demonstration project would require not only additional resources (funding, staff, and time) but would require the suspension of hiring and other human resources functions at HINU until such time as guidance is developed. Extensive work would have to be completed to develop operating procedures, qualification and classification guidelines and all other aspects of the Human Resources functions that are identified in the Federal Register Notice to make the demonstration project work. With limited funding at HINU and within BIA/BIE, this option may not be feasible. Had this happened earlier in the demonstration project, this corrective action would have been a viable option. Since we are almost seven years into the demonstration project, the costs of starting over outweigh the benefits that would be realized.

## II. METHODOLOGY

The results of this review are reflective of a multifaceted approach to gathering information through extensive organizational research and on-site visits that involved document reviews at Haskell Indian Nations University. Information from all sources was analyzed in the aggregate to present key findings. Specifically, our methodology included reviews of personnel actions and associated records, as well as agency policies and guidelines that influence the HR decisions of managers and HR professionals. We utilized the HEWP Summary Evaluation that was completed by Jarrett HR Consultants on November 3, 2006 rather than conducting structured individual and group interviews to assess familiarity with delegated authorities. The HEWP Summary Evaluation was prepared as a mandated requirement to determine the effectiveness of the personnel system changes undertaken in the demonstration project. The evaluation was conducted in accordance with requirements outlined in the Demonstration Projects Evaluation Handbook issued by the Office of Personnel Management dated April 1, 1999. A copy of the Executive Summary from the HEWP Summary Evaluation prepared by Jarrett HR Consultants is included in Appendix A of this report. The team also analyzed relevant data from the Federal Personnel and Payroll System (FPPS) on personnel action trends. Other sources of information included internal reports and audits. Our audit focused on the systems of talent (including DE), and performance culture.

### BACKGROUND

In 1996, based on the unique nature of the Haskell mission in the Federal sector, HINU submitted legislation to Congress for developing an alternative personnel system. The HINU and SIPI Administrative Act of 1998 (Public Law 105-337) was passed on October 31, 1998. It determined that the provisions of culturally sensitive curricula for higher education programs at HINU was consistent with the commitment of the Federal government to the fulfillment of treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources. The Law found that giving a greater degree of autonomy to the institution while maintaining it as an integral part of the Bureau of Indian Affairs (BIA) would facilitate the transition of HINU to a full 4-year university. The law allowed HINU to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures in accomplishing these purposes. A copy of Public Law 105-337 is included in Appendix B.

Public Law 105-337 granted HINU the authority to conduct a demonstration project that was not limited by any specific authority under Title 5 of the United States Code or any provision of law, rule or regulation to take actions regarding the following:

- (1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;
- (2) the methods of classifying positions and compensating employees;

- (3) the methods of assigning, reassigning or promoting employees;
- (4) the methods of disciplining employees;
- (5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;
- (6) the hours of work per day or week;
- (7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and
- (8) the methods of reducing overall staff and grade levels.

The law allowed HINU to implement a very broad range of changes to the existing Title 5 system. The Alternative Personnel System Team (APS) was established to design and implement the project. The new personnel system that was developed provided innovations (called interventions) to the existing Title 5 personnel system. The initiatives it recommended were designed to assist the institution in hiring the best quality candidates for employment to meet mission objectives. Based on a set of specific personnel system changes (interventions) designed to streamline processes and empower managers, the new personnel system was labeled the Higher Education Workforce Project (HEWP). Changes included new hiring and appointment authorities, a new system for compensating and assigning employees (broadbanding), delegated classification authority, delegated procurement authority, a contribution-based compensation and assessment system (CCAS) that replaced the existing appraisal system and provided an equitable and flexible method for assessing and compensating the workforce, revised reduction-in-force procedures, and procedures for furthering the training and education of the workforce (academic certification training and sabbaticals).

At the beginning of the demonstration project, employees were allowed to choose between moving over to the HEWP or remaining under the current Title 5 regulations. A control group of 45 positions was established that would remain under Title 5 regulations. Employees were given an additional chance to become part of the HEWP after 4 years into the project. Currently there is a group of 37 employees who are part of the control group and not participating in the demonstration project.

At HINU, the Personnel Office staff consists of a Human Resources Officer, one Human Resources Specialist, and one Human Resources Assistant. (We recently learned that the Human Resources Specialist retired on May 26, 2007 and the Human Resources Assistant has announced her resignation as this report was published.) They currently provide Human Resources services for a staff at HINU of approximately 200 employees (164 employees participating in the project and 37 "control group" employees.) The HR Officer at HINU was recently hired on 04-01-07 and the position had been vacant for a period of over 6 months. During this time, the office continued to function through the

services of one HR Specialist and one HR Assistant. The new HR Officer does not have a background in managing an HR function under a demonstration project, though she does have an extensive background in Human Resources and experience working with Indian Preference through the Indian Health Service.

In completing our review of the demonstration project, the team found that the review materials and tools used in accountability reviews did not help in assessing how the demonstration project was functioning since it was outside of Title 5. The DOI accountability review program tools were utilized loosely as a basis of reviewing their recruitment program along with their performance plans and awards program. The tools for Official Personnel Folder (OPF) review were utilized, as the demonstration project was required to maintain the employee OPFs in accordance with OPM regulations. The Merit System Principles were also utilized when reviewing merit case files to determine if they were adhered to and to determine whether or not Prohibited Personnel Practices had occurred during the demonstration project.

### III. FINDINGS

#### ***TALENT***

In preparing for the review at HINU, the accountability team was surprised to find that the demonstration project was functioning solely from the language contained in Public Law 105-337, which established the demonstration project at HINU and the Federal Register Notice that was published June 30, 2000; which announced the final plan that would be used. The Federal Register Notice provided a basic framework for establishing the demonstration project but did not get into specific operating procedures or the “nuts and bolts” of operating all of the various human resources programs within the project. A copy of the Federal Register Notice is contained in Appendix C. When the accountability review team arrived at HINU to begin their review of the program, a “draft” operations manual was provided to the team to assist them with understanding how the demonstration project was operated. The HEWP Operations Manual was in draft form and not finalized for use by the project. It appears that parts of the operations manual were utilized in helping the HR staff run the demonstration project in addition to the information contained in the Federal Register Notice.

The demonstration project was developed to provide HINU with increased control and accountability for the covered workforce. All positions at HINU, General Schedule (GS) and Wage Grade (WG) were included in the project and are still subject to Indian Preference under Title 25. The intent of the project would have allowed a more simplified, accelerated hiring process to attract and retain highly qualified individuals and allowed for delegated examining authority; scholastic achievement appointments; and eminent scholars appointments. Candidates are evaluated for meeting minimum qualifications based on OPM’s Operating Manual “Qualification Standards for General Schedule Positions”.

HINU utilized three appointment options: permanent, contingent and temporary appointments. The permanent appointment replaced the existing career and career-conditional appointments. The contingent appointment was a new appointment authority that was based roughly on the existing term appointment authority. The contingent appointment was for limited positions not to exceed four years, with an option for one additional year when the need for an employee’s service was not permanent. All employees under the permanent and contingent appointments were eligible for benefits under the guidelines of the demonstration project provided the appointment was expected to last for at least one year. An academic year was considered equivalent to a calendar year for academic appointments. Temporary appointments were available for positions that were expected to last less than one year. Selections for temporary appointments for less than one year were made non-competitively and selections for contingent appointments could be made both competitively and non-competitively and were eligible for conversion for conversion to permanent appointments.

The HEWP allowed for a modified probationary period. It was thought that employees in the Academic and Technical/Specialist career paths needed more than the one-year

probationary period to provide managers the time needed to properly assess the contribution and conduct of new hires in the higher education environment. Permanent employees were subject to three years probation that may be decreased to not less than one year. All newly hired employees were subject to a possible extension of their probationary period equal to the length of any educational/training assignment that placed the employee outside normal supervisory review. The modified probationary period applied to new hires or to those who did not have reemployment or reinstatement eligibility.

A Voluntary Emeritus Program was defined under the HEWP, which allowed the President the authority to offer retired or separated individual voluntary assignments in the institution and to accept the gratuitous services of these individuals. The program could not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution. The Voluntary Emeritus Program would ensure continued quality higher education by allowing retired employees to retain a presence in the HINU education community and to enrich the institution's educational mission through mentorships and other service. One or more HINU education managers must recommend volunteers to the President.

A broadband system replaced the General Schedule and Wage Grade structure. Four broadband levels were created for the project. Levels I through IV will include the current grades of GS-01 through GS-15. At the start of the demonstration project, all wage grade compensation levels were converted to GS grades, and then the GS grades were used in setting the broadband levels. The levels are defined as follows:

Level I	GS-04 – 06
Level II	GS-07 – 09
Level III	GS-10 – 12
Level IV	GS-13 – 15

As the rates of the General Schedule and/or Executive Schedule increased, the minimum and maximum rates of the broadband levels also increased. Individual employees received pay increases based on their assessments under the Contribution-based Compensation and Assessment System (CCAS). General pay increases are given to all employees regardless of assessment scores. Within-Grade Increases occur as scheduled under the General Schedule, subject to attainment of a full performance assessment score. Employees also receive the locality pay of their geographical area.

A complete copy of the Public Law and Federal Register Notice will be included in Appendix 1 of this report. At the end of the Federal Register Notice, all waivers to Title 5, United States Code are listed that applied to the demonstration project as well as all waivers to Title 5, Code of Federal Regulations.

An initial briefing was conducted with the Vice President for Administration, Mr. Marvin Buzzard and with the President, Dr. Linda Warner. The team explained the reasons for the review along with asking questions concerning the demonstration project and some of the history behind the decisions at the time to pursue this course

rather than continue within the traditional hiring under Title 5 authorities and the Excepted Service authorities available to the University under Title 25, Indian Preference. Dr. Warner had recently been appointed to the President's position and had little information to share with the team, as she was new to the university and their human resources operations. Mr. Buzzard provided the team with the most relevant historical information concerning the demonstration project and its establishment. Mr. Buzzard had indicated that one of the reasons why the university pursued the ability to establish a demonstration project was the restrictiveness of the regulations under Title 5 when hiring instructors in a university setting. They wanted the flexibility to hire the "best and brightest" instructors and to be able to pay above the minimum rate to attract a highly qualified staff. Within the city of Lawrence, Kansas, HINU must compete for instructors with the University of Kansas, an institution that is quite a bit larger. Another reason why the university pursued the use of a demonstration project was the ability to run their human resources operations at the university rather than to depend upon services from the Office of Indian Education Program located in Albuquerque, New Mexico. The distance between the HR Office in Albuquerque and the university added further delays to the hiring of qualified personnel.

Our review of talent consisted of the review of merit staffing files, delegated examining files and the Official Personnel Folders for employees. A random sampling of case files was reviewed from FY 2005 and FY 2006 to allow for a 39.5% review of cases. Recruitment at HINU during FY 2006 would not have provided enough files for our review. OPFs for selected employees were reviewed for appropriateness of the appointment along with the completion of our OPF review, which will be discussed in a later section of this report.

#### **Case File Review – Merit Promotion and Delegated Examining**

Recruitment case files were reviewed for consistency with Merit System Principles. The review team utilized the check lists developed by the Office of Personnel Management as a guide for reviewing vacancy announcements and merit promotion procedures for consistency rather than for adhering to the rules and regulations contained in Title 5 and the CFR. At HINU, recruitment for positions was accomplished utilizing two different types of recruitment methods: Merit Promotion and Delegated Examining. The review team had some difficulty understanding the use of these terms "merit promotion" and "delegated examining" in the sense that they are utilized under HR operations covered under Title 5. HINU used "merit promotion" procedures when they advertised positions that are open to candidates within the scope of "all Federal candidates." They used "delegated examining" when considering candidates from "all sources."

#### **1. Merit Promotion Case Review**

##### **General Findings:**

1. Merit case files did not contain proof that vacancy announcements were listed in USAJOBS or posted to other outside advertising sources to allow

- the university to attract outside applicants.
2. Qualifications for positions varied from position to position and did not follow the minimum qualifications outlined in the OPM Guide for Qualification Standards for General Schedule Positions.
  3. Specialized experience statements in vacancy announcements did not define what would be considered "specialized experience."
  4. Vacancy announcements did not include information concerning Veterans Preference and how candidates could claim veteran's preference for employment.
  5. Applications were not always date stamped when received in the Human Resources Office.
  6. Required notification letters to applicants were not always prepared and sent after the selection process was completed.
  7. When rating panels were utilized for positions, the panels consisted of less than three members, crediting plans were inconsistent.
  8. Job analysis and crediting plans were, for the most part, missing from the merit case file. KSAs identified for the position were not documented and, in some cases, did not make sense for the position being advertised.
  9. Type of appointment information was missing from announcements.
  10. OPM qualifications documentation was missing from the merit case files.

**Specific Findings:**

1. Masters degree requirements were included on vacancy announcements for instructors. This is not part of the OPM qualifications for the GS-1701 series and is above the minimum requirements. This caused some applicants to lose consideration for positions.
2. College transcripts were required from applicants when positive education requirement(s) did not exist for the position. This caused some applicants to lose consideration for positions.
3. Original college transcripts were required from candidates when substituting education for experience. It is not an OPM requirement to submit original transcripts when substituting education for experience where positions do not have a positive education requirement. This caused some applicants to lose consideration for positions.
4. PhDs were required on certain positions that were advertised. This is not part of the OPM qualifications for the GS-1701 series and is above the minimum requirements. This caused some applicants to lose consideration for positions.
5. One case file contained a request to advertise a position and it included the name of an individual who should be selected for the position. This gave the appearance of preselection.
6. Contingent appointments were typically advertised for one length of time; however, SF-50 actions were processed with a not to exceed date that was different (usually longer) than what was advertised. A few actions had not to exceed dates of 4 years.



7. Vacancy announcements included language that indicated applications must be received by the closing date of the announcement; however; applicants from outside the commuting area could post-mark their applications by the closing date of the announcement and would receive consideration if received within 3 days.
8. One position was advertised as a “temporary position”; however; the opportunity was for a temporary promotion. An individual who was serving on a noncompetitive temporary promotion with a not to exceed date of 120-days was selected to continue on this promotion. The vacancy announcement should have been advertised as a temporary promotion opportunity rather than a temporary position.
9. A College Resident Assistant position was initially advertised with a condition of employment that indicated only female applicants would be considered for the position. There was no documentation in the case file to support this condition of employment and the announcement was later amended to remove the requirement; however; no documentation was included as to why this requirement was removed.
10. An Instructor of Business Administration was advertised and applications were accepted from candidates more than 3 days after the closing date of the announcement. The announcement was not extended and the case file did not indicate that the announcement was reopened for an additional period. One applicant, a non-Indian with VEOA eligibility, met all of the degree requirements in addition to submitting the application before the closing date of the announcement, did not receive consideration for the position. An Indian Preference candidate was determined to meet qualifications and placed on a selection certificate. His application was received well after the closing date of the announcement. An additional candidate, with Indian Preference, was found disqualified because the Masters Degree had not been confirmed. A case of loss of consideration exists for the non-Indian candidate and a possible loss of consideration for the Indian candidate.
11. In reviewing probationary period that were applied to new employees, there was no consistency as to how the three-year probationary period was applied. Some employees were placed on a one-year probationary period, while others were subject to the three-year probationary period. SF-50 actions did not note why probationary period were shortened.
12. A Human Resources Specialist position was classified, advertised, candidates rated, and a selection made, all by the same person. An appearance of a conflict of interest exists when the selecting official rates and ranks candidates that will be interviewed and selected by the same selecting official.
13. The completion and adjudication of background investigations on employees were for the most part missing from the OPF.
14. Appointments were being processed within a short time after a selection was made. There was no indication that candidates were initially screened by the security office or favorable screening of fingerprint checks were received from OPM before a candidate was brought on board.

## Department of the Interior

15. Job analysis and crediting plans were missing from all case files reviewed. No indication how KSAs for positions were determined.
16. Selection certificates did not include explanations when candidates declined offers of positions.
17. When positions were readvertised and candidates did not have to reapply to receive further consideration, candidates who were initially referred but not selected were not included on further certificates that were issued to the selecting official. No indication that these candidates received additional consideration when readvertisements were closed and certificated.

**Required Actions:**

1. Corrective actions that were left by the review team should be completed, if not already done so, and reported back to the review team lead upon completion. Specific corrective actions and documentation was provided to the Human Resources Officer at HINU. A list of these actions is contained in Appendix B.

**2. Delegated Examining**

The HEWP provided for delegated examining authority, which would provide a streamlined applicant examining process. The plan indicated that this process would be used to fill all positions at HINU. Basic eligibility factors would be determined using any available resources, linking the applicants' knowledge, skills, and abilities to those required in each position. Minimum eligibility requirements will be those at the lowest equivalent grade of the appropriate broadband level.

The team was told prior to arriving at HINU for the review that a Delegated Examining Unit (DEU) existed. Based on the traditional understanding of DEU that is utilized under Title 5, one of the OPM auditors experienced in reviewing DEU began his review of the case files that were designated as "delegated examining." The team soon realized that DEU in its true sense was not what was happening at HINU. Recruitment cases did not differ from the cases recruited under "merit promotion" except for the fact that the area of consideration was increased to all sources. There were no operating procedures for positions that were recruited under delegated examining; rating and ranking only occurred in some cases, not all; certificates were not audited before being issued to selecting officials; and selection certificates did not include scores of candidates, in score order.

**General Findings:**

1. Delegated examining did not exist in the demonstration project.
2. Selection certificates did not list candidates in score order and there was no evidence that the certificates were audited.
3. Appointing authorities that were used were incorrect.

4. Qualifications required for positions were at a higher level than the minimum qualifications in the OPM Qualification Guide.

**Specific Findings:**

1. Two candidates were placed on a certificate for an Education Laboratory Technician position. The first person declined, the second person was not selected. No documentation was included in the file as to why the second candidate was not selected.
2. The Education Laboratory Technician was advertised using an hourly rate as opposed to an annual rate. There was no explanation as to why this position was treated differently.
3. In several instances when candidates from a "delegated examining" announcement were appointed, the legal authority cited on the sF-50 was for an OPM issued certificate rather than a certificate issued under the demonstration project (ZLM; P.L. 105-337 correct authority).
4. There were possible instances of candidates who lost consideration for positions and should be afforded priority consideration for future positions. The Instructor of Biology position is one example of where two candidates who were eligible for consideration were not included on the selection certificate.
5. In one instance, an Instructor of Education position had a requirement for a Masters Degree with a current Kansas State Elementary Certification. This was included in the crediting plan at the acceptable level. This requirement for a state certification in elementary education did not seem appropriate for a position at a 4-year institution.

**Required Actions:**

1. Corrective actions that were left by the review team should be completed, if not already done so, and reported back to the review team lead upon completion. Specific corrective actions and documentation was provided to the Human Resources Officer at HINU. A list of these actions is contained in Appendix B.

**Other Issues:**

Education Program Administrator Position: The President position at HINU was advertised under the DEU to all sources. This position, as stated in the Operating Manual, was excluded from inclusion in the demonstration project and as such retains all rights and authorities under Title 5. The position was advertised as a GS-15 grade level position. The vacancy announcement did not include the basic qualifications for the GS-1710 series under professional and scientific positions from the OPM qualifications guide. There was incomplete information on Veterans Preference in the vacancy announcement. The crediting plan used for the vacancy announcement did not clearly define levels of achievement. There was very little difference between superior and good levels. Levels of experience under each KSA define experience that was not

asked for within the KSA, i.e., KSA 1: thorough knowledge of functions and process in the field of post-secondary education, to be rated Superior; the candidate must possess knowledge of Indian higher education. Scoring sheets were not used in the panel process; scores from each panel member were not clearly recorded. Four panel members were listed on the rating process sheet; however, there are only numerical scores on the crediting plan from three panel members. Since scoring was not clearly indicated, there was no explanation or indication how the decision was made to refer two candidates and there was no indication how a cut-off score was determined. Rating process sheet indicated the use of a selective factor; however, the vacancy announcement did not include a selective factor.

The selectee's initial appointment was processed as a career conditional appointment. This was incorrect as the selectee was entitled to be appointed under Indian Preference, Excepted Service (170, ZLM, P.L. 105-337). The probationary period was stated incorrectly and needed to be changed to cover the one-year probationary period as covered under 5 CFR. The service computation date needed to be reviewed and adjusted to include previous service with the BIA and the retirement coverage needed to be reviewed to make sure that the selectee was placed in the proper retirement system.

Since the operating manual indicated that the President's position was excluded from the demonstration project, there appears to be an issue/problem with the salary level that was set for the employee. The selectee's salary was set at the step 8 of the GS-15 level based upon the advice and guidance provided by the HINU HR Staff. They provided information on pay setting based on the broadband utilized under the demonstration project. This guidance appears to be incorrect. A variance of salary will need to be prepared and sent to OPM for approval based on the advance in salary rate that was set for the selectee.

### **3. Official Personnel Folder Review**

A random sampling of OPFs was reviewed by the team for consistency and proper file maintenance. All OPFs reviewed were in the proper folder with name, date of birth and social security number legible on each. All records in the OPF were in chronological order with only a few exceptions. Documents with other employee's social security numbers were sanitized and SF-50 actions were properly corrected. It appears that a complete OPF review has not been conducted at HINU due to the number of documents that were contained in the OPF that should have been removed and returned to the employee such as SF-182, training forms and other training documents.

#### **Findings:**

1. The following forms were filed on the right-side of the OPM and need to be either moved to the left-side or removed from the folder altogether:
  - a. I-9 forms;
  - b. Address forms;
  - c. Credit reports;
  - d. Direct deposit forms;

- e. Position descriptions;
  - f. Tentative selection notices;
  - g. Handicap forms;
  - h. DI-1935 forms;
  - i. GSA-3607 forms;
  - j. IDPs;
  - k. W-4 forms;
  - l. WGI certifications;
  - m. MOUs and Conditions of Employment;
  - n. Notice of Scheduling of Background Investigations;
  - o. Applicant screening questionnaires;
  - p. Multiple copies of job applications; and
  - q. Training materials, certificates and SF-182 forms.
2. Folders did not contain documents when employees chose not to elect health and/or life insurance benefits. These need to be completed and filed in the OPF to provide an audit trail along with documentation that benefits were declined.
  3. In one instance, a copy of a passport document was included on the right side of the OPF and needed to be removed.
  4. Certificates of investigation were missing in some folders and needed to be located and filed.
  5. SF-177 forms were filed in the OPF and should be removed and placed in medical files for employees.
  6. BIA-Form-4432, Indian Preference Certification, was not used in three instances of initial appointment. Only the BIA-Form-4432 can be used to give a candidate Indian Preference for appointment in positions within the demonstration project.
  7. Award justifications, documents and SF-50 actions reflecting the awards have not been removed from the OPF.

**Recommended Actions:**

1. Copies of the OPF Review form should be utilized to review and purge documents from the OPF.
2. It is recommended that a team of HR Specialists and Assistants conduct a thorough review of all OPFs for HINU that goes beyond the paper review that was conducted. OPFs should be reviewed for service computation dates, tenure issues, appropriate NOA codes, pay issues, appropriate retirement coverage and purge all prohibited/unnecessary documents from the folder.

## ***PERFORMANCE CULTURE***

### ***Performance***

At HINU, the Federal Register Notice established the Contribution-based Compensation and Assessment System (CCAS), which was intended to provide an equitable and flexible method for assessing and compensating the higher education workforce. The CCAS allowed for more employee involvement in the performance assessment process, increased communication between supervisors and employees, facilitated clear accountability of contribution by each employee, facilitated employee progression tied to institutional contribution, and provided employee progression tied to institutional contribution, and provided an understandable basis for salary changes.

The CCAS was envisioned to promote salary adjustment decisions made based on an employee's overall annual contribution when compared to all other employees and levels of compensation. Contribution would be measured by using a set of six factors, each of which is relevant to the success of the educational institution and criteria would be determined by each organizational unit. A pay pool would be established at the beginning of the annual assessment cycle and include a group of employees among whom the CCAS dollars are calculated and distributed at the end of the rating period. The President of the institution was to determine the pay pool structures. At the end of the rating period, the employee would summarize their contributions for each factor in a self-assessment. The immediate supervisor (assessment official) would identify for each employee the earned level and interval of each factor. All assessment officials within the pay pool would meet together to ensure consistency and equity of the contribution assessments. An Overall Contribution Score (OCS) is calculated for each employee, the employees are then placed in rank order, and the pay pool panel meets to conduct a final review of the OCS and recommends compensation adjustments for the pay pool members. The pay pool panel also has the option of giving an employee an incentive award, which does not affect base pay.

During the interview with the Vice President for Administration, Mr. Marvin Buzzard, was asked how the performance system was working at HINU. He indicated that some Departments within the University had not utilized the performance system as it was intended. When asked about the pay pools, no one could answer whether or not pay pools had been set up and what amounts were available for pay out each year.

Very few awards were given to employees at HINU as evidenced from the reports that were provided to the accountability team. Performance ratings were not entered into the Federal Personnel and Payroll System (FPPS) for the last three years and current ratings for 2006 were not available for review. Performance plans (CCAS forms) were missing from the performance folders that were reviewed and at least five performance folders were missing plans for 2006 where employees were on board for more than 90 days and were entitled to a performance review. From the plans that were reviewed, it was evident that performance plans were not established at the beginning of the performance period as plans were dated the same day that evaluations were given.

There was no evidence that employees at HINU received salary adjustments based on their OCS for the rating period. The team found that employees who were considered part of the "control group" were also subject to the CCAS and received ratings through this performance system. This appears to be incorrect as these employees were still subject to Title 5 guidelines and should have continued to be part of the Department of the Interior's performance appraisal system.

#### ***Awards***

At HINU, the President was responsible for establishing an Incentive Awards Budget (IAB) for the institution each year. The IAB would be set at not less than 1 percent of the institution's total salary budget calculated on September 30 of each year. The IAB was to be established as a separate fund from the funds available for base pay increases and contribution bonuses. The IAB was to be available for use as incentive awards for employee contributions and all other incentive awards (i.e. Special Act or Service). There was to be no connection to CCAS contributions. The IAB funds were under the management of the pay pool manager, who was to give final approval for all Incentive Awards.

Cash awards were reviewed and most were coded under the nature of action code 840, Cash Award based on contribution/performance. In most cases, the award that was granted under this nature of action authority did not have a supporting/current performance rating. Most employee performance folders did not include DI-450, cash award forms, though occasionally these forms were found to support the award given. SF-50 actions for performance awards were found in the OPFs and should be removed and placed in the employee's performance folder.

#### **Recommended Actions:**

1. Awards documentation that is contained in the OPFs should be pulled and filed in the employee performance folders.
2. Employee performance folders should be fully reviewed to determine who is missing ratings for 2006 and managers contacted to locate missing documents and ratings.
3. Managers should be reminded, in writing, concerning the importance of establishing employee performance plans and making sure that performance plans are in place for the next performance period.

#### IV. RECOMMENDATIONS

Where do we begin to make recommendations about the Demonstration Project at HINU? The demonstration project, as a whole, is dysfunctional, does not provide a foundation for providing operating human resources services to the staff at HINU, and for the most part violates most, if not all, Merit System Principles. If the Accountability Review had been conducted solely by the Office of Personnel Management, the review would have stopped after one day and their only recommendation would have been to close down operations at HINU immediately. Given the nature of the program that the demonstration project supports, Haskell Indian Nations University, and who would suffer because of the inability to hire instructors and other staff in support of university operations, the review team decided that a complete shut down of operations would not be in the best interest of the university. However, decisions need to be made immediately concerning the viability of continuing the demonstration project vs. ending the project and returning the human resources function under Title 5.

In reaching the recommendations that are to follow, the team tried to find things that were working within the demonstration project and to identify things that could be immediately fixed that would allow the project to continue to function in its current state. With the recent retirement of the only Human Resources Specialist that was with the project when it started, the staff remaining would continue to have a difficult time trying to develop standard operating procedures that would allow them to operate, even in a limited capacity. When the basic foundation for operating human resources programs (staffing, classification, compensation, performance) do not exist or are flawed, it is difficult to recommend "quick fixes" to allow operations to continue.

Rather than trying to fix something that is "broken beyond repair", it is this team's first recommendation to end the demonstration project as soon as possible and return the human resources function back to a Title 5 operation. In making this our primary recommendation, the team took into consideration the reasons why the public law was developed and approved. Both HINU and the Southwestern Indian Polytechnic Institute (SIPI) were looking for a human resources system that would allow them to have greater flexibility outside of the Federal hiring process and to make their institutions competitive for quality instructors to meet the needs of Indian students. In the case at HINU, there was no evidence this actually occurred. If anything, qualifications were set at higher levels, which restricted applicant pools, positions were readvertised more than once to locate "qualified" candidates, and there were times when certificates of eligible candidates were issued up to six months after the closing date of an announcement. In some cases, the advertisement dates were so short there was an appearance of preselection for positions at HINU and advertising jobs was just a "formality." This also contributed to the restricted applicant pools. The occupations that may have benefited from the changes in the hiring process were administrative or clerical in nature where candidates were selected and placed into positions.

The advantages for returning to Title 5 human resources operations are many and one of the major factors to be considered is the fact that regulations, policies and operating



procedures exists in this system, which can be easily implemented at HINU. HINU would not have to worry about adhering to Merit System Principles since this is the foundation of Title 5 programs. In addition, it is a known and established system of human resources operations and can be quickly implemented with the help of the Human Resources Operations from both the Bureau of Indian Education and the Bureau of Indian Affairs. Recruitment operations could continue at HINU during the transition back to Title 5 operations since staff at HINU has experience with Title 5 procedures. One major factor to look at in favor of returning to the Title 5 procedures is the many changes in human resources flexibilities that have occurred since the development of the public law. Higher salaries can be offered to individuals through new flexibilities that are in place under recruitment, retention and relocation bonuses, and setting pay above the minimum rate. Other benefits for attracting employees can be realized through the use of the student loan repayment program, flexible work schedules, the benefits programs under health and life insurance, dental and vision insurance, thrift savings plan benefits, and long-term care benefits. The Bureau of Indian Affairs is also working on recruitment programs within the Excepted Service, which would allow the hiring of Indian Preference candidates at an accelerated level through the Indian Excellence Programs.

We would recommend additional assistance from the Human Resources Office with the Bureau of Indian Education in Albuquerque, New Mexico to assist the staff at HINU with the processing of personnel actions and the maintenance of OPFs. After the initial conversion back to the Title 5 system, we would set up a review process that would assist the HR staff at HINU with continuing to maintain compliance with the new system and would schedule the accountability team to return for another on-site assistance visit at the six-month stage and after one year from implementation.

If the higher education levels for instruction and dean positions are still a necessary requirement for the continued accreditation of the university, we can work with the HR Staff to develop a proposed qualification standard for these positions. We will work with the Office of Personnel Management to seek their approval of the use of a higher qualification standard that requires advanced degrees.

The alternative of returning the HR function to Title 5 would be to fix the problems with the demonstration project. Making changes to the demonstration project would require not only additional resources (funding, staff, and time) but would require the suspension of hiring and other human resources functions at HINU until such time as operating guidance is developed and implemented. Extensive work would have to be completed to develop operating procedures, qualification and classification guidelines and all other aspects of the Human Resources functions that are identified in the Federal Register notice to make the demonstration project work. With limited funding at HINU and within BIA/BIE, this option may not be feasible.

In considering this option of "fixing" the demonstration project, HINU would need to contract with a contractor who specialized in Federal human resources programs and services or with the Office of Personnel Management to develop an action plan to "reestablish" the demonstration project. Operating tools and procedures would have to

be developed, tested and implemented by the contractor before any of the HR functions could begin to operate. All of this work would need to be done on an accelerated timeline within six months. Close monitoring and supervision of the changes and new operating procedures would be established to ensure that Merit System Principles are adhered to and procedures are followed. The accountability team would set up on-site assistance visits at six-month intervals for a two-year timeframe to monitor the progress of the demonstration project until it is fully implemented. We would also recommend that the Office of Personnel Management be involved in this process at all phases of revamping the demonstration project to provide technical expertise to the project.

It is our recommendation that a meeting be scheduled with the President of HINU in the very near future to explain the concerns identified in our review.

## Appendix A

### Higher Education Workforce Project

Conducted by Jarrett HR Consultants

November 3, 2006

#### Executive Summary

Note: This document represents a revised version of a previously submitted document. This document is intended to replace the previous document in its entirety. No pages of the previously submitted document should be used or added to this document.

#### Background

Haskell Indian Nations University (HINU) is a higher education institution that provides post-secondary education to Native American students from across the United States. HINU is operated through funds provided by Congress to the Bureau of Indian Affairs (BIA) consistent with the commitment of the Federal Government to the fulfillment treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources.

The mission of HINU is to serve members of Federally-recognized American Indian and Alaska Native nations, as authorized by Congress and in partial fulfillment of treat and trust obligations. With student learning as its focus, Haskell embraces the principles of sovereignty and self-determination and upholds respects, rights and responsibility.

Haskell has an average enrollment of over 1000 students each semester. Students represent tribes from across the United States. HINU integrates American Indian/Alaska Native culture into all of its curricula and the focus of this curriculum, besides its intertribal constituency and federal support through the BIA makes HINU unique and provides challenges as it moves forward in the 21<sup>st</sup> century.

#### Problems Identified In the Previous Title 5 Personnel System

HINU has traditionally operated under the Title 5 Personnel System. This is the personnel management system used by the majority of Federal agencies. This personnel system did not provide an environment that motivated employees to continue to increase their contributions to the University and its unique mission. It involved hiring restrictions and overly complex job classifications that unduly exhausted valuable resources (staff, time and budget) and unnecessarily detracted attention from the University's educational mission. Under the Title 5 system, managers had only limited tools to reshape the workforce to ensure continued growth of new ideas, strategies and state-of-the-art skills for the 21<sup>st</sup> century.

#### Demonstration Projects

The Civil Service Reform Act of 1978 (5 USC 47) authorized demonstration projects to be conducted. The purpose of demonstration projects is to evaluate alternatives to standard rules of personnel management as regulated by Title 5.

#### HEWP Initiative

In 1996, HINU submitted legislation to Congress for developing an alternative personnel system based on its unique mission. The Southwestern Indian

Polytechnic Institute (SIPI) submitted similar legislation to Congress in 1997 and, in 1998; the two pieces of legislation were joined together into H.R. 4259.

The HINU and SIPI Administrative Act of 1998 (Public Law 105-337) was passed on October 31, 1998. It determined that the provisions of culturally sensitive curricula for higher education programs at HINU and SIPI were consistent with the commitment of the Federal government to the fulfillment of treaty obligations to Indian Tribes and through the principle of self-determination and the use of Federal resources. The Law found that giving a greater degree of autonomy to the institutions, while maintaining them as part of the Bureau of Indian Affairs, would facilitate the transition of HINU to a full 4-year University. The law allowed HINU to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures in accomplishing these purposes. Public Law 105-337 granted HINU and SIPI the authority to conduct a demonstration project that was not limited by any specific authority under Title 5 of the U.S. Code or any provision of law, rule or regulation to take actions regarding:

- (1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;
- (2) the methods of classifying positions and compensating employees;
- (3) the methods of assigning, reassigning or promoting employees;
- (4) the methods of disciplining employees;
- (5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;
- (6) the hours of work per day or week;
- (7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and
- (8) the methods of reducing overall staff and grade levels.

The law also specifically granted delegated procurement authority to the President of Haskell but did not provide for a waiver of any law, rules or regulation providing for equal employment opportunity, Indian Preference, Veterans' Preference, the Merit Systems Principles or Prohibited Personnel Practices.

The new system was designed to (1) provide an encouraging environment that promoted the growth of all employees and (2) improve the local higher education manager's ability and authority to manage the workforce effectively. It was called the Higher Education Workforce Project or HEWP. Changes included new hiring and appointment authorities, a new system for compensating and assigning employees (broadbanding), delegated classification authority, delegated procurement/contracting authority, a contribution-based compensation and assessment system (CCAS) that replaced the existing appraisal system and provided an equitable and flexible method for assessing and compensating the workforce, revised reduction-in-force procedures, and procedures for furthering the training and education of the workforce (academic certification training and sabbaticals).

To test the validity of the outcomes of the Demonstration Project, a Comparison Group was created that did not participate in any interventions of the Demonstration Project. From these individuals, a second group was created that participated in the assessment portion of the Demonstration Project and was identified as the Control Group. The majority of the University participated fully in the Demonstration Project and was labeled the Experimental Group. At the time of the summary evaluation, however, it was determined that only one group had been established. This group had been incorrectly labeled the "Control Group" and had changed during the course of the Demonstration Project when employees were given a second option to participate in HEWP. The Summary Evaluation makes comparisons with the Control Group established at HINU.

However, the errors made at HINU in establishing and implementing the Control Group at HINU have limited the usefulness of the comparisons made in evaluating the Demonstration Project.

A Personnel Policy Board was to be established to provide oversight of the Demonstration Project. However, a Personnel Policy Board was not established. Draft operating procedures were developed which were compiled into a draft operating manual. The draft manual was completed on August 29, 2000, and was never finalized. Training was provided to HINU staff by the Alternate Personnel System (APS) Team from mid to late August 2000. Training on the Demonstration Project was to continue throughout the term of the Project. As determined in the Summary Evaluation, however, newly hired supervisors and employees had not been trained on the project and, in some cases, had received no information on the Project to assist them in utilizing the Project interventions.

Implementation of HEWP was set at October 1, 2000. A Baseline Employee Survey was conducted and finalized in August 2002.

#### Requirement for Demonstration Project Evaluations

There are three (3) phases of evaluation required for Demonstration Projects under the Office of Personnel Management (OPM).

The first is the Baseline Phase, which is to be conducted prior to or immediately upon implementation of the Demonstration Project, is intended to provide a baseline for evaluation at the project at later phases. The Baseline Evaluation for the HEWP Demonstration Project was conducted in August 2002, by SRA International, Inc., 1777 Northeast Loop 410, Suite 510, San Antonio, TX 78217. The HEWP Baseline Evaluation covered the planning period from the inception of the demonstration project in 1996 to its implementation on October 1, 2000.

The second phase is the interim evaluation. Evaluations at this phase are intended to measure whether the Demonstration Project is accomplishing its intended objectives and allow modification of the Project if objectives are not being met. An interim evaluation was conducted of the HEWP Demonstration Project in May 2003. The evaluation noted significant problems in several areas of the HEWP. A second review of HEWP interventions in Academic Affairs was conducted by the Faculty Senate. This position paper was submitted to the President in March 31, 2005. This review also noted significant problems in the Demonstration Project and noted that the project was not accomplishing its stated objectives.

The third and final phase is the summary evaluation. This evaluation measures the accomplishments of the Demonstration Project to provide measurable statistics in order to make a final determination on whether to recommend permanent implementation of the Project, extension of the project in order to further evaluate accomplishment of its objectives, or termination of the project. This evaluation accomplishes the summary phase of evaluation of the HEWP Demonstration Project.

#### Methods of Evaluation

The evaluation attempted to use statistical (objective) data, perceptual data (employee interviews) and attitudinal data (employee surveys). Both intended outcomes of project interventions and unintended outcomes were reviewed. Unintended outcomes included impact of the project on veterans and other EEO groups, and the impact of the Demonstration Project on the Merit Systems Principles and Prohibited Personnel Practices.

The evaluator attempted to review required Site Historian Records to capture the "history" or intervening events that were important to the evaluation. It was determined, however, that a Site Historian had not been designated and no records had been kept of events that might have affected the success of the project.

An employee survey was completed as part of the summary evaluation with greater participation of employees than in the Baseline or the Interim phases of evaluation. In the Baseline employee survey, only 55 (27% of the HINU workforce) employee surveys were completed. Ninety-three employee surveys (45% of the workforce) were completed in the Interim phase of evaluation. In the summary phase of evaluation, 129 employee responses (63% of the HINU workforce) were completed:

Statistical data was requested of the HINU Human Resources and President's Office over a six month period. However, except in a few instances (noted in the summary evaluation), this data was not provided to the evaluator. In cases where statistical data was provided, comparisons were made of attitudinal, perceptual and objective (statistical) data on the accomplishment of project interventions and objectives.

#### Description of HEWP Interventions

HEWP personnel system changes were referred to as "interventions". The detailed and official descriptions of each of the interventions are included in the March 10, 2000, Federal Register Notice. Primary interventions were developed to have the most significant impact on the HINU workforce. These included:

(1) Simplified, Accelerated Hiring. To compete with the private sector, managers needed an improved hiring process that was streamlined, easy to



administer, and allowed for timely job offers. The HEWP Demonstration Project system was designed to provide a flexible system that allowed the University to more rapidly appoint individuals to positions. Veterans and Indian Preference continued to apply. The Delegated Examining Process provided a flexible system in which candidates were assigned numerical scores and were placed into groups when referred to selecting officials.

The Scholastic Achievement Appointment provided the authority to appoint candidates with degrees to positions with positive education requirements. Candidates were required to have a cumulative grade point average (GPA) of 3.5 or better (on a 4 point scale) in courses or fields of study required for the occupation, and were required to have an overall GPA of at least 3.0 on a 4.0 scale.

(2) Permanent and Contingent Appointment Authorities. HEWP provided a method to adjust the workforce as needed with two appointment options: permanent and contingent appointments that provided for flexible hiring practices at the University. The permanent appointment replaced the existing career and career-conditional appointments. The contingent appointment was a new appointment authority that was roughly based on the existing term appointment.

(3) Contribution-based Compensation and Appraisal System (CCAS). The purpose of CCAS was to provide an equitable and flexible method for appraising and compensating the HINU workforce. CCAS measured employees' contributions to the mission and goals of the University, rather than how well the employee performed as defined by a job description and performance standards. Contribution was measured by using a set of factors, discriminators, and descriptors, each of which was relevant to the success of the HINU. The factors were:

1. Primary Duties and Requirements
4. Teamwork/Supervision

2. Customer/Student Service
3. Department and Institutional Service
5. Professional Development Activity
6. Communications/Research and Publications

(4) Classification Authority. Under the Demonstration Project, classification authority was delegated to the HINU President who had the authority to re-delegate classification authority to subordinate supervisor levels, at least one level above the first-line supervisor. A new simplified Statement of Duties and Requirements (SDR) was to replace the normal position description form. The SDR combined position information, staffing requirements, and contribution expectations into a single document. It included job specific information and reference to the CCAS level descriptors.

Secondary interventions were those that were based on interventions that had been tried and tested in other Demonstration Projects. The secondary interventions included:

(1) Extended Probationary Period. This provision applied to all divisions of HINU and provided a means for extending the opportunity to evaluate the contributions of newly hired employees.

(2) Broadbanding. The broadbanding system replaced the GS grade structure. Occupations with similar characteristics were grouped together into career paths with broadband levels designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing pay rates.

#### Results and Findings

(1) Simplified, Accelerated Hiring. In order to accomplish this objective, HINU established a streamlined applicant examining process under the

Delegated Examining Authority that they were given under the Demonstration Project. The process was to be used to fill positions at HINU. Basic eligibility factors were to be determined, using any and all available resources, linking applicants' knowledge, skills and abilities to those required for the position. Minimum eligibility requirements were those that were equivalent to the lowest equivalent grade of the appropriate broadband level. Selective placement factors could be established when judged to be critical to successful job performance. The intent was that all candidates were to be evaluated to determine if they met minimum qualifications and, if one or more candidates demonstrated qualified Indian preference eligibility, then only those candidates were to be considered for the position. For scientific and professional positions at the basic rate of pay equivalent to GS-9 and above, names of all qualified applicants were to be referred by quality groups in the order of the numerical rating, including any veterans' preference points. For all other positions, veterans' preference eligible candidates with a compensable service-connected disability of ten-points or more who met basic (minimum) eligibility were to be listed at the top of the highest group certified. For GS-9 and above academic and academic administrative positions, the University could convene committees to review the applications on the certification list. Non-academic supervisors could choose to use the committees in the hiring process for GS-9 level positions and above. Under the new delegated examining authority, the HINU Personnel Director was to serve as a consultant during the hiring process, overseeing Indian and veterans' preference, timely processing and equitable procedures for all applicants. Other project initiatives, such as delegated classification authority, and new hiring appointments were established to promote accomplishment of this project intervention.

In reviewing the accomplishment of this intervention, perceptual data from on-site interviews was considered. This perceptual data indicated that the on-site Personnel Director still controlled all hiring processes and did not serve as a

consultant as identified in the Federal Register Notice. Interviewed supervisors also reported that the hiring processes were still the same as before the Demonstration Project; that selection committees including managers from applicable divisions were seldom established. Instead, selection committees, it was reported, included voting members of the Union, EEO and other organizational divisions outside of the areas in which the vacant position was located.

Information from the summary employee survey (attitudinal data) was compared with the results of the same questions on the baseline survey. The results of this comparison reflected that the percentage of supervisors who believed they had enough authority to hire the people with the right skills when they needed them has significantly decreased during the Demonstration Project. The same supervisors were slightly less satisfied that the last candidate they hired had skills that were a good match for the position.

Statistical data was requested from HINU on the timeframes for filling vacant positions. The information was not provided to the evaluator. However, information on the timelines for filling vacant positions was obtained from newly hired employees during on-site interviews and statistical data was then obtained from the department of Academic Affairs. This data reflected that the timeframes to fill some positions had improved while the timeframes to fill other positions was considerably longer in length; up to six months in length. This appeared to be the result of factors, such as the requirement of classification determinations on some positions, requiring that a determination be made by OIEP Human Resources Office in Albuquerque, NM, since classification authority had been delegated to but was not utilized at HINU.

Two separate hiring appointments were established at HINU commensurate with the implementation of HEWP. A Scholastic Achievement Appointment was

established that provided HINU with the authority to appoint candidates with degrees to positions with positive education requirements. This appointment applied to Indian Preference candidates only. Four (4) candidates were appointed under this authority in 2001 although only one (1) was still on board at the time of the summary evaluation. No candidates had been appointed under this authority since 2001.

An Eminent Scholars Appointment was also established under HEWP. Under this authority, the President of HINU could appoint Indian preference candidates who had specialized skills and/or knowledge in fields not conventionally acquired through academic degree programs but that was relevant to the mission of the University. This appointment authority could have been very beneficial to expeditious hiring of individuals in much needed positions. However, this appointment authority was never utilized by HINU.

To summarize, the interventions established to promote simplified, accelerated hiring at HINU had not achieved their intended objectives. The timelines for filling positions were, in some cases, up to six months in length, classification authority was still being accomplished at OIEP in Albuquerque and not at HINU. Supervisors were less satisfied with the processes for filling vacant positions than before implementation of the Demonstration Project.

(2) Permanent and Contingent Appointment Authorities. Prior to HEWP implementation, instructors were often hired on emergency appointments to fill positions. Since emergency appointments were only 3 months in duration, it took several different instructors (each hired on an emergency appointment) to teach a course for a full semester. These appointments were replaced under HEWP with contingent appointments that, while not permanent in nature, did not have a 3 month limitation, allowing one instructor to teach a course for the full semester. This appeared to be very beneficial to fulfillment of the HINU mission although it

still appeared that the number of employees hired on appointments other than permanent was unusually large.

As part of the accelerated hiring process, a new multi-purpose statement of duties and requirements (SDR) was intended to replace the traditional position description (PD). A memorandum was issued by the HINU President on June 5, 2000, outlining the use of the SDR and mandating replacement of the PD with the new multi-purpose SDR. However, the change in procedure from the PD to the SDR was never utilized and, at the time of the summary evaluation, the PD was still being utilized at HINU.

Under HEWP, the HINU President had the authority to grant sabbaticals to employees without application to a higher level of authority. The purpose of the sabbatical authority was to enable an employee to spend time in an academic or work environment or to take advantage of the opportunity to devote full-time efforts to technical, academic or managerial research that could have aided HINU in achieving its ultimate objective of full accreditation. The HINU President reported that several sabbaticals had been approved in cases where expenses were paid by an entity outside the University. Although this was directly attributable to the University's lack of available funds to cover the expenses, it is directly contrary to the responsibility of the University, as identified in the Federal Register Notice, to cover the expenses of the sabbatical. By limiting approval of sabbaticals to those on which outside coverage of an employee's expenses was provided, the University missed an opportunity to reap the other benefits that were identified in the Federal Register Notice under this Authority.

(3) Contribution-based Compensation and Appraisal System (CCAS).

The CCAS promoted salary adjustment decisions made on the basis of an employee's overall annual contribution when compared to all other employees

and level of compensation. Therefore, larger-than-average increases were permitted for employees who were deemed to be under compensated and smaller-than-average increases were permitted for employees who were determined to be over-compensated in relation to their institutional contributions.

Problems with the CCAS and pay pools were identified in both the Interim Evaluation and the Faculty Senate Position Paper. Supervisors in each Department had attempted to implement the CCAS system without oversight resulting in uneven implementation and application of the system. There were no procedures established to ensure that awards were linked to mission contribution and accomplishment. The results of responses to questions on the employee survey relating to the CCAS reflected that there had been an increase in the level of employee confidence in the CCAS since the baseline and interim surveys. This appeared to be the result of steps taken in some Departments to rectify disparities in application of CCAS within the University. A comparison was made of the CCAS to the appraisal system used in other Demonstration Projects and it was noted that the CCAS had not been developed specifically for use in HINU's unique higher education learning environment. Instead, the CCAS had been developed and used in other Demonstration Project with missions that were dissimilar to that of HINU.

Complaints were also received over the procedures for pay pools and awards. The results of the employee survey revealed that an 8.6% decrease in the number of employees who now believed that financial rewards were seldom related to employee performance. Eleven percent fewer employees believed that pay raises depended on their contribution to the accomplishment of the HINU mission. Twenty-one percent fewer employees believed that pay raises depended on how well they performed. One percent fewer employees believed that cash awards depended on how well they performed. Six percent fewer employees believed that high-performing employees received monetary awards.

Ten percent fewer employees believed that high-performing employees received non-monetary awards. Twenty-five percent fewer employees believed that supervisors were fair in recognizing individual accomplishments and 10% fewer employees believed that the organization recognized supervisors who took the time to develop their employees' knowledge, skills and abilities. Based on the fact that the survey results reflected a general decrease in the confidence level of employees in the appraisal and awards programs, the objective of the Demonstration Project to realize more satisfied employees as a result of a firmly established link between mission contribution and pay/awards has not been established.

Additional reviews were made to determine if a disparity existed between awards to employees in the Experimental Group (full HEWP participation) and the Control Group. No disparity was noted between the groups. It was noted, however, that there was a much higher number of employees who received monetary award greater than \$5,000. prior to implementation of the Demonstration Project.

There was considerable dissatisfaction expressed by employees over the fact that there was no public recognition of awards and that the criteria for giving awards was not known to the general employee population. It is recommended that a Personnel Policy Board be established to establish criteria for awards and to make determinations on such issues as public recognition of awards.

(4) Broadbanding. Under the broadband system, it was anticipated that competitive promotions would be less frequent and that movement through the broadband levels would be a more seamless process than under the current GS/WG procedures. It was also anticipated that advancement within the broadband system would be contingent on merit. One major factor of the broadband system was the addition of higher quality candidates for employment



because salaries of individual candidates were to be based on academic qualifications and/or work experience and not limited by the current GS/WG pay procedures. The hiring official was to determine the starting salary of individual candidates based on the available labor market considerations relative to special qualification requirements, the scarcity of qualified applicants, programmatic urgency, and the education/experience level of each new candidate.

In on-site interviews, it was determined that there was little understanding of the broadband system by employees; how employees moved up within the broadband system or between broadband levels. In response to questions on the employee survey, it was noted that 60% of responding supervisors indicated that they had not received adequate training on administration of the pay system. Supervisors were also less satisfied than they were during the Baseline evaluation with the amount of authority they had to determine pay for their employees. Statistical data was obtained and it was determined that the salaries of new employees during the latter years of the Demonstration Project were less likely to be set at the equivalent of step 1 of the GS pay system. This indicates that the system had worked to a certain extent even though supervisors were less pleased with the process. It was also determined that the primary factor in limitations placed on pay setting was budgetary in nature.

(5) Delegation of Classification Authority. Prior to the implementation of HEWP, classification authority was maintained at the OIEP Human Resources Office in Albuquerque, New Mexico. This caused delays in filling vacant positions while the positions were classified. Delegation of classification authority to HINU under HEWP was intended to give HINU managers at the lowest practical level the authority, control and flexibility they needed to provide quality educational opportunities for American Indian students. Under HEWP, classification authority was delegated to the HINU President. The authority could be further re-delegated to subordinate management levels. First-line supervisors

were responsible for determining position requirements, preparing the Statement of Duties and Requirements and providing classification recommendations to the Human Resources Director who was to provide on-going consultation and guidance to managers and supervisors throughout the classification process.

Unfortunately, except on a very limited basis, classification authority was never implemented at HINU and it was never operated according to the procedures outlined in the Federal Register Notice. The result was dissatisfaction among managers who correctly believed that the authority to classify positions had been delegated to HINU under P.L. 105-337. Instead of implementing and utilizing classification authority at HINU, the University continued to forward positions to the OIEP Human Resources Office in Albuquerque to be classified. According to the HINU Human Resources Specialist, this decision had been made as a result of complaints that she had received from HINU staff concerning her classification of positions in the Section of the University where her husband worked. However, by continuing to send positions to OIEP in Albuquerque to be classified, the intent and benefit of this aspect of the Demonstration Project was negated causing frustration among supervisors.

(6) Delegation of Procurement/Contracting Authority. Along with Classification Authority, HINU was also delegated procurement and contracting authority under HEWP. A GS-13 Contracting Officer was hired on September 19, 2004 to administer the newly delegated contracting and procurement authorities. When interviewed during the on-site visits, the Contracting Officer noted that full procurement/contracting authority had not yet been realized. Others at the University indicated that the delay was due to the acquisition of a program entitled, "IDEAS" that would shortly be obtained and full contracting/procurement authority would be realized. There were benefits noted under this authority even though it has not yet been fully implemented. For example, the new Contracting Officer now has an unlimited warrant level

authority (in an interview with the primary HR Specialist, Jefferson; the evaluator was informed that the warrant level has been raised to \$10,000) which allows for purchasing of more equipment and supplies than allowed prior to HEWP implementation.

(7) Extended Probationary Period. One of the benefits to HINU under HEWP was the retention of "excellent contributors" and the separation of "poor performers". In order to accomplish this, an extended probationary period was implemented that changed the "trial period" for employees from one to three years. The results of the employee survey revealed a greater percentage of employees than in the Baseline survey who expected to look for another job outside of the University during the coming year. In addition, the extended probationary period had been unevenly implemented and applied by the HINU Human Resources Office resulting in confusion among supervisors and staff at the University as to how the probationary period was set. At the conclusion of the Demonstration Project test period, the HINU President had intervened and had established policy that ensured consistent application of the extended probationary period. Even with these problems, the extended probationary period had been applied within HINU to allow sufficient determination that this had proved to be of benefit to the University in separating poor performers.

(8) Increased Utilization of Supervisory Authority. One of the primary objectives of HEWP was to give more authority to supervisors to take personnel actions. However, the Demonstration Project did not achieve this intended objective as proven by the results of the employee survey.

(9) Unintended Outcomes. A review was made to determine whether the Demonstration Project had any unintended outcomes on veterans, EEO or other groups, on merit systems principles, or on prohibited personnel practices. Although EEO complaints had risen during the Project period, it was determined

that this was the result of other factors and not of the Demonstration Project. There were several allegations of misuse of the system by the Human Resources Office that had not been investigated. However, at the conclusion of this summary evaluation, the primary subject of these complaints (the primary HINU Human Resources Specialist) had left HINU for another Federal position. It was recommended that if future complaints of this nature were raised they be immediately investigated to determine their validity.

#### Factors Affecting the Success of the Demonstration Project

It was determined that several factors affected the present and future success of the Demonstration Project. First, although HINU has been promised sufficient budget to implement HEWP and to operate HEWP objectives, this had not been realized. The budget of HINU had remained the same throughout the Demonstration Project leaving little money to implement the Project interventions. For example, although broadbanding had been implemented, the lack of budget to support this intervention had severely limited its application and success. Secondly, employees and supervisors have lost confidence in the system and have lost faith that the interventions will ever be fully implemented. Third, the Academic staff has been furloughed four of the past eight summers leaving them with a loss of salary for the furloughed period. In prior administrations, a summer session was adopted that helped interested Instructors work through the summer months thus obtaining additional salary for the summer period. In response to the summary evaluation, the HINU President reported that the decision not to hold a summer session for four of the past eight years had been based on a recommendation from Academic Affairs. Regardless of the reason for the decision not to hold a summer session, however, the loss of salary by the Academic staff has caused budgetary decisions (such as the cost of HEWP implementation) to be questioned by this Department who believe that available funds should be applied toward the mission. Unless this issue is resolved,

initiatives, such as HEWP, are most likely doomed to failure. Lastly, there were numerous complaints about the lack of personnel services provided by the HINU Human Resources Office to HINU employees and supervisors. There were also complaints about retaliatory action taken by this office against the HINU workforce. Since the HR Office is critical to any success of the Demonstration Project, it is recommended that this Office be placed in an organizational structure directly under the HINU President to ensure that personnel services are evenly provided to the entire HINU workforce.

Threats to Internal Validity. Five (5) threats to internal validity were identified. First, a Type III error was identified. This means that the Demonstration Project was incorrectly implemented. Therefore, the evaluation tested only the project that was implemented and not the project that was intended. Second, although statistical data was requested from HINU on many occasions, very little of the requested information was provided. Where possible, the data was obtained from other sources, such as individual HINU managers and the OIEP HR Office. However, the failure to HINU to provide the requested data, in some cases, severely impacted on the ability to conduct an accurate evaluation of the Project accomplishments. Third, during on-site interviews, employees expressed fear of retaliation by the HINU HR Office if the evaluation identified them by name or position. These individuals were promised confidentiality and, in some cases, this has negatively impacted on the ability to verify and validate some information in the evaluation. Lastly, during the Baseline employee survey, only a very small percentage of the HINU workforce completed employee surveys. Since this data has been used in comparison to later surveys, it impacts on the validity of comparisons in the summary evaluation.

Findings and Recommendation.

Many of the HEWP interventions were never implemented or were unevenly implemented across organizational divisions. Therefore, it is difficult to recommend implementation or termination of these untested interventions. The interventions that were most beneficial to HINU were the extended probationary period, the Contracting/Procurement Authority, and the establishment of permanent, contingent and temporary appointment authorities. It should be noted, however, that care should be taken to ensure that the use of contingent and temporary appointments do not detract from the security for retention of the employee population as is now indicated. By making the majority of all appointment with a Not To Exceed (NTE) date rather than making the appointments permanent, the University will be less likely to compete satisfactorily with the University of Kansas for quality candidates in the area. Other project interventions, such as broadbanding and the CCAS/awards programs, were implemented but were only partially utilized due to the severe budgetary restrictions faced by the University. It was determined that the CCAS appraisal system was not developed exclusively to meet HINU's unique higher education mission. Rather, it is the same intervention that was used in other Demonstration Projects. The evaluator reviewed both the HINU CCAS and the CCAS implemented as part of the Department of Defense Civilian Acquisition Workforce Personnel Demonstration Project and found the programs too similar in nature to ensure that the needs of HINU's unique mission are met. It is recommended that further evaluation of these interventions (and modification of the HINU CCAS) be conducted to ensure that these will be beneficial to the University prior to permanent implementation.

Government-wide Applicability. Some of the project interventions could be utilized government-wide, such as the Procurement/Contracting Authority. However, since none of the HEWP interventions were thoroughly and evenly implemented and tested, the evaluator is reluctant to make such a recommendation at this time. If the project is extended and the interventions are

more thoroughly tested, a decision on whether to recommend the interventions for government-wide application could be made.

Extension of the Demonstration Project. HEWP was extended for an additional two years. Despite the fact that the Project was extended, no changes were made at that time that would have resolved the many outstanding problems that HINU was experiencing with HEWP. Since many of the interventions had not been implemented or had been unevenly implemented, the extension of the Project did little to assist the validation of results under the Demonstration Project. As reflected in the results of the most recent employee survey, 33 1/3 percent of responders are against permanent implementation of the Project. A larger percentage of responders (44%) are unsure whether the Project should be permanently implemented, reflecting a failure to achieve the stated program objective of a higher rate of satisfied employees through linkage between Project interventions and contribution to mission accomplishment. The percentages in the employee survey are now more positive than in the previous Baseline and Interim surveys. Based on this increase in employee percentages toward project implementation, it would be a disservice to the money and efforts that have been expended toward accomplishing HEWP, to abandon the project at this point. The interventions have not been thoroughly tested to determine their ability to benefit successful mission accomplishment.

A recommendation could be made to further extend the project for an additional period of time. However, this would accomplish little if full implementation of project interventions is not accomplished in conjunction with the extension of the project or if needed changes to the system are not actualized. There is also little point in making a recommendation to extend the project if the funds needed to fully implement the interventions are not available. If the above issues are resolved, however, extension of the project could be very beneficial to HINU in fully implementing and testing project interventions.

General Recommendations. The results of the most recent employee survey reflect that only 24% of responders support project implementation and this reflects dissatisfaction among the HINU workforce in HEWP. However, the project was designed to assist HINU in meeting mission objectives and this could still be accomplished through implementation of the project interventions. Unfortunately, the interventions were not sufficiently implemented and tested to provide definitive proof that they have met the objectives stated for the Project in the Federal Register Notices. If the project is to be permanently implemented, there must be further testing of project interventions to establish a stronger link between the interventions and success or failure to meet mission accomplishments.

It is recommended that the decision on the outcome of HEWP be made in coordination with the newly appointed HINU President who has the most to gain or lose in this process. Lacking support of the newly appointed President, there is little chance for the program to succeed.

The Project could be terminated and HINU revert back to the former Title 5 system. Since so much time and effort has already been extended toward the Project, this would be the least favored of the options on the outcome of the Project.

A request could be made to extend HEWP based on the fact that the interventions were never fully implemented and tested. This recommendation should be made, however, only if the newly appointed President fully supports the project and there are funds available to fully implement and utilize the project interventions. If a request is made to extend the project, a Personnel Policy Board must be established to oversee even project implementation and operations and the HEWP Operating Manual must be finalized and distributed to



managers and employees to dispel the atmosphere of secrecy that now surrounds some project interventions. Procedures must be established for CCAS, broadbanding and award that includes all organizational divisions and ensure even operations throughout the University. Classification authority must be implemented and accomplished at HINU instead of OIEP to expedite hiring procedures. A Site Historian must be appointed and records kept during the extended time period of the project. All project interventions must be fully implemented and thoroughly tested with detailed records kept regarding the accomplishment of stated objectives.

If a decision is made to proceed with project implementation, it is recommended that only the interventions proven useful to HINU in the past six year Demonstration Project period be included in the request for permanent implementation. These would include: procurement/contracting authority, permanent/contingent/temporary appointment authorities, and the extended probationary period. Consideration should also be given to implementing project interventions on a permanent basis only in Academic Affairs where it is most needed. However, without the broadbanding intervention HINU would still be less likely to compete with UK for much needed talent.

Interim Changes. Whether a decision is made to extend or to permanently implement the project, several actions should be initiated by the HINU President. First, the HINU Human Resources Office should be placed in the organization structure directly under the Office of the President with technical oversight by the OIEP HR Office. Only in this way will the President be able to ensure that adequate HR services are provided to the entire organization without preferential treatment to some organizational divisions. Alternately, HINU could explore the option of outsourcing the HR function to another Federal agency if this would be economically beneficial to the University. A thorough personnel management survey should be conducted of the HINU HR functions to determine the level of

personnel support being provided to HINU employees and staff. Consideration should be given to utilizing a 360 degree evaluation of the HR office as part of this evaluation.

Additionally, the issue of furloughing the academic staff must be resolved as this is the source of many issues surrounding employee dissatisfaction and retention in the Academic Division. In a meeting with the Faculty Senate, the evaluator was informed that recommendations were previously made and forwarded to the President on ways to implement summer school at the University (or distance learning). The President responded that she did not recall these recommendations and she did not believe that they had been forwarded to her. If there are such recommendations, they should be reviewed and considered as this would allow some of the academic staff an option of working through the summer school term and would increase the salary to these individuals.

Follow-up. This summary evaluation should be coordinated with the Office of Personnel Management to ensure that all required areas of evaluation had been addressed. The evaluator will work with HINU after the report has been coordinated with OPM to finalize the evaluation and address areas needing revision. A diskette containing a copy of this evaluation is being forwarded to HINU so that necessary changes can be made. In addition, the evaluator requests a meeting with BIA/BIE officials who review this document to clarify the information submitted in portions of this evaluation.

## Appendix B

PUBLIC LAW 105-337—OCT. 31, 1998 112 STAT. 3171

Public Law 105-337  
105th Congress

### An Act

To allow Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute each to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures, and for other purposes.

Oct. 31, 1998  
[H.R. 4259]

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998".

#### SEC. 2. FINDINGS.

The Congress finds that—

- (1) the provision of culturally sensitive curricula for higher education programs at Haskell Indian Nations University and the Southwestern Indian Polytechnic Institute is consistent with the commitment of the Federal Government to the fulfillment of treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources; and
- (2) giving a greater degree of autonomy to those institutions, while maintaining them as an integral part of the Bureau of Indian Affairs, will facilitate—

- (A) the transition of Haskell Indian Nations University to a 4-year university; and
- (B) the administration and improvement of the academic program of the Southwestern Indian Polytechnic Institute.

#### SEC. 3. DEFINITIONS; APPLICABILITY.

(a) DEFINITIONS.—For purposes of this Act:

- (1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.
- (2) EMPLOYEE.—The term "employee", with respect to an institution named in subsection (b), means an individual employed in or under such institution.
- (3) ELIGIBLE.—The term "eligible" means an individual who has qualified for appointment in the institution involved and whose name has been entered on the appropriate register or list of eligibles.
- (4) DEMONSTRATION PROJECT.—The term "demonstration project" means a project conducted by or under the supervision of an institution named in subsection (b) to determine whether

Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998.  
Kansas.  
New Mexico.  
25 USC 3731 note.  
25 USC 3731.

25 USC 3731 note.

specified changes in personnel management policies or procedures would result in improved personnel management.

(b) APPLICABILITY.—This Act applies to—

- (1) Haskell Indian Nations University, located in Lawrence, Kansas; and
- (2) Southwestern Indian Polytechnic Institute, located in Albuquerque, New Mexico.

25 USC 3731  
note.

**SEC. 4. AUTHORITY.**

(a) IN GENERAL.—Each institution named in section 3(b) may conduct a demonstration project in accordance with the provisions of this Act. The conducting of any such demonstration project shall not be limited by any lack of specific authority under title 5, United States Code, to take the action contemplated, or by any provision of such title, or any rule or regulation prescribed under such title which is inconsistent with the action, including any provision of law, rule, or regulation relating to—

- (1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;
- (2) the methods of classifying positions and compensating employees;
- (3) the methods of assigning, reassigning, or promoting employees;
- (4) the methods of disciplining employees;
- (5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;
- (6) the hours of work per day or per week;
- (7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and
- (8) the methods of reducing overall staff and grade levels.

(b) CONSULTATION AND OTHER REQUIREMENTS.—Before commencing a demonstration project under this Act, the president of the institution involved shall—

(1) in consultation with the board of regents of the institution and such other persons or representative bodies as the president considers appropriate, develop a plan for such project which identifies—

- (A) the purposes of the project;
- (B) the types of employees or eligibles to be included (categorized by occupational series, grade, or organizational unit);
- (C) the number of employees or eligibles to be included (in the aggregate and by category);
- (D) the methodology;
- (E) the duration;
- (F) the training to be provided;
- (G) the anticipated costs;
- (H) the methodology and criteria for evaluation, consistent with subsection (f);
- (I) a specific description of any aspect of the project for which there is a lack of specific authority; and
- (J) a specific citation to any provision of law, rule, or regulation which, if not waived, would prohibit the conducting of the project, or any part of the project as proposed;

(2) publish the plan in the Federal Register;

Federal Register,  
publication

- (3) submit the plan so published to public hearing;
- (4) at least 180 days before the date on which the proposed project is to commence, provide notification of such project to—
- Notification.
- (A) employees likely to be affected by the project; and  
(B) each House of Congress;
- (5) at least 90 days before the date on which the proposed project is to commence, provide each House of Congress with a report setting forth the final version of the plan; and
- Reports.
- (6) at least 60 days before the date on which the proposed project is to commence, inform all employees as to the final version of the plan, including all information relevant to the making of an election under subsection (h)(2)(A).
- (c) LIMITATIONS.—No demonstration project under this Act may—
- (1) provide for a waiver of—
- (A) any provision of law, rule, or regulation providing for—
- (i) equal employment opportunity;  
(ii) Indian preference; or  
(iii) veterans' preference;
- (B) any provision of chapter 23 of title 5, United States Code, or any other provision of such title relating to merit system principles or prohibited personnel practices; or any rule or regulation prescribed under authority of any such provision; or
- (C) any provision of subchapter II or III of chapter 73 of title 5, United States Code, or any rule or regulation prescribed under authority of any such provision;
- (2) impose any duty to engage in collective bargaining with respect to—
- (A) classification of positions; or  
(B) pay, benefits, or any other form of compensation;
- or
- (3) provide that any employee be required to pay dues or fees of any kind to a labor organization as a condition of employment.
- (d) COMMENCEMENT AND TERMINATION DATES.—Each demonstration project under this Act—
- (1) shall commence within 2 years after the date of enactment of this Act; and
- (2) shall terminate by the end of the 5-year period beginning on the date on which such project commences, except that the project may continue beyond the end of such 5-year period—
- (A) to the extent necessary to validate the results of the project; and  
(B) to the extent provided for under subsection (h)(2)(B).
- (e) DISCRETIONARY AUTHORITY TO TERMINATE.—A demonstration project under this Act may be terminated by the Secretary or the president of the institution involved if either determines that the project creates a substantial hardship on, or is not in the best interests of, the institution and its educational goals.
- (f) EVALUATION.—

Reports.

(1) **IN GENERAL.**—The Secretary shall provide for an evaluation of the results of each demonstration project under this Act and its impact on improving public management.

(2) **INFORMATION.**—Upon request of the Secretary, an institution named in section 3(b) shall cooperate with and assist the Secretary, to the extent practicable, in any evaluation undertaken under this subsection and provide the Secretary with requested information and reports relating to the conducting of its demonstration project.

(g) **ROLE OF THE OFFICE OF PERSONNEL MANAGEMENT.**—Upon request of the Secretary or the president of an institution named in section 3(b), the Office of Personnel Management shall furnish information or technical advice on the design, operation, or evaluation, or any other aspect of a demonstration project under this Act.

(h) **APPLICABILITY.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, all applicants for employment with, all eligibles and employees of, and all positions in or under an institution named in section 3(b) shall be subject to inclusion in a demonstration project under this Act.

(2) **PROVISIONS RELATING TO CERTAIN BENEFITS.**—

(A) **OPTION FOR CERTAIN INDIVIDUALS TO REMAIN UNDER CURRENT LAW GOVERNING CERTAIN BENEFITS.**—

(i) **ELIGIBLE INDIVIDUALS.**—This subparagraph applies in the case of any individual who, as of the day before the date on which a demonstration project under this Act is to commence at an institution—

(I) is an employee of such institution; and  
(II) if benefits under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are to be affected, has completed at least 1 year of Government service (whether with such institution or otherwise), but taking into account only civilian service creditable under subchapter III of chapter 83 or chapter 84 of such title.

(ii) **OPTION.**—If a demonstration project is to include changes to any benefits under subpart G of part III of title 5, United States Code, an employee described in clause (i) shall be afforded an election not to become subject to such demonstration project, to the extent those benefits are involved (and to instead remain subject to the provisions of such subpart G as if this Act had not been enacted).

(B) **CONTINUATION OF CERTAIN ALTERNATIVE BENEFIT SYSTEMS AFTER DEMONSTRATION PROJECT TERMINATES FOR PERSONS BECOMING SUBJECT THERETO UNDER THE PROJECT.**—Notwithstanding any other provision of this Act, the termination of a demonstration project shall not, in the case of any employee who becomes subject to a system of alternative benefits under this Act (in lieu of benefits that would otherwise be determined under subpart G of part III of title 5, United States Code), have the effect of terminating—

(i) any rights accrued by that individual under the system of alternative benefits involved; or

(ii) the system under which those alternative benefits are afforded, to the extent continuation of such system beyond the termination date is provided for under the terms of the demonstration project (as in effect on the termination date).

(8) TRANSITION PROVISIONS.—

(A) RETENTION OF ANNUAL AND SICK LEAVE ACCRUED BEFORE BECOMING SUBJECT TO DEMONSTRATION PROJECT.—Any individual becoming subject to a demonstration project under this Act shall, in a manner consistent with the requirements of section 6308 of title 5, United States Code, be credited with any annual leave and any sick leave standing to such individual's credit immediately before becoming subject to the project.

(B) PROVISIONS RELATING TO CREDIT FOR LEAVE UPON SEPARATING WHILE THE DEMONSTRATION PROJECT IS STILL ONGOING.—Any demonstration project under this Act shall include provisions consistent with the following:

(i) LUMP-SUM CREDIT FOR ANNUAL LEAVE.—In the case of any individual who, at the time of becoming subject to the demonstration project, has any leave for which a lump-sum payment might be paid under subchapter VI of chapter 55 of title 5, United States Code, such individual shall, if such individual separates from service (in the circumstances described in section 5551 or 5552 of such title 5, as applicable) while the demonstration project is still ongoing, be entitled to a lump-sum payment under such section 5551 or 5552 (as applicable) based on the amount of leave standing to such individual's credit at the time such individual became subject to the demonstration project or the amount of leave standing to such individual's credit at the time of separation, whichever is less.

(ii) RETIREMENT CREDIT FOR SICK LEAVE.—In the case of any individual who, at the time of becoming subject to the demonstration project, has any sick leave which would be creditable under section 8339(m) of title 5, United States Code (had such individual then separated from service), any sick leave standing to such individual's credit at the time of separation shall, if separation occurs while the demonstration project is still ongoing, be so creditable, but only to the extent that it does not exceed the amount of creditable sick leave that stood to such individual's credit at the time such individual became subject to the demonstration project.

(C) TRANSFER OF LEAVE REMAINING UPON TRANSFER TO ANOTHER AGENCY.—In the case of any employee who becomes subject to the demonstration project and is subsequently transferred or otherwise appointed (without a break in service of 3 days or longer) to another position in the Federal Government or the government of the District of Columbia under a different leave system (whether while the project is still ongoing or otherwise), any leave remaining to the credit of that individual which was earned

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or credited under the demonstration project shall be transferred to such individual's credit in the new employing agency on an adjusted basis under regulations prescribed under section 6308 of title 5, United States Code. Any such regulations shall be prescribed taking into account the provisions of subparagraph (B).

(D) COLLECTIVE-BARGAINING AGREEMENTS.—Any collective-bargaining agreement in effect on the day before a demonstration project under this Act commences shall continue to be recognized by the institution involved until the earlier of—

- (i) the date occurring 3 years after the commencement date of the project;
- (ii) the date as of which the agreement is scheduled to expire (disregarding any option to renew); or
- (iii) such date as may be determined by mutual agreement of the parties.

25 USC 3731  
note.

**SEC. 5. DELEGATION OF PROCUREMENT AUTHORITY.**

The Secretary shall, to the maximum extent consistent with applicable law and subject to the availability of appropriations therefor, delegate to the presidents of the respective institutions named in section 3(b) procurement and contracting authority with respect to the conduct of the administrative functions of such institution.

25 USC 3731  
note.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated, for fiscal year 1999, and each fiscal year thereafter, to each of the respective institutions named in section 3(b)—

- (1) the amount of funds made available by appropriations as operations funding for the administration of such institution for fiscal year 1998; and
- (2) such additional sums as may be necessary for the operation of such institution pursuant to this Act.

25 USC 3731  
note.

**SEC. 7. REGULATIONS.**

The president of each institution named in section 3(b) may, in consultation with the appropriate entities (referred to in section 4(b)(1)), prescribe any regulations necessary to carry out this Act.

Deadline.  
25 USC 3731  
note.

**SEC. 8. LEGISLATION TO MAKE CHANGES PERMANENT.**

Not later than 6 months before the date on which a demonstration project under this Act is scheduled to expire, the institution conducting such demonstration project shall submit to each House of Congress—



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- (1) recommendations as to whether or not the changes under such project should be continued or made permanent; and
- (2) proposed legislation for any changes in law necessary to carry out any such recommendations.

Approved October 31, 1998.

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LEGISLATIVE HISTORY—H.R. 4259:

HOUSE REPORTS: No. 105-700, Pt. 1 (Comm. on Government Reform and Oversight).

CONGRESSIONAL RECORD, Vol. 144 (1998):

Oct. 6, considered and passed House.

Oct. 14, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 34 (1998):

Oct. 31, Presidential statement.

**Appendix C**



# Federal Register

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Friday,  
June 30, 2000

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**Part VIII**

**Department of the  
Interior**

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**Bureau of Indian Affairs**

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**Higher Education Workforce Project;  
Notice**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Higher Education Workforce Project**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approval of a demonstration project final plan.

**SUMMARY:** On March 10, 2000, the Bureau of Indian Affairs (BIA) published a notice in the *Federal Register* (65 FR 13170), to allow Haskell Indian Nations University to conduct a demonstration project to test the feasibility and desirability of a new personnel management policies and procedures. This notice announces the approval of a final plan of the demonstration project for Haskell Indian Nations University.

**DATES:** Implementation of this demonstration project will begin on October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Karen Swisher, Haskell Indian Nations University, Lawrence, Kansas 66046, 785-749-8497; e-mail address: kswisher@ross1.cc.haskell.edu.

**SUPPLEMENTARY INFORMATION:****1. Overview**

Public Law 105-337, Haskell Indian Nations University (HINU) and Southwestern Indian Polytechnic Institute (SIPI) Administrative Systems Act of 1998, Oct. 31, 1998, allows HINU to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures. Public Law 105-337 finds that the provision of culturally sensitive curricula for higher education programs at Haskell Indian Nations University is consistent with the commitment of the Federal Government to the fulfillment of treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources. It further finds that giving a greater degree of autonomy to the institution while maintaining it as an integral part of the Bureau of Indian Affairs will facilitate the transition of Haskell Indian Nations University to a 4-year university. This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The 31 total comments received on the first notice in the *Federal Register*, March 10, were valuable guides to revision of the Higher Education Workforce Project (HEWP). Three speakers commented on the *Federal Register* notice at the April 24 public

hearing, and 28 letters were received by the deadline of May 6. Fourteen identical letters opposed the demonstration in general terms. A number of commentors submitted a form letter which arrived on May 9, and its concerns although not official comments, were also considered. Written comments represented input from both Haskell employees and alumni. Most changes to the demonstration project derive from these public comments.

The majority of the changes are in the area of Contribution-based Compensation and Assessment System (CCAS). Major changes include the decision that the General Increase will be given to all employees annually regardless of CCAS assessment scores. Within-Grade Increases will also continue. And the General Schedule salary structure will be maintained as the framework for the project's broadbanding system, revisions were made to clarify Indian preference, veterans' preference, merit principles, and Equal Employment Opportunity (EEO).

The comments highlighted instances of misunderstanding with the present personnel system as well as the project innovations. They underscored the importance of providing training on the Demonstration Project to supervisors and employees. The substance of all comments received has been conveyed to the Office of Indian Education Programs (OIEP) and the HEWP Steering Committee, in the event that policies, processes, and training sessions may benefit from such perspectives. The following is a summary of these written and oral comments by topical areas and a response to each.

**2. Summary of Comments****A. Participating Employees, I.E.**

**Comments.** One comment suggested only faculty should go under the demonstration project. The commenter stated that hiring problems are a problem in the area of instruction, so employees in other areas should be exempt from the demonstration.

**Response.** Public Law 105-337 Sec. 4 Authority (b) (1) states that all applicants for employment with, all eligible and employees of, and all positions in or under an institution named in section 3(b) shall be subject to inclusion in a demonstration project under this Act. Prior to the design phase of the demonstration project other work units on campus besides instruction had expressed dissatisfaction with the current personnel system. For the preceding reasons all employees at the

institution will be included in the demonstration project. Information was added to clarify the makeup of the participants in the project and the division of the participants into an experimental and a control group for the purpose of evaluating the contribution based portion of the assessment process.

**B. Hiring and Appointment Authorities, III.A**

**Comments.** Three comments gave support to the HEWP plan to classify, examine and appoint employees on site rather than at the area BIA personnel office in Albuquerque.

An area of great concern was Indian Preference. Of the items contained in the letters which arrived after the closure of the comment period was the statement that Indian preference is compromised by the demonstration, and one other letter voiced this concern. One letter in support of HEWP noted the Indian Preference wording of III.A.1, which states that applicants who meet Indian Preference qualifications will receive preference in hiring. Also, the impact of the Scholastic Achievement Appointment on Indian preference received two negative comments. One further question regarding Indian Preference concerned ranking procedures for Indian preference if more than one applicant meets Indian Preference.

Two comments opposed the optional extension of the probation period from one to three years, because of a concern that this would place undue stress on employees. One stated that one year of probation, not three, was sufficient time to evaluate an employee.

Two comments supported contingent appointments, and one other comment expressed the concern that contingent appointments would replace permanent employees.

One comment suggested language that would delineate the Haskell Board of Regents, role in the hiring and review of the Haskell President. It based its authority on Public Law 105-337 and a resolution passed by the National Haskell board of Regents Jan. 13, 2000 (2000-03). The recommended language included giving the Regents authority for (1) determining the process for applications for President; (2) rating and ranking Presidential applicants and (3) recommending the most qualified candidate(s) to the Director of OIEP. It suggested that the Regents conduct an annual review of the President to be used to help determine appropriate personnel actions based on performance or conduct. The comment further suggested that the Regents expand their

authority after long-range development planning, self-study, and training.

Commenters also showed concern for hiring procedures. One requested clarification of academic procedures in reference to hiring of Academic positions and questioned whether non-academic administrators should follow the same procedures. One comment stated that the term insufficient number is not clarified in reference to highest certifiable grouping of candidates (III.A.1.a).

*Response.* HEWP proceeds with the hiring and appointment authorities of the demonstration project, which improves personnel administration of employees. The demonstration project corrects personnel problems by providing on-site personnel classification, examination, rating, and appointment authorities.

The revised document clarifies and strengthens wording of Indian preference hiring procedures, which is supported by the Public Law 105-337 limitation:

No demonstration project under this Act may provide for a waiver of Indian preference. (4.C.1).

The Indian Preference rating section now reads:

If one or more qualified applicants demonstrate Indian preference eligibility, then only those applicants will be considered for the position. Those Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled and receive numerical scores of 70, 80, or 90.

If no Indian Preference applicants meet the minimum qualifications, then other candidates will be considered. Those non-Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled and receive numerical scores of 70, 80, or 90.

The Scholastic Achievement Appointment in the Federal Register is revised to allow this appointment only for candidates who qualify for Indian Preference.

Policies for probation and contingent appointments remain as they are in the Federal Register. The flexible probation period allows for employees to finish advanced degrees or licensing required for upper-level position. This encourages an educated, well qualified workforce. In the case of faculty, the probation period is a compromise with the seven years required for tenure at most colleges. Contingent appointments are not meant to replace permanent employees. The Federal Register states:

The contingent appointment may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution, but may be used to supplement regular positions work activities (III.A.2).

The intent of HEWP is to provide contingent appointments for general staffing needs and academic appointments equivalent to the positions of teaching assistant and instructor. Contingent appointments are subject to time limits so that contingent employees can transition to permanent positions. The use of part-time instructors can become exploitive, with such employees given limited salaries, no benefits, and no permanent status. HEWP allows for the flexibility of temporary and emergency additions to the workforce, but with the provision that ongoing employment leads to institutional commitment.

HEWP does not address the relationship between the Board of Regents and OIEP. The demonstration is a personnel system within the federal government, and legal liability for the system rests with the federal government. The HEWP Operations Manual and the memorandum of understanding between OIEP and the Board of Regents will expand on the Regents' role outside of this document.

HEWP clarified the term academic procedures in III.A.1.a. The Federal Register is revised to clarify the number of highest certifiable groupings of job candidates:

If according to the judgment of hiring personnel the superior group does not create a large enough pool of eligible applicants for ranking, then applicants in the next lower group may be certified.

#### C. Broadbanding, III.B.

*Comments.* One comment suggested employees' change in broadband levels should be noncompetitive. Other comments showed a need for clarification of the Federal Register; one comment misinterpreted broadbanding as a means to lower base salary; another comment said the terms Professional and Technical/Specialist as broadband categories were unclear; another comment requested clarification for GS and WG equivalent levels, as well as executive ranges. Finally, the Simplified Assignment Process (III.B.2) was considered a preliminary step toward downsizing:

[Simplified Assignment Process] implies HINU is downsizing, shrinking instead of growing.

*Response.* Advances within broadband levels are noncompetitive, and advances from one broadband area

to another can be noncompetitive. This provides for rewarding high-performing employees who contribute to the institution's mission. This also encourages continuity by moving employees through broadbands without necessitating a change to a supervisory positions. Broadbanding does not change base pay or the locality adjustment. Step increases for satisfactory or higher performance, and incentive increases as a result of assessment scores can be added to base pay. Base pay is not subject to reduction except under adverse actions. The three broadband categories are changed to Academic, Technical/Specialist and Support. HEWP revised graphics and terms to clarify broadband salary levels and increases. The Simplified Assignment Process section opens with a general statement that emphasizes the flexible assignment process of broadbanding rather than as a method of initiating downsizing at HINU.

#### D. Classifications, III.C.

*Comment.* Employees are entitled to an appeals process for classification of positions and a timeline.

*Response.* The section Classification Appeals (III.C.6) addresses appeals and limits, including the time period for case processing under Title V (5 CFR 511.605).

#### E. Contribution-based Compensation Assessment System, III.D.

*Comment.* Four comments supported CCAS as a tool to improve employee quality. Individual comments about CCAS questioned procedural details. These included clarity of the graphic illustration (with the suggestion that it should be inverted so up showed high-achieving employees); privacy of ranking procedures; and second-level supervision of the pay pool for the Administrative Council and the President. Two comments questioned the learning contract process, with one concerned that employees would be required to pursue degrees and/or training to keep a job. One commenter was unfamiliar with the term 360 degree feedback used in the assessment process. Another comment on 360 degree feedback expressed concern that surveys used to provide customer feedback would be too time consuming and further requested information on the specific means to obtain peer evaluation.

*Response.* The demonstration implements CCAS on the starting date but with amendments based on comments. Details of the procedures are clarified, including the graphic illustration of CCAS. Privacy in

personnel matters continues to be a priority of the managers, supervisors, and HINU personnel office for CGAS according to federal guidelines. As the supervising manager of HINU, the President has final authority over the Administrative Council and in turn is assessed by the OIEP director. The learning contracts, which are written agreements between supervisors and employees, encourage employees to receive training to remain current with their appropriate employment fields. The institution also expects employees to learn appropriate behaviors in the workplace. HINU has required, for example, all-campus training in harassment issues as well as computer literacy. Training is part of the ongoing personnel process. Such training enhances the skills of employees, resulting in qualified, high-performing employees. HEWP added wording to clarify the term learning contract, and the Operations Manual will specify procedures. HEWP added language to III.D.3 to clarify the term 360 degree feedback, as an assessment system that includes input from several sources. HEWP does not believe that surveys would be unmanageable. At present, customers provide information via surveys for teacher evaluation, computer services, library services evaluation, and procurement and warehouse evaluation. Other areas of the institution use surveys to collect data, but they are not coordinated into one assessment process, which would be the advantage of the demonstration project. Procedures for peer evaluation, as well as customer and manager evaluations, will be developed for each area of the institution and explained in the Operations Manual.

#### F. General Comments

A range of general comments questioned overall procedures of the demonstration project, including the following:

##### (1) Fairness

*Comments.* Two comments suggested supervisors can use the broadbanding system to unfairly move employees to undesirable work assignments and enable managers to insert the phrase "other duties as assigned" into job descriptions. Because such broadbanding changes may not be adverse actions, no appeal process is in place. Two comments expressed concern that the supervisors would conduct the employee assessment unfairly and politicize the process. One respondent was uncertain who would conduct the assessments, and if that person would be appropriate. One comment suggested

the importance of equitable administration of sabbatical awards, and another comment noted the importance of managerial training for fairness of the demonstration.

*Response.* The demonstration establishes a structured, group review process to assess employees' contributions to the mission, including broadband work assignments, assessments, and sabbatical awards. This process is designed to reduce favoritism and promote fairness. The advantage of flexible movement among assignments and levels enhances the ability of the institution to meet needs that change quickly as new academic programs evolve and as budget appropriations change on an annual basis. Employees with exceptional skills can be recruited and moved through pay levels more quickly. Sabbaticals are evaluated on criteria that evaluate overall contribution to the mission. Balances are in place to ensure supervisors give employees fair work assignments, assessments, and rewards. The demonstration project provides a balance to supervisory assessment scores and ranking through use of pay pool panels. These provide for review of supervisors' ratings by their peers (i.e., by other raters in the same pay pool) and by the supervisor of all raters in that pool. In addition, rated employees are rank-ordered by the entire pay pool panel. The intent here is not so much to require ranking per se as to ensure that inflation or deflation by any rater will be identified and corrected via the normal operation of the panel process. Finally, the pay pool manager (who is at a higher organizational level than all the above-mentioned supervisors) oversees and approves the results of the group review process.

A focused training session will teach supervisors and managers how to administer CGAS correctly. HEWP concurs that formal and informal training is essential for every employee in the project. Additionally, a third-party evaluator continually collects data on project operation and monitors compensation trends, among other areas.

Broadbanding does not imply employees will be assigned outside their fields of expertise. The Federal Register states:

a technical expert can be assigned to any project, task, or function requiring similar technical expertise. A manager might be asked to manage any similar function or institution consistent with that individual's qualifications (III.B.2).

An employee may appeal an undesirable assignment under the

current negotiated agreement with the union. The negotiated union agreement also provides appeals procedures for assessment scores. The current evaluating supervisor, familiar with the work environment, will conduct the assessment.

In summary, the pay pool panel process, managerial training, continuing evaluation, and union appeals all guard against favoritism and promote fairness for employees under the demonstration.

##### (2) Composition of the Steering Committee and Team

*Comments.* Two commenters raised concerns regarding the individuals who developed the demonstration project. They noted the need for expertise in the fields of labor law, federal personnel systems, and academic personnel systems. Adequate Indian representation on the development team and committee was questioned by one comment.

*Response.* HEWP team members represented labor law concerns throughout the development of the project documents. Also, steering committee members are familiar with labor law in their roles as respondents to union negotiations. The negotiated agreement in effect during the initial design portion of the project was with NFFE. After the initial publication of the proposed project IEF was certified as the bargaining unit for HINU. Currently, IEF does not have a negotiated agreement with the university.

However, the administration of the university is committed to working with IEF to ensure the success of the university. The federal personnel specialist at Haskell has worked with the team from the time of her appointment in July, 1999. An Office of Personnel Management personnel officer familiar with demonstrations projects spent details totaling more than seven months at Haskell. She worked with the team and steering committee to develop a lawful, effective personnel system. Those who worked on HEWP also had academic experience in personnel practices, including University of Utah, Arizona State University, Cornell University, and Montana State University. Team members researched personnel practices at numerous colleges and universities, including St. Mary's College, Baker University, University of Kansas, Ohio State University, Simon Fraser University, George Mason University, Georgia Institute of Technology, Portland State University, University of Delaware, University of Minnesota, University of Wisconsin, and others. Most of the team and committee

members who developed the program are Indian. The steering committee and director of Office of Indian Education Programs have final authority over the project. All of these individuals are Indian. The team used volunteer members with expertise who contributed to the overall effort. Two-thirds of the SIPI-Haskell team were Indian. When Haskell separated from SIPI, two non-Indians remained with the team out of four active members, and three resource people. Four out of six members of the sub-committee developing descriptors for the operations manual are Indian.

### (3) Academic Freedom

*Comment.* One comment suggested HEWP suppresses academic freedom because it derives from a military model. Another comment also expressed concern over academic freedom.

*Response.* As a federal institution, Haskell remains under federal law regarding conflict of interest and the Hatch Act. HEWP makes no change from Title V in classroom or other areas of academic freedom. In *Academic Ethics* (III.E.2) it clarifies employee responsibilities and rights regarding an academic environment outside the restrictions of usual government employment. Ideas and concepts were drawn from other demonstration projects, Air Force and Army, however, the employees in these projects were civil service employees as is the case with HINU.

### (4) Availability of Federal Register Document for Employee Input

*Comments.* One comment in support of HEWP described the numerous training sessions made available to employees. Two adverse comments noted the working draft of the Federal Register was unavailable to employees, while one comment said the Federal Register language was overly bureaucratic.

*Response.* In December, 1999, the HEWP team announced availability of the draft at the library and on the campus electronic bulletin board. The team provided training sessions during regular meeting times, including meetings with Faculty Senate, Facilities, Athletics, Managers, Food Services, and Student Services. They created an e-mail address for response to comments and suggestions. Because the Federal Register is a legalistic document, and provides evidence that is acceptable to a court of law (*prima facie* evidence), language must be accurate and specific. Team members followed models, recommendations, and requirements in

the National Archives and Records Administration publication "The Federal Register: What It Is and How To Use It" (rev. 1992).

### (5) Budget

*Comments.* Concerns arose over adequate budget to support the changes of HEWP, including monies to support professional training and technological upgrades.

*Response.* The steering committee and team members made OIEP aware of the need for budget increases. Salary adjustments are based on the possibility of level funding. Clarification of the professional training provisions (III.G) includes encouragement for outside grants monies. To address upgrades of information systems on campus, outside consultants evaluated the available technology and estimated costs to implement and support the demonstration project. The revisions to HEWP made as a result of comments simplify the information technology needs.

### (6) Definitions

*Comment.* One commenter asked for the addition of explanatory definitions to the document. The commenter noted Retained Rate Employee in III.D.5 is a confusing term. The commenter also questioned the meaning of positive education requirements in the Scholastic Achievement Appointment section (III.A.1.b). Another comment noted Merit Principles are not defined in III.D.a, the section, Delegation of Examining Authority.

*Response.* The definition and rights of an employee who retains a salary after a Reduction-In-Force under 5 U.S.C. 5363 and 5 CFR part 536 are delineated in these federal documents, which are cited in III.D.5. The term positive education requirements refers to positions with a directly related or professional level college curriculum. Federal Merit Principles are the widespread ethical and legal standards that guide all federal institutions' personnel systems (5 U.S.C. 2301-2305). Technical demonstration project terms were defined within the text of the document. The operations manual will include a glossary of technical personnel vocabulary.

### (7) Waivers

*Comment.* The waiver to Chapter 71 of Title V, USC was considered unnecessary since all employees are under the demonstration project.

*Response.* The waiver enforces the unilateral application of the project to all union and non-union employees, as

determined in the authorizing law, Public Law 105-337.

Dated: June 23, 2000.

Kevin Gover,  
Assistant Secretary—Indian Affairs.

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## I. Executive Summary

The project was designed by an Alternative Personnel System (APS) Team, under the authority of the Interim President of HINU and the Office of Indian Education Programs, Bureau of Indian Affairs. There are three major areas of change: (a) institution-controlled rapid hiring; (b) a contribution-based compensation system; (c) and a simplified assignment process. The project will cover all employees at HINU as described under section II. E. The Department of Interior will perform extensive evaluation of the project.

## II. Introduction

### A. Purpose

The purpose of the project is to demonstrate that greater managerial control over personnel processes and functions at the worksite can enhance the effectiveness of a higher education workforce and, at the same time, expand

the opportunities available to employees through a more responsive personnel system. This demonstration project will provide managers at the lowest practical level the authority, control, and the flexibility they need to provide quality educational opportunities for American Indian students. This project not only provides a system that recognizes, rewards, and retains employees for their contribution, but it also supports their personal and professional growth.

#### *B. Problems With the Present System*

Haskell Indian Nations University, a Federal higher education institution, provides post-secondary education to Native American students from across the United States. To do this effectively and efficiently, the institution must employ top-quality faculty, administrators, support staff, and technical/specialist workforce. The current personnel system must be re-engineered to provide incentives and rewards to employees who exhibit characteristics of educational mastery, enthusiasm, and innovation, and who increase their contribution to the higher education mission accordingly. Hiring restrictions and overly complex job classifications unduly exhaust valuable resources (staff, time, and budget), and unnecessarily detract attention from the institution's educational mission. Managers must be able to compete with the private and public education sector for the best talent and be able to make timely and competitive job offers to potential employees. Those same managers need the tools to reward employees for continuing excellence so that the higher education system reflects a quality workforce. The current personnel system does not provide an environment that motivates employees to continue to increase their contribution to the institution and its mission. A contribution-based compensation system will help managers acquire motivational tools and provide a forum in which to apply them. The higher education process is continually changing and depends on shared expertise of a highly educated faculty and staff; therefore, managers can implement most effective strategies through local control of positions and their classification. Managers need the ability to move employees freely within their institution to meet the educational mission and to provide developmental opportunities for employees. Managers at present have only limited tools to shape the workforce to ensure continued growth of new ideas, strategies, and state-of-the-art skills for the 21st century.

The inflexibility of many of today's personnel processes and the diffused authority, accountability, and approval chains throughout the system result in a workforce that cannot posture itself for a rapidly changing technological and academic environment. This demonstration is designed: (1) To provide an encouraging environment that promotes the growth of all employees; and (2) to improve the local higher education manager's ability and authority to manage the workforce effectively.

#### *C. Changes Required/Expected Benefits*

This project will demonstrate that a human resources' system tailored to the mission and needs of a higher education institution will result in: (a) Increased quality in the higher education workforce and the educational outcomes produced; (b) increased timeliness of key personnel processes, especially hiring; (c) increased retention rates of "excellent contributors"; (d) increased satisfaction of institutional customers with the higher education process and its outcome; and (e) increased satisfaction with the personnel management system by customers/ students, employees and tribal communities.

The Higher Education Workforce Project (HEWP) builds on the features of demonstration projects at the Department of Defense Acquisition, Air Force Research Laboratory, Department of the Navy (China Lake), and National Institute of Standards and Technology (NIST). The long-standing Department of the Navy (China Lake) and NIST demonstration projects have produced impressive statistics on job satisfaction for their employees versus that for the Federal workforce in general. Therefore, in addition to the expected benefits mentioned above, it is anticipated that the HEWP will result in more satisfied employees as a consequence of the proposed demonstration project's hiring procedures, classification accuracy, pay equity, and fairness of performance management. A full range of measures will be collected during project evaluation.

#### *D. Participating Institutions*

The Higher Education Workforce Project (HEWP) will cover Haskell Indian Nations University, an institution of higher education of the Department of the Interior, Bureau of Indian Affairs. HINU is located in Lawrence, Kansas.

#### *E. Participating Employees*

In determining the scope of the demonstration project, primary consideration was given to the number and diversity of occupations within the Higher Education Workforce Project, which includes professional employees and supporting personnel. The project provides for adequate development and testing of the Contribution-based Compensation and Assessment System (CCAS). The intent of this project is to provide the institution with increased control and accountability for the covered workforce. Therefore, the decision was made to include all General Schedule (GS) and Wage Grade System (WG) positions in the demonstration project. All positions and series in effect on October 1, 2000 will be included in the demonstration project. Employees will be divided into two groups, an Experimental and a Control group. Employees covered under the Performance Management and Recognition System Termination Act (pay plan code GM) are General Schedule employees and are covered under the demonstration project.

#### *F. Bargaining Units*

Of the approximately 200 HINU employees, all except managerial employees formerly were under union representation by the National Federation of Federal Employees union and were covered by a negotiated national agreement. At the time of final publication the Indian Educators Federation (IEF) union had been certified as the bargaining unit representative for OIEP. The NFFE agreement will continue to be recognized as the applicable agreement until such time as a new agreement is reached in accordance with the specific requirements under Public Law 105-337. Any collective bargaining agreement in effect on the day before this demonstration project commences shall continue to be recognized by HINU until such date of a new negotiated agreement, as may be determined by mutual agreement of the parties.

#### *G. Project Design*

In 1996, after several years of planning and research, HINU submitted legislation to Congress for developing a different higher education personnel system. In 1997 SIFI submitted legislation to Congress proposing an alternative personnel system. In 1998, the two pieces of legislation were joined due to the similarity of the two higher education schools' missions and identification of similar problems with acquiring personnel. Public Law 105-

337, Oct. 31, 1998, authorized each institution to carry out a demonstration project for developing a higher education alternative personnel system. A joint Steering Committee was established in September 1999 as the governing body for the project. Members on the Steering Committee represented both institutions and the Office of Indian Education Programs, BIA. An Alternative Personnel System Team was established in October 1999, made up of employees from SIPI and HINU to design and develop the demonstration project that would test a new personnel system for use at SIPI and HINU. The APS team presented recommendations for a new system to the Steering Committee in December 1999 for approval. BIA, OIEP subsequently determined that the two institutions could separate individual alternative personnel systems and the Steering Committee was disbanded. HINU continued to use its APS team to design this project. The APS team developed an alternative personnel system that represents sweeping changes in the entire spectrum of human resources management for HINU. Several of the initiatives are designed to assist the institution in hiring the best people to fulfill mission requirements. Others focus on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to effectively manage workforce turnover and maintain institutional excellence were also developed.

Public Law 105-337 authorizes HINU to test alternative benefits systems. Though no changes have been made to the existing benefits systems in this publication, HINU reserves the right to test alternative benefits systems in the future in accordance with the provisions of Public Law 105-337.

### III. Personnel System Changes

#### A. Hiring and Appointment Authorities

##### 1. Simplified, Accelerated Hiring

The complexity of the current system and various hiring restrictions create delays; hamper management's ability to hire, develop, realign, and retain a quality workforce that is reflective of the institution's mission statement; and inhibit a quick response to the technological, economic and educational needs of tribal communities. Line managers, departmental and divisional managers find the complexity limiting as they attempt to accomplish timely recruitment of needed personnel with appropriate knowledge and skills. To compete with the private sector and

institutions of higher learning for the best talent available and be able to make expeditious job offers, managers need a process that is streamlined and easy to administer. In order to create a human resources management system that facilitates meeting HINU's mission and institutional excellence, this demonstration project will respond to today's dynamic environment by obtaining, developing, motivating, and retaining high-performing employees. The project will provide a flexible system that can restructure or renew the workforce quickly to meet diverse mission needs, respond to workload needs, and contribute to quality educational infrastructure.

Specifically, this part of the demonstration project will provide simplified, accelerated hiring of quality personnel by providing HINU full authority to appoint individuals to positions. Appropriate recruitment methods and resources will include those that are likely to yield quality candidates with the knowledge, skills, and abilities necessary to perform the duties of the position.

(c) *Delegated Examining Authority.* This demonstration project establishes a streamlined applicant examining process. This process will be used to fill all positions at HINU. Basic eligibility factors will be determined, using any and all available resources, linking applicants' knowledge, skills, and abilities to those required in each position. Minimum eligibility requirements will be those at the lowest equivalent grade of the appropriate broadband level. Selective placement factors may be established when judged to be critical to successful job performance. These factors will be determined by the HINU selecting officials and communicated to applicants for minimum eligibility. All candidates will be evaluated to determine if they meet minimum qualifications. If one or more qualified applicants demonstrate Indian preference eligibility, then only those applicants will be considered for the position. Those Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled and receive numerical scores of 70, 80, or 90.

If no Indian Preference applicants meet the minimum qualifications, then other candidates will be considered. Those non-Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be

filled and receive numerical scores of 70, 80, or 90.

Veterans' preference eligibles meeting basic (minimum) qualifications will receive an additional five or ten points (depending on their preference eligibility) added to the minimum scores identified above. Applicants will be placed in one of the following quality groups based on their numerical score including any preference points: Basically Qualified (score of 70 to 79); Highly Qualified (score of 80 to 89); or Superior (score of 90 and above). The names of veterans' preference eligibles will be entered ahead of others having the same numerical score.

For scientific and professional positions at the basic rate of pay equivalent to GS-9 and above, names of all qualified applicants will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, (i.e., other than professional positions at the equivalent of GS-9 and above), veterans' preference eligibles with a compensable service-connected disability of ten percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

For GS-9 and above academic and academic administrative positions, the institution may convene committees to review the applications on the certification list. In accordance with academic procedures—which could include review of credentials and interviews—these committees will recommend a ranked preference list to the hiring officials. Non-academic supervisors may choose to use committees in the hiring process for GS-9 level positions and above.

All applicants in the highest group will be certified. If according to the judgement of the selecting official the Superior group does not create a large enough pool of eligible applicants for ranking, then applicants in the next lower group may then be certified; should this process not yield a sufficient number, groups will be certified sequentially until a selection is made or the qualified pool is exhausted. When two or more groups are certified, applicants will be identified by quality group (i.e., Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. Indian preference eligibles will be placed at the top of the Superior group. Passing over any veterans' preference eligible(s) to select a non-preference non-Indian eligible requires approval under current pass-over or objection procedures.

The on-site Personnel Director will serve as a consultant during the hiring



process, overseeing Indian and veterans' preference, timely processing of paperwork, and other procedures that ensure lawful and equitable procedures for all applicants. The hiring process will reflect the federal Merit Principles.

**(b) Scholastic Achievement Appointment.** This demonstration project establishes a Scholastic Achievement Appointment that provides the authority to appoint candidates with degrees to positions with positive education requirements. This appointment applies only to Indian Preference candidates. Candidates may be appointed under this procedure if (1) They meet the minimum standards for the positions as published in OPM's Operating Manual "Qualification Standards for General Schedule Positions," or university classification standards, (2) they meet the selective factors stated in the vacancy announcement, (3) the occupation has a positive education requirement, (4) the candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualification Standards for the occupational series and an overall undergraduate GPA of at least 3.0 on a 4.0 scale, and (5) the appointment is into a position at a pay level lower than the top step of GS-7. Appointments may also be made at the equivalent of GS-9 through GS-11 on the basis of graduate education and experience, but with the requirement of a GPA of at least 3.7 on a scale of 4.0 for graduate courses in the field of study required for the occupation.

**(c) Eminent Scholars Appointment.** This demonstration project establishes an Eminent Scholar Appointment that provides the authority to appoint Indian Preference candidates with expertise relevant to the mission of the institution. Candidates appointed under this authority may have specialized skills and/or knowledge in fields not conventionally acquired through academic degree programs. Qualifications include a demonstrated record of achievement and recognition as a foremost expert in the appointee's area of expertise. Academic degrees may be considered. The President has hiring authority over this appointment.

#### 2. Permanent, Contingent and Temporary Appointment Authorities

The educational work environment is seriously affected by variable workload and mission changes that require flexibility not only in workforce numbers but required skills and knowledge. The current personnel system is unable to adapt the workforce

rapidly to these changes. This demonstration project provides a method to adjust the workforce as needed. Under this demonstration project there are three appointment options: permanent, contingent and temporary appointments. The permanent appointment replaces the existing career and career-conditional appointments. The contingent appointment is a new appointment authority that is based roughly on the existing term appointment to provide flexible hiring practices for HINU. The contingent appointment is for limited positions not to exceed four years, with an option for one additional year when the need for an employee's service is not permanent. All employees under the permanent and contingent appointments will be eligible for benefits under the guidelines of the demonstration project, provided the appointment is the duration of at least one year. Benefits are the same as those currently afforded permanent employees. An academic year is considered equivalent to a calendar year for academic appointments.

The institution may make a temporary appointment for a period that is expected to last less than one year. Reasons for making a contingent or temporary appointment include, but are not limited to, carrying out special project work; staffing new or existing programs of limited duration; filling a position in activities undergoing review for reduction or closure; and replacing permanent employees who have been temporarily assigned to another position, are on extended leave, or have entered military service. Selections for temporary appointments for less than one year will be non-competitive. Selections for contingent appointments may be made under non-competitive or competitive examining processes. Employees hired under a one-year or more, contingent appointment authority are not permanent, but may be eligible for conversion to permanent appointment. To be converted, the employee must (1) have been selected for a contingent position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the contingent position(s) may be eligible for conversion to permanent appointment at a later date; (2) must have participated in each cycle of the contribution-based assessment process during their appointment; and (3) be selected under merit promotion procedures for the permanent position. Service under a contingent appointment immediately prior to a permanent

appointment may be applied toward the probationary period at the discretion of the manager, provided contribution is adequate and the permanent position is in the same career path as the contingent appointment. The institution may place a contingent employee in any other contingent position, provided the employee meets the qualifying requirements of that position. However, such reassignment will not serve to extend the appointment beyond the original contingent appointment time period. Academic and Technical/Specialist conversions will require review by appropriate peers. Permanent, contingent and temporary appointments may be used for part-time and full-time purposes. The contingent and temporary appointments may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution, but may be used to supplement regular positions work activities. Any position filled using a temporary appointment for two consecutive years must be reviewed by the Personnel Director for more appropriate designation as a permanent or contingent appointment position.

#### 3. Modified Probationary Period

For employees in the Academic and Technical/Specialist career paths, the current one-year probationary period does not always provide managers the time needed to properly assess the contribution and conduct of new hires in the higher education environment. New hires may be involved in extended training, degree completion and/or educational assignments away from their normal institution. A means of extending the opportunity for management to review and evaluate the contribution and potential of new hires is needed. Expansion of the current one-year probationary period affords management better control over the quality of employees required to meet mission needs and provide sufficient opportunity to evaluate contribution during the beginning of a career. Permanent employees will fulfill a maximum of three years probation that may be decreased to not less than one year. All newly hired employees may be subject to an extension of their probationary period equal to the length of any educational/training assignment that places the employee outside normal supervisory review. The modified probationary period applies to new hires or those who do not have reemployment or reinstatement eligibility. Aside from extending the probationary period, all other features of the current probationary period are

retained. Probationary employees will be terminated when they fail to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When a supervisor decides to terminate an employee serving a probationary period because his/her work contribution or conduct during that period fails to demonstrate fitness or qualifications for continued employment, the supervisor shall terminate the employee's services by written notification thirty days prior to the effective date of the action. Probationary employees will receive all the benefits of the non-probationary permanent employees, with the exception that they may be separated without due cause. After fulfilling the probationary requirements, an employee will not be separated without full substantive and procedural rights.

#### 4. Voluntary Emeritus Program

Under the demonstration project, the President of HINU has the authority to offer retired or separated individuals voluntary assignments in the institution and to accept the gratuitous services of those individuals. Voluntary Emeritus Program assignments are not considered employment by the Federal Government (except as indicated below). Thus, such assignments do not effect an employee's entitlement to buy-outs or severance payments based on earlier separation from Federal Service. This program may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution.

The Voluntary Emeritus Program will ensure continued quality higher education by allowing retired employees to retain a presence in the HINU education community. Experienced workers will be available to enrich the institution's educational mission through mentorships and other services.

To be accepted into the Voluntary Emeritus Program, a volunteer must be recommended to the President by one or more HINU education managers. Not

everyone who applies is entitled to an emeritus position. The President must document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while the volunteer is serving in emeritus status. Retired or separated Federal employees may accept an emeritus position without a "break in service" or mandatory waiting period.

Voluntary Emeritus Program volunteers will not be permitted to monitor contracts on behalf of the Government but may participate on any contract if no conflict of interest exists. The volunteer may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists.

An agreement will be established by the volunteer, the President, and the Personnel/Human Resources Office. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the service provided is gratuitous, does not constitute an appointment in the Civil Service, is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government because of the service are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purposes of:

(i) Subchapter I of Chapter 81 of Title 5, U.S.C. (using the formula established in 10 U.S.C. 1588 for determination of compensation) (work-related injury compensation);

(ii) Chapter 171 of title 28, U.S.C. (tort claims procedure);

(iii) Section 552a of Title 5, U.S.C. (records maintained on individuals); and

(iv) Chapter 11 of title 18, U.S.C. (conflicts of interest).

(c) the volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the activity (travel, administrative, office space, supplies, etc.);

(f) a one-page statement of duties and experience; a statement specifying that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program; a provision allowing either party to void the agreement with ten days' written notice and;

(g) the level of security access required.

#### B. Broadbanding

##### 1. Broadband Levels

A broadband system will replace the current General Schedule (GS) and Wage Grade structure. Currently, the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white-collar work—administrative, technical, clerical, and professional. The Wage Grade System covers all blue-collar work—trade, craft, and labor.

Occupations with similar characteristics will be grouped together into three career paths with broadband levels designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates. Academic, Technical/Specialist, and Support designate career paths as depicted in TABLE I. Competitive promotions will be less frequent, and movement through the broadband levels will be a more seamless process than under current procedures. Like the broadband systems used at the Department of the Navy (China Lake) and the National Institute of Standards and Technology (NIST) permanent demonstration projects, advancement within the system is contingent on merit.

TABLE I.—BROADBAND CAREER PATHS

Academic:	I	II	III	IV
	(GS 4-6)	(GS 7-9)	GS (10-12)	GS (13-15)
Technical or Specialist:	I	II	III	IV
	(GS 4-6)	(GS 7-9)	GS (10-12)	GS (13-15)
Support:	I	II	III	
	(GS 4-6)	(GS 7-9)	GS (10-12)	

There will be four broadband levels in the demonstration project, labeled I, II, III, and IV. Levels I through IV will include the current grades of GS-01 through GS-15. These are the grades in which the workforce employees are currently found. Wage grade compensation levels were converted to GS grade, then the GS grade was used in setting the broadband levels. The position of President of HINU will be paid minimally at the GS 15, step 1 pay rate and will be limited by a maximum pay rate equivalent to Executive Schedule Level III.

Generally, employees will be converted into the broadband level that includes their permanent GS and WC grades of record. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule and/or Executive Schedule are increased, the minimum and maximum rates of the broadband levels and the salary range of the President will also increase. Individual employees receive pay increases based on their assessments under the Contribution-based Compensation and Assessment System (CGAS). General pay increases will be given to all employees regardless of assessment scores. Within-Grade Increases will occur as scheduled under the General Schedule, subject to attainment of a full performance assessment score. Currently no special salary rates are in effect at HINU. However, if a position is created that falls under a special salary rate, that rate will be converted to a broadband level comparable to the special salary rate and that special salary rate will no longer be applicable to the demonstration project employee. Employees will receive the locality pay of their geographical area.

All applicants for employment with, all eligibles for employment with and all newly hired employees will be hired under the HEWP demonstration

program procedures, and will be subject to the HEWP demonstration program. All newly hired personnel entering the system will be employed at a level consistent with the expected basic qualifications for the broadband and level, as determined by rating against qualification standards. Salaries of individual candidates will be based on academic qualifications and/or work experience. The hiring official will determine the starting salary based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified applicants, programmatic urgency, and education/experience of the new candidates. In addition to the flexibility available under the Broadbanding system, the authorities for retention, recruitment, and relocation payments granted under the Federal Employees Pay Comparability Act of 1990 (FEPCA) can also be used.

The use of broadbanding provides a stronger link between pay and contribution to the mission of the institutions. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the demonstration project.

Academic work requires knowledge in a field of science or learning characteristically acquired through education or training equivalent to a bachelor's or higher degree with major study in or pertinent to the specialized field, as distinguished from general education. The Academic provides or performs the primary mission of the institution. Technical/Specialist work involves extensive practical knowledge, gained through experience and/or specific training or requires knowledge pertinent to the occupation typically

acquired by a college degree, certification or licensing. Work in these occupations may involve substantial elements of the work of the Academic field, but requires less than full knowledge of the field. Technical/Specialist work is associated with and supportive of the mission. Support Services occupations involve structured work in support of office or facility. The work facilitates the program/mission.

2. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the institution have maximum flexibility to assign individuals. Broadbanding enables the institution to have the maximum flexibility to assign an employee within broad descriptions, consistent with the needs of the institution and the individual's qualifications. Assignments may be accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or institutional component consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

C. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series that are divided into 22 occupational groups. The present Federal Wage classification system has similar groupings. The HEWP currently covers numerous series in the 22 occupational groups and Federal Wage System. These occupational series and groups will be maintained throughout the demonstration project.

## 2. Classification Standards

The present system of OPM classification standards will be used for identification of proper series and occupational titles of positions within the demonstration project. The CCAS broadband factors and their level descriptors, as aligned in the three career paths, will be used for the purpose of broadband and level determination. Under the demonstration project, each broadband level will be represented by a set of descriptors.

## 3. Classification Authority

Under the HEWP, the President will have delegated classification authority and may re-delegate this authority to subordinate management levels. Re-delegated classification approval must be exercised at least one management level above the first-line supervisor of the position under review, except in the case of those employees reporting directly to the President. First-line supervisors will provide classification recommendations. The Personnel Director will provide on-going consultation and guidance to managers and supervisors throughout the classification process.

## 4. Statement of Duties and Requirements

Under the demonstration project's classification system, a new Statement of Duties and Requirements (SDR) will replace the current position description. The SDR will combine the position information, staffing requirements, and contribution expectations into a single document. The new SDR will include a description of job-specific information, reference the CCAS broadband level descriptors for the assigned broadband level, and provide other information pertinent to the job. An automated computer assisted process to produce the SDR may be used. The objectives in developing the new SDR are to: (a) Simplify the descriptions and the preparation process through automation; (b) provide more flexibility in work assignments; and provide a more useful tool for other functions of personnel management, *e.g.*, recruitment, assessment of contribution, employee development, and reduction in force.

## 5. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption or non-exemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551.

All employees are covered by the FLSA unless they meet criteria for exemption. Positions will be evaluated

as needed by comparing the duties and responsibilities assigned the broadband level descriptors for each broadband level, and the 5 CFR part 551 FLSA criteria.

## 6. Classification Appeals

An employee may appeal the occupational series, title, or broadband level of his/her own position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the Haskell Classification Appeals Panel. Time periods for case processing under 5 CFR 511.605 apply.

An employee may not appeal the accuracy of the SDR document, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the personnel/human resources office and will include copies of appropriate demonstration project criteria.

## D. Contribution-based Compensation and Assessment System

### 1. Overview

The purpose of the Contribution-based Compensation and Assessment System (CCAS) is to provide an equitable and flexible method for assessing and compensating the higher education workforce. CCAS allows for more employee involvement in the performance assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution by each employee, facilitates employee progression tied to institutional contribution, and provides an understandable basis for salary changes.

CCAS goes beyond a performance-based rating system. It measures the employee's contribution to the mission and goals of the institution, rather than how well the employee performed a job as defined by a performance plan. Past experience with the existing performance appraisal system indicates that performance plans are often tailored to the individual's level of previous performance. Hence, an employee may have been rewarded by

salary step increases for accomplishing a satisfactory level of performance against a diminishing set of responsibilities. CCAS promotes salary adjustment decisions made on the basis of an employee's overall annual contribution when compared to all other employees and level of compensation. Therefore, larger-than-average salary increases are possible for employees who are determined to be under-compensated, and smaller-than-average increases are permitted for employees who are deemed to be over-compensated in relationship to their institutional contributions.

An employee's performance is a synthesis of contributions that determines the Employee Assessment Score (EAS). Contribution is measured by using a set of six factors, each of which is relevant to the success of the educational institution. The descriptors for each factor will have four levels. Criteria for achieving these levels will be determined by each organizational unit, such as an academic department, within the school. Taken together, these factors capture the critical content of jobs in each career path. The factors may not be modified or supplemented. These factors are the same as those used to classify a position at the appropriate broadband level.

The compensation system is an important indicator of what an organization believes is important to its success. A well designed compensation system provides a battery of tools to support organizational goals and outcomes. The design should be strategic, flexible, and customer-focused. The current compensation system, because it was implemented in a piecemeal fashion for a hierarchical organization, does not relate to educational needs and is cumbersome. The demonstration project will test a compensation system that is able to change based on the needs of the entire organization, of the taxpayer, and of the student being served.

Employees in all four broadband levels will have the same factors, with applications relevant to the SDR. The six factors are: (1) Primary Duty and Requirements; (2) Customer/Student Service; (3) Department and Institutional Service; (4) Teamwork/Supervision; (5) Professional Development Activity; (6) Communications/Research and Publications. These factors were chosen for assessing the yearly contribution of HINU employees in the three career paths (1) Academic, (2) Technical/Specialist, and (3) Support. Each factor has multiple levels of increasing contribution corresponding to the

broadband levels within the relevant career paths. These levels will be delineated in the operations manual.

*Factor 1*

Primary Duty and Requirements refers to the activities that relate to the position description title, such as Carpenter, relating to levels of achievement of carpenter duties; or Instructor, relating to achievement of levels related to classroom instruction. The individual factor will relate to the activity described by the title.

*Factor 2*

Customer/Student Service pertains to activities that relate to direct and indirect contact with customers/students. Work is timely, efficient and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

*Factor 3*

Departmental and Institutional Service refers to institutional programs and department plans that contribute to the employee's organizational unit and

the institution as a whole to reflect the vision, mission and goals.

*Factor 4*

Teamwork/Supervision refers to non-managerial employees (Teamwork) or managers (Supervision and Teamwork). Teamwork is a factor that describes any worker's contribution to the mission and goals of the organizational unit, through interactions with other employees and departments, including supervision of employees. Management of resources is also part of this factor.

*Factor 5*

Professional Development Activity refers to any training, academic course work, instructional conferences, or activity that contributes to the employee's ability to perform duties for the benefit of the institution of higher learning.

*Factor 6*

Communications/Research and Publications refers to ability to communicate—both written and oral—in a clear, concise, and appropriate manner. Research and Publication refers to researching relevant sources for curriculum and instructional topic area

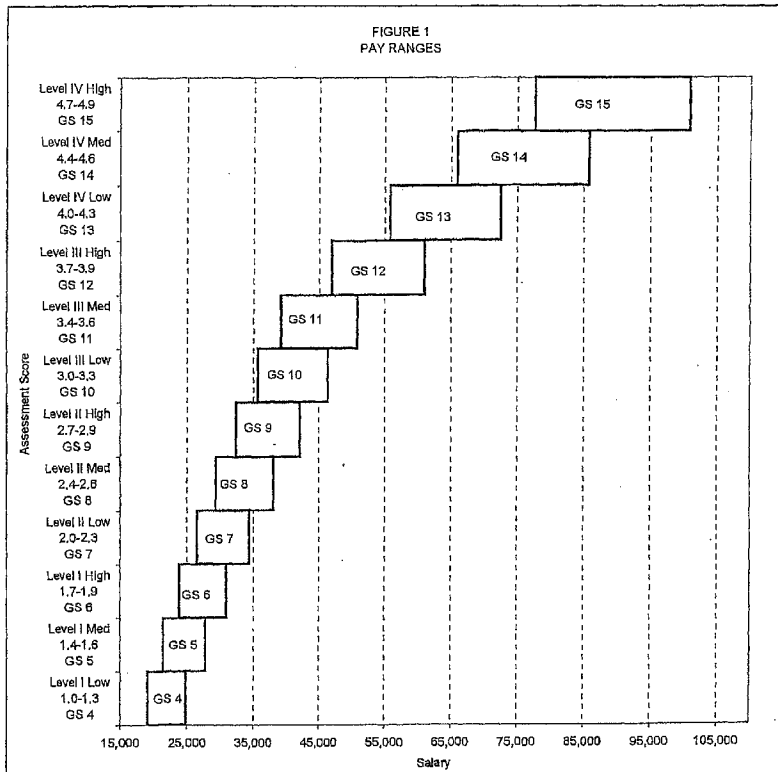
purposes, and in some cases publishing the results of research.

2. CCAS Pay Ranges

The Contribution-based Compensation and Assessment System (CCAS) pay schedule is the same as the General Schedule and provides a direct link between increasing levels of contribution and increasing salary. This is shown by the graph in Figure 1. The horizontal axis of Figure 1 represents the salary range of the General Schedule from GS-4, Step 1, which is \$19,000 (Calendar Year 2000) through GS-15, Step 10, which is \$100,897 (CY00). Each employee's CCAS Pay Range is the pay range for their GS grade. Locality salary adjustments are not included in the CCAS pay ranges, but are incorporated into the demonstration participant's pay.

The vertical axis in Figure 1 represents the scale for assessment scores in 0.1 increments within each broadband level. This scale is directly related to the CCAS pay range for GS grades, the broadband levels, and the factor descriptor levels.

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With the exception of the President's pay rate, these CCAS pay ranges encompass all salaries (excluding locality pay) paid under this demonstration, from GS-4, step 1, through GS-15, Step 10, for CY2000. The salary range for the President's position is from GS-15 to Executive Schedule Level III. The President's salary is the only salary that may increase beyond GS-15, Step 10.

Each year the CCAS pay ranges are adjusted upward based on the general pay increase under 5 U.S.C. 5303. All employees will receive the general pay increase under 5 U.S.C. 5303 each year.

Within-Grade Increases (WGI's) will occur as scheduled under the General Schedule system, provided the employee earns an assessment score equivalent to or higher than the Expected Contribution Score (ECS) for their grade and level. The pay schedule and the CCAS pay ranges are the same for all three career paths, with the exception that the Support Broadband has three levels rather than four levels. The minimum and maximum numerical assessment scores and associated base salaries for each broadband level, by career path, are provided in TABLE II (see 3. CCAS Assessment Process).

These minimum and maximum break points represent the lowest and highest General Schedule salary rates for the grades banded together and, therefore, the minimum and maximum salaries possible for each broadband level.

Employees whose annual assessment scores plotted against their base salary fall within their current pay range are considered appropriately compensated. Employees whose scores plotted against their salaries fall to the left or above their respective pay ranges are considered under-compensated. Employees whose scores plotted against their salaries fall to the right or below

of their respective pay ranges are considered over-compensated. The goal of CCAS is to make pay consistent with employees' contributions to the HINU mission.

Employees will enter the demonstration project without a loss of pay (see Section V, Conversion) and without an Employee Assessment Score (EAS). The first assessment score will result from the first annual CCAS assessment process. Until the first CCAS assessment process is completed, no employee is considered to be appropriately, over- or under-compensated. Employees may determine their Expected Contribution Score (ECS) by locating the intersection of their salary and GS Grade with the highest assessment score in each interval for that grade and pay range. The highest numerical value in each interval is the ECS. Future CCAS assessments may alter an employee's position relative to this graph.

3. CCAS Assessment Process

The annual CCAS assessment cycle begins on July 1 and ends on June 30 of the following year, with the exception of the first year of the demonstration project, which will begin at the project's

inception on October 1, 2000, and end June 30, 2001. At the beginning of the annual assessment cycle, the broadband level descriptors will be provided to employees so that they know the basis on which their contribution will be assessed for their pay pool. (A pay pool is a group of employees among whom the CCAS dollars are calculated and distributed. The President of the institution determines the pay pool structure (see Section III D 4). At that time, employees will be advised that all factors are critical. Key terms will be defined or clarified. Supervisor and employee discussion of specific work assignments, standards, objectives, and the employee's contributions within the CCAS framework should be conducted on an ongoing basis.

Near the end of the annual (July 1 to June 30) assessment cycle, the immediate supervisor (assessing official) meets with employees, requesting them to summarize their contributions for each factor in a self-assessment. From an employee's inputs and his/her own knowledge from all available sources, the assessment official identifies for each employee the earned level and interval (low, medium or high) for each factor.

The assessment officials within each pay pool (including second-level supervisors) meet together to ensure consistency and equity of the contribution assessments.

To determine the EAS, numerical values are assigned to each factor, using the intervals shown in TABLE II. TABLE II shows each of the three broadbands divided into levels, along with the corresponding GS grades, and the scale for contribution scores. The highest numerical score in each interval is the ECS for the Low, Medium, and High intervals of the level. If the contribution for a factor is at the lowest possible score of Level I, an assessment score of 1.0 is assigned. Higher levels of contribution correspond to numerical scores in 0.1 increments up to 4.9. A factor score of 0.0 can be assigned if the employee's contribution does not demonstrate a minimum Level I contribution. Likewise, a factor score of 5.9 can be assigned if the employee's contribution exceeds the maximum Level IV contribution. The EAS is calculated by averaging the numerical values assigned for each of the six factors.

TABLE II.—ASSESSMENT SCORE INTERVALS WITHIN BROADBAND LEVELS  
[Academic]

I			II			III			IV		
Low	Med.	High	Low	Med.	High	Low	Med.	High	Low	Med.	High
1.0-1.3	1.4-1.6	1.7-1.9	2.0-2.3	2.4-2.6	2.7-2.9	3.0-3.3	3.4-3.6	3.7-3.9	4.0-4.3	4.4-4.6	4.7-4.9
(GS 4-6)			(GS 7-9)			(GS 10-12)			(GS 13-15)		

[Technical or Specialist]

I			II			III			IV		
Low	Med.	High	Low	Med.	High	Low	Med.	High	Low	Med.	High
1.0-1.3	1.4-1.6	1.7-1.9	2.0-2.3	2.4-2.6	2.7-2.9	3.0-3.3	3.4-3.6	3.7-3.9	4.0-4.3	4.4-4.6	4.7-4.9
(GS 4-6)			(GS 7-9)			(GS 10-12)			(GS 13-15)		

[Support]

I			II			III		
Low	Med.	High	Low	Med.	High	Low	Med.	High
1.0-1.3	1.4-1.6	1.7-1.9	2.0-2.3	2.4-2.6	2.7-2.9	3.0-3.3	3.4-3.6	3.7-3.9
(GS 4-6)			(GS 7-9)			(GS 10-12)		

The assessing officials (including second-level supervisors) meet again, correcting any inconsistencies and making the appropriate adjustments in the factor assessments. Then an Overall Contribution Score (OCS) is calculated

for each employee and employees are placed in rank order:

$$O.C.S. = \frac{\text{Expected Contribution Score (ECS)}}{\text{Employee Assessment Score (EAS)}} \times 100 \text{ \%}$$

The pay pool panel (pay pool manager and the assessing officials in the pay pool who report directly to him/her) meets to conduct a final review of the OCS and recommends compensation adjustments for pay pool members. The

pay pool panel has the authority to make OCS adjustments, after discussion with the initial assessing officials, to ensure equity and consistency in the ranking of all employees. Final approval of OCS rests with the pay pool manager. The OCS approved by the pay pool manager becomes the final OCS.

Assessment officials will communicate the factor scores and OCS to each employee and discuss the results by July 15.

If on June 30, the employee has served under CCAS for less than six months, the assessment official will wait for the subsequent annual cycle to assess the employee. The first CCAS assessment must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CCAS assessment process due to special circumstances that take the individual away from normal duties or duty station (e.g., long-term full-time training, active military duty, extended sick leave, leave without pay, union activities, etc.), the assessment official will document the special circumstances on the assessment form. The assessment official will then determine which of the following options to use:

(a) Re-certify the employee's last OCS; or

(b) Presume the employee is contributing consistently with his/her pay level and will be given minimally the full general increase and any within-grade increase that may be due.

Pay adjustments will be made on the basis of the OCS or substitute determination and the employee's rate of basic pay. Pay adjustments are subject to payout rules discussed in section II, D. 4. Final pay determinations will be made by the pay pool manager. OCS scores can only be adjusted after discussion with the assessment official.

Pay adjustments will be documented by SF-50, Notification of Personnel Action. For historical evaluation and analytical purposes, dates on the effective date of OCS assessments, actual assessment scores, the actual salary increases, amounts contributed to the pay pool, and applicable bonus amounts and/or awards will be maintained for each demonstration project employee.

#### 4. 360-degree Feedback and Learning Contracts

HRNU will establish a performance feedback system using a 360-degree feedback process. The system will use 360-degree feedback, or input from several sources, including: (a) an employee's manager, (b) peers, and (c) customers. Performance feedback will

provide all employees with information on their contribution to the organization's performance. It will also help them identify their training and developmental needs for the yearly cycle by pinpointing areas of strength and items needing improvement.

The results of the 360-degree performance feedback will go only to the employee, with group or area results being summarized for the manager. In areas with a single employee, the results will be provided to the manager. If an employee appeals his/her rating, the employee may use 360-degree supporting information in the appeal of the original assessment. Training in the use of the performance feedback system will be provided to all employees.

This information contributes to Learning Contracts, which are written agreements between supervisors and employees identifying management or employee skill blocks. Skill blocks are skills or abilities that allow a manager or employee to succeed and excel at their job. Every employee will have a Learning Contract that will consider needs identified by employee development measures, the performance feedback system, and a degree/certification/recertification system.

This is especially important in the development of managers. One item identified in "A Study of Management and Administration: The Bureau of Indian Affairs" by the National Academy of Public Administration, is the need for a management development program. One of the primary management objectives recommended by NAPA was management development. To accomplish this objective requires a commitment to provide the planning and resources necessary to support this training and development. The creation of a management learning contracts with the associated knowledge and skill blocks for managers will support this objective.

#### 5. Pay Pools

The pay pool structure and allocated funds are under the authority of the President. The following minimal guidelines will apply to pay pool determinations: (a) a pay pool(s) is based on the institution's organizational structure and should include a range of salaries and contribution levels; (b) a pay pool must be large enough to include a second level of supervision, since the CCAS process uses a group of supervisors in the pay pool to determine OCS and recommended salary adjustments; and (c) neither the pay pool manager nor the supervisors within

a pay pool will recommend or set their own individual pay levels.

The amount of money available in the pay pool fund is determined by the President. An incentive amount (I), made up of money that would have been available for quality step increases, within-grade increase amounts not awarded because of inadequate contribution, promotions between grades encompassed in the same broadband level, and other appropriate incentive factors. The amount of "I" will be determined each year by the President and will be at a minimum of 1 percent based on a percentage of the base pay salaries of all employees as of September 30. The amount of "I" may be adjusted as necessary each year to maintain cost discipline. Though not all funds within a pay pool must be distributed each year as pay or bonuses, a pool of funds are to be set aside for pay purposes and may not be used for other purposes before annual pay calculations are made. Justification for altering the amount of money in the pay pool fund must be made to the President, who has final authority. The President, if provided sufficient justification, has the authority to alter the amount of money in the pay pool fund.

#### 6. Salary Adjustment Guidelines

After the initial conversion into the CCAS, employees' yearly contributions will be determined by the CCAS process described above, and their OCS versus their current rate of base pay will be plotted on a graph. Refer back to Figure 1. The position of those points relative to the CCAS pay ranges (GS grade) gives a measure of the employee's compensation (salary) versus contribution (Employee Assessment Score). Employees fall into one of three categories: over-compensated—to the right or below the pay range; appropriately compensated—within the pay range; or under-compensated—to the left or above the pay range. Depending on the category into which an employee falls on the graph, he/she may be eligible for three forms of additional compensation (all employees will receive the annual general pay increase regardless of contribution score): (1) Within-Grade Increases (WGI's) will occur as scheduled under the General Schedule system provided the employee earns an assessment score equivalent to or higher than the EGS for their grade and broadband level. Failure to obtain an adequate assessment score will result in the denial of the WGI. If the employee is in a two-year or a three-year waiting cycle for the receipt of a WGI, and does not obtain an adequate



assessment in one of the annual assessment cycles, an average assessment score for the WGI waiting period must be calculated to determine eligibility for receipt of the WGI when it occurs. The average assessment score would be calculated by adding all annual assessment scores that have occurred and dividing by the number of years (two or three) of the waiting period. Subsequent decisions on receipt of WGI's when in a one, two, or three year waiting period will be based on an average of the last two or three assessment scores as applicable; (2) The pay pool panel has the options of giving an employee a base salary increase and/or a contribution bonus (a lump-sum payment that does not affect base salary). An employee on retained pay in the demonstration project will receive pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR part 536; (3) The pay pool panel has the option of giving an employee an incentive award (a lump sum payment that does not affect base pay).

An employee receiving a retained rate may be eligible for a base pay increase, since such increases are limited by the maximum salary rate for the employee's broadband level.

An employee identified as appropriately compensated may receive a contribution base pay increase provided the increase does not exceed the maximum salary for the employee's current broadband level pay range. An employee identified as over-compensated will receive no additional contribution base pay increase, no contribution bonus and no incentive award. An employee identified as under-compensated would be eligible for a base pay increase. The contribution base pay increase may not exceed the maximum salary for the current level.

Employees who are appropriately compensated and under-compensated are eligible for contribution bonuses up to \$10,000 with the approval of the pay pool manager. Contribution bonus amounts exceeding \$10,000 require the President's approval.

Employees whose OCS would result in a base pay increase such that the salary exceeds the maximum salary for their current broadband level will receive a contribution bonus equaling the difference. This bonus will be paid as a lump sum payment and will not add to base pay.

In general, those employees who fall in the under-compensated category should expect to receive greater salary increases than those in the over-compensated category. Over time, all employees in the over- and under-compensated categories will migrate

closer to the appropriate CCAS pay ranges and receive a salary appropriate for their level of contribution.

Each pay pool manager will set the necessary guidelines for pay adjustments in the pay pool. Decisions will be consistent within the pay pool, reflect cost discipline over the life of the demonstration project, and be subject to administrative review. The maximum available base pay rate under this demonstration project will be the rate for a Executive Schedule Level III.

#### 7. Incentive Awards Budget

The President will establish an Incentive Awards Budget (IAB) for the institution each year. The IAB will be set at not less than 1 percent of the institution's total salary budget calculated on September 30 of each year. For the first year of the project, the total IAB will be set at a minimum of 1.0 percent of total salaries. The IAB is separate from the funds available for base pay increases and contribution bonuses. The IAB includes funds formerly spent for performance awards and incentive awards. The IAB will be available for use as incentive awards for employee contributions and all other incentive awards (*i.e.* Special Act or Service). The President may adjust the annual budget proportions of performance awards and incentive awards in the IAB. This will allow adequate funds for incentive awards not related to CCAS contributions. IAB funds will be paid as lump sum amounts and will not add to base pay. The IAB funds will be under the Pay Pool Manager for each pay pool. The Pay Pool Manager will give final approval for all Incentive Awards.

#### 8. Movement Between Broadband Levels

It is the intent of the demonstration project to have career growth accomplished through the broadband levels. Movement within a broadband level will be determined by contribution and salary increases following the CCAS process. Movement to a higher broadband level is a competitive action. Movement to a lower broadband level may be voluntary or involuntary.

Broadband levels derive from salaries of the banded GS grades and equivalent Wage Grades. The lowest salary of any given broadband level is that for step 1 of the lowest GS grade in that broadband level. Likewise, the highest salary of any given broadband level is that for step 10 of the highest GS grade in that broadband level. There is a natural overlap in salaries in the GS grades that also occurs in the broadband system. Since the CCS is directly related

to salaries, there is also an overlap between OCS across broadband levels.

Under the demonstration project, managers are provided greater flexibility in assigning duties by moving employees among positions within their broadband level. If there are vacancies at higher levels, employees may be considered for promotion to those positions in accordance with competitive selection procedures.

Under competitive selection procedures, the selecting official(s) may consider candidates from any source based on job-related, merit-based methodology. Similarly, if there is sufficient cause, an employee may be demoted to a lower broadband level position according to the contribution reduction-in-pay or removal procedures discussed in section III E 2.

#### 9. Implementation Schedule

The 2000 employee annual appraisal will be done according to the performance plan rules in effect at the time of the 2000 close-out. Employees will be moved by personnel action into the demonstration project and into the appropriate broadband level on October 1, 2000, or as specified in the institution's implementation plan. The first CCAS assessment cycle will run from October 1, 2000 to July 30, 2001. Overall assessment scores and pay adjustments resulting from the 2001 assessment cycle will be paid out the first full pay period of January 2002.

#### 10. CCAS Grievance Procedures

Bargaining unit employees who are covered under a collective bargaining agreement may grieve CCAS pay determinations under the grievance-arbitration provisions of the agreement. Other employees not included in a bargaining unit may utilize the appropriate administrative grievance procedures to raise a grievance against CCAS pay decisions (5 CFR Part 771), with supplemental instructions as described below.

An employee may grieve the assessment scores. If an employee is covered by a negotiated grievance procedure that includes grievances over assessment or appraisal scores, then the employee must use that procedure. If an employee is not in a bargaining unit, or is in a bargaining unit but grievances over appraisal or assessment scores are not covered under a negotiated grievance procedure, then the employee may use the administrative grievance procedure (5 CFR Part 771) with supplemental actions described below.

The employee will submit the grievance initially to the first line supervisor, the assessment official, who

will submit a recommendation to the pay pool panel. The pay pool panel may accept the assessment official's recommendation or reach an independent decision. In the event that the pay pool panel's decision is different from the assessment official's recommendation, appropriate justification will be provided. The pay pool panel's decision is final unless the employee requests reconsideration by the next higher official to the pay pool manager. The pay-pool manager will render the final decision on the grievance.

#### 11. Contribution-based Reduction-in-Pay or Removal Actions

CCAS is an assessment system that goes beyond a performance-based rating system. Contribution is measured against the CCAS factors for the three career paths, each having multiple levels of increasing contribution. (For the purposes of this section, these factors are considered critical and are synonymous with critical elements as referenced in 5 U.S.C. Chapter 43.) This section applies to reduction-in-pay or removal of demonstration project employees based solely on inadequate contribution. Inadequate contribution in any one factor at any time during the assessment period is considered grounds for initiation of reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance, except with respect to appeals of such actions. The statutory authority for appeals of contribution-based actions appears in 5 U.S.C. 4303(e). As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's contribution in any factor is at or less than the midpoint of the next lower broadband level (or a factor score of zero for broadband level 1 employees), the employee is considered to be contributing inadequately. In this case, the supervisor must inform the employee, in writing, that unless the contribution increases to a score above the midpoint of this next lower broadband level (thereby meeting the standards for adequate contribution) and is sustained

at this level, the employee may be reduced in pay or removed. For broadband level 1 employees, a factor score that increases to the midpoint and is sustained at that level is determined to be adequate.

The written notice that informs an employee that he/she may be reduced in pay or removed affords the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution with regard to identifiable factors. As part of the employee's opportunity to demonstrate adequate contribution, he or she will be placed on a Contribution Improvement Plan (CIP). The CIP will state how the employee's contribution is inadequate, what improvements are required, recommendations on how to achieve adequate contribution, assistance that the agency shall offer to the employee in improving inadequate contribution, and consequences of failure to improve.

Additionally, when an employee's contribution plots in the area to the right or below the upper rail of the normal pay range, the employee is considered to be contributing inadequately. In this case, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay or removed.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCAS assessment process may reconvene any time during the year to review the circumstances warranting the recommendation to take further action on the employee.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower broadband level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall

contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee proposed for a reduction-in-pay or removal is entitled to a 30-day advance notice of the proposed action that identifies specific instances of the employee's inadequate contribution upon which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action.

A decision to reduce in pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction-in-pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

#### E. Special Situations Related to Pay

##### 1. Change in Assignment

The CCAS concept, using the broadbanding structure, provides flexibility in making changes in assignments. In many cases an employee can be reassigned, without change in their rate of basic pay, within broad descriptions, consistent with the needs of the institution and commensurate with the individual's qualifications. Subsequent institutional assignments to projects, tasks, or functions requiring the same level and area of expertise and the same qualifications would not constitute an assignment outside the scope or coverage of the current level descriptors. In most cases, such assignments would be within the factor descriptors and could be accomplished without the

need to process a personnel action. Assignment resulting in series change, broadband level change, or change to KSAs shall be accomplished by official personnel action. Thus, this approach allows for broader latitude in institutional assignments and streamlines the administrative process. Rules for specific types of assignments under CCAS follow:

(a) **Promotions.** When an employee is promoted to a higher broadband level, the salary upon promotion will be at least 6 percent, typically not more than 20 percent, greater than the employee's current salary. However, if the minimum rate of the new broadband level is more than 20 percent greater than the employee's current salary, then the minimum rate of the new broadband level is the new salary. The employee's salary may not exceed the salary range of the new broadband level. When an employee receiving a retained rate is promoted to a higher broadband level, at a minimum the employee's salary upon promotion will be set in the higher broadband level at 6 percent higher than the maximum rate of the employee's existing broadband level; or at the employee's existing retained rate, whichever is greater.

(b) **Competitive Selection for a Position with Higher Potential Salary.** When an employee is competitively selected for a position with a higher target broadband level than previously held (e.g., Upward Mobility), upon movement to the new position the employee will receive the salary corresponding to the minimum of the new broadband level or the existing salary, whichever is greater.

(c) **Voluntary Change to Lower Broadband Level/Change in Career Path (except RIF).** A provision exists today for an employee to request a change to lower grade. If that request is totally the employee's choice, then the employee's salary is lowered accordingly. To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout and show reasons for the request. All actions will be appropriately documented. Although the rationale behind such a voluntary request varies under CCAS, a voluntary request for a pay reduction or a voluntary declination of a pay raise would effectively put an over-compensated employee's pay closer to or within the employee's contribution level. Since an objective of CCAS is to properly compensate employees for their contribution, the granting of such requests is consistent with this goal. Under normal circumstances, all

employees should be encouraged to advance their careers through increasing contribution rather than trying to be under-compensated at a fixed level of contribution. When an employee accepts a voluntary change to lower broadband level or different career path, salary may be set at any point within the broadband level to which appointed, except that the new salary will not exceed the employee's current salary or the maximum salary of the assigned broadband level, whichever is lower.

(d) **Involuntary Change to Lower Broadband Level Without Reduction in Pay Due to Contribution-based Action.** Due to inadequate contribution, an employee's salary may fall below the minimum rate of basic pay for the broadband level to which he/she is assigned. When an employee is changed to a lower broadband level due to such a situation, this movement is not considered an adverse action.

(e) **Involuntary Reduction in Pay, to Include Change to Lower Broadband Level and/or Change in Career Path Due to Adverse Action.** An employee may receive a reduction-in-pay within his/her existing broadband level and career path; be changed to a lower broadband level; and/or be moved to a new position in a different career path due to an adverse action. In these situations, the employee's salary will be reduced by at least 6 percent, but will be set no lower than the minimum salary of the broadband level to which assigned. Employees placed into a lower broadband level due to adverse action are not entitled to pay retention.

(f) **Reduction-in-Force (RIF) Action (including employees who are offered and accept a vacancy at a lower broadband level or in a different career path).** The employee is entitled to pay retention if all Title 5 conditions are met.

(g) **Return to limited or light duty from a disability as a result of occupational injury to a position in a lower broadband level or to a career path with lower salary potential than held prior to the injury.** The employee is entitled indefinitely to the salary held prior to the injury and will receive full general and locality pay increases.

## 2. Academic Ethics

According to the Ethics Reform Act of 1989, Federal employees may not accept outside salaries, stipends, and/or honoraria directly related to work duties. This prevents conflict of interest for employees who would use information acquired through federal employment to seek outside gain. However, normal academic activities fall outside the restrictions of usual

government employment. The 1991 Ethics Manual for federal employees clarifies acceptable guidelines for outside employment:

The Committee has determined that the following types of compensation are not honoraria: Compensation for activities where speaking, appearing, or writing is only an incidental part of the work for which payment is made (e.g., conducting research).

Haskell employees may engage in outside employment or activities that relate to their official duties and responsibilities and accept outside salaries, stipends, and/or honoraria. Employees must inform their supervisor prior to engaging in such activities.

## F. Revised Reduction-in-Force (RIF) Procedures

RIF shall be conducted according to the provisions of 5 CFR part 351 and BIA procedures except as otherwise specified below.

Displacement means the movement via RIF procedures of an employee into a position held by an employee of lower retention standing.

Employees are entitled to additional years of retention service credit in RIF, based on assessment results. This credit will be based on the employee's three most recent annual overall contribution scores (OCSs) of record received during the four-year period prior to the issuance of RIF notices. However, if at the time RIF notices are issued, three CCAS cycles have not yet been completed, the annual performance rating of record under the previous performance management system will be substituted for one or more OCSs, as appropriate. An employee who has received at least one but fewer than three previous ratings of record shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. Employees with three OCS or performance ratings shall receive credit for performance on the basis of the value of the actual ratings of record divided by three. In cases where an individual employee has no annual OCS or performance rating of record, an average OCS or performance rating will be assigned and used to determine the additional service credit for that individual. (This average rating is derived from the current ratings of record for the employees in that individual's career path and broadband level within the competitive area affected by a given RIF.)

When a competing employee is to be released from his/her position, the activity shall establish separate master retention lists for the competitive and excepted services, by type of work schedule and (for excepted service

master retention lists) appointing authority. Within the above groups, competing employees shall be listed on the master retention list in compliance with 5 CFR part 3551 and BIA procedures.

Employees will be ranked in order of their retention standing, beginning with the most senior employee. This employee may displace an employee of lower retention standing occupying a position that is at the same or lower broadband level and that is in a series for which the senior employee is fully qualified, to include a series in a different career path. The undue interruption standard of 5 CFR 351.403(a)(1) shall serve as the criterion to determine if an employee is fully qualified. In addition, to be fully qualified. (However, statutory waivers shall continue to apply) The displaced employee must be appointed under the same authority, if excepted service, and in the same work schedule. Offer of assignment shall be to the position that requires no reduction or the least possible reduction in broadband. Where more than one such position exists, the employee must be offered the position encumbered by the employee with the lowest retention standing.

Displacement rights are normally limited to 2 GS grades below the employee's present position. However, a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to 5 grades below the employee's present position level.

Employees covered by the demonstration are not eligible for grade retention. Pay retention will be granted to employees downgraded by reduction in force whose rate of basic pay exceeds the maximum salary range of the broadband level to which assigned. Such employees will be entitled to retain the rate of basic pay received immediately before the reduction for a period of one year or the completion of one assessment cycle whichever is longer. The employee will then receive the pay level or bonus equivalent to their CCAS rating. If the CCAS rating indicates a pay level lower than the current pay level then the CCAS level becomes the employee's new pay level.

Under the demonstration project, all employees affected by a reduction-in-force action, other than a reassignment, maintain the right to appeal to the Merit Systems Protection Board (MSPB) if they believe the process/procedures were not properly applied.

Prior to RIF, employees may be offered a vacant position in the same broadband as the highest broadband available by displacement. Employees

may also be offered placement into vacant positions for which management has waived the qualifications requirements. If the employee is not placed into a vacant position and cannot be made an offer of assignment via displacement, the employee shall be separated.

#### G. Academic and Certificate Training

Trained and educated personnel are a critical resource in a higher education institution. This demonstration recognizes that training and development programs are essential to improving the performance of individuals in the higher education workforce, and thereby raising the overall level of performance of the higher education workforce, and that a well-developed training program is a valuable tool for recruiting and retaining motivated employees. The HEWP authorizes degree and certificate training for HINU employees, and may contribute payment for these degree and certificate training programs. HINU will continue to seek funds from grants and internal budget to facilitate continuous acquisition of advanced, specialized knowledge essential to the higher education workforce, and provide a capability to assist in the recruiting and retaining of personnel critical to the present and future requirements of the higher education workforce.

#### H. Sabbaticals

The President of HINU will have the authority to grant sabbaticals without application to higher levels of authority. These sabbaticals will permit employees to engage in study, research, or work experience that contributes to their development and effectiveness. The sabbatical provides opportunities for employees to acquire knowledge and expertise that cannot be acquired in the normal working environment. These opportunities should result in enhanced employee contribution. The spectrum of available activities under this program is limited only by the constraint that the activity contributes to the institution's mission and to the employee's development. The program can be used for advanced education; employee development; or training with industry or on-the-job work experience with public, private, or nonprofit organizations. It enables an employee to spend time in an academic or work environment or to take advantage of the opportunity to devote full-time effort to technical, academic, or managerial research.

The HEWP sabbatical program will be available to all demonstration project employees who have seven or more

years of service in the institution. Each sabbatical will be of three to twelve months' duration and must result in a product, service, report, or study that will benefit the higher education community as well as increase the employee's individual effectiveness. A process for application for a sabbatical will be established by the mechanism to recommend sabbaticals to the President, who has final approval authority, and who must ensure that the program benefits both the higher education workforce and the individual employee. Funding for the employee's salary and other expenses of the sabbatical is the responsibility of the institution.

#### IV. Training

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will provide not only the necessary knowledge and skills to carry out the proposed changes, but will also lead to participant commitment to the program.

Training prior to of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) A description of the personnel system; (2) how employees are converted into and out of the system; (3) the pay adjustment and/or bonus process; (4) the new position requirements document; (5) the new classification system; and (6) the contribution-based compensation and assessment system.

##### A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, as well as skills training in using the classification system, position requirements document, and contribution assessment software developed for use in the project.

##### B. Administrative Services Staff

The Vice President for Administration, the Director of Personnel and the HEWP administrative

staff will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will receive training in the procedural and technical aspects of the project.

#### C. Employees

Prior to implementation, all employees covered under the demonstration project will be trained through various media. This training is intended to fully inform all affected employees of all significant project policies, procedures, and processes.

#### V. Conversion

##### A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee-protection approach that ensures each employee's initial placement into a broadband level without loss of pay. There will be no change or adjustment for General Schedule employees. They will remain at their current grade and step. Automatic conversion from the permanent Wage Grade into the new broadband system will be accomplished. Wage Board employees will be converted to a GS grade corresponding to the pay rate equal to or greater than their WG rate. They will then be placed into the new broadband system at that GS level.

Adverse action and pay retention provisions will not apply to the conversion process, as there will be no decrease in base pay rate. If the employee's rate of basic pay exceeds the maximum rate of basic pay for the broadband level corresponding to the employee's GS grade, the employee will remain at that broadband level and will receive a retained rate.

##### B. Conversion Back to the Former System

For demonstration project employees who were originally in the Wage Board System and are either moving to a Wage Grade (WG) position not under the demonstration project, or if the project ends and the employee must be converted back to their original Wage Grade system, the following procedure will be used to convert the employee's GS grade and step to the corresponding WG rate of pay. The position will convert to its original WG classification and grade. The employee will have their converted Wage Grade and WG rate of pay determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or

other simultaneous action. For conversions upon termination of the project and for lateral assignments, the employees pay will be equal to the original pay level upon entering the demonstration project. If they currently receive a rate of pay greater than their original rate they will be moved to the pay level nearest their demonstration project rate but not less than their current rate. If their current rate exceeds pay level five of their previous WG rate they will retain pay at the rate received in the demonstration project.

For GS schedule employees there will be no change from their project based pay since it is the GS system. Their current GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the current GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules) as if the GS-converted grade and rate were actually in effect immediately before the employee left the demonstration project.

##### 3. Employees Receiving a Retained Rate Under the Project

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her broadband level. The institution will confer with the Office of Personnel Management (OPM) to prescribe a procedure for determining WG-equivalent pay rates for employees receiving retained rates.

##### 4. Years of Retention Service Credit and Contribution Provisions

Employees leaving the demonstration project will be assigned ratings of record that conform with pattern E of 5 CFR 430.208(d) based on the years of credit accumulated for the 3 most recent years during the last 4 years while under the demonstration project. Since the demonstration project does not make use of summary level designators (e.g., Outstanding, Level 5, Highly Successful, Level 4, Fully Successful, Level 3, or Unacceptable, Level 1) used in the appraisal system and programs constructed under 5 U.S.C. Chapter 43 and 5 CFR part 430, the retention service credit that is based on the OCS. A score of 100%, Full Performance, or higher will convert to a satisfactory rating in the current Federal appraisal system for the purpose of retention service credit.

##### 5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. CCAS base salary increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

#### VI. Project Duration

The project evaluation plan addresses how each intervention will be comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the Federal Register. At the five-year point, the entire demonstration project will be reexamined for: (a) Permanent implementation; (b) modification and additional testing; (c) extension of the evaluation period; or (d) termination.

#### VII. Evaluation Plan

Demonstration-authorizing legislation (Public Law 105-337) mandates evaluation of the demonstration project to assess the effects of project features and outcomes. The overall evaluation will consist of three phases—baseline, formative, and summary evaluations. The evaluation for the HEWP will be overseen by the Secretary, Department of the Interior, and Office of Indian Education Programs (OIEP). The main purpose of the evaluation is to determine the effectiveness of the personnel system changes to be undertaken. To the extent possible, strong direct or indirect relationships will be established between the demonstration project features, outcomes, and mission-related changes and personnel system effectiveness criteria. The evaluation approach uses an intervention impact model that specifies each personnel system change as an intervention, the expected effects of each intervention, the corresponding measures, and the data sources for obtaining the measures.

During the development of the Higher Education Workforce Project an observation was made that while previous demonstrations had used similar employee assessments, there appeared to be no study to show that the results achieved in the projects derived from the link between assessment and compensation. It was suggested that the outcomes may have resulted from the change in the work environment when the new assessment system was

implemented. Therefore, it was decided during the evaluation design process that there should be an internal control group that would participate in the assessment process without it affecting their compensation other than the current system does. There would still be an external control group, hereafter referred to as the comparison group. With these three groups the effect of the link between assessment and contribution could be more closely examined. The experimental, control and comparison groups should be as similar in composition as possible.

However, since the demonstration will be applied to a diverse group of employees throughout the institution and given the size of the participant pool it may be difficult to evaluate the comparison group as a whole. Therefore, the comparison group members may be selected from the non-participant group that most closely matches the functions performed by the participant group. Baseline data and comparisons among the three groups will be made and the information recorded and monitored over time.

After completing training on demonstration project procedures, employees will be asked to respond with a decision of their choice to participate. Once these individuals have been identified, final selection of the comparison group will be accomplished.

The specific measures to be collected using the different methods are determined from the goals and objectives stated for each intervention. Both qualitative and quantitative measures will be obtained. Most of the potential measures can be grouped around three major effectiveness criteria: speed, cost, and quality. Collectively, the outcomes of the interventions are hypothesized to lead to institution personnel management improvements, as reflected by timeliness, cost effectiveness, and quality.

Baseline measures will be taken prior to project implementation. Then, repeated post-implementation measurements will be taken to allow longitudinal comparisons by intervention within HINU. To compare the effects of the intervention on the institution, two groups will be used to evaluate the effects on the personnel system, a control group located within the HINU and a comparison group comprised of employees external to the institution. These two groups will be selected and compared to the experimental group to determine the effects and outcomes of the project.

The effectiveness of each intervention and of the demonstration project as a whole in meeting stated objectives will be addressed using a multi-approach method. Some methods will be unobtrusive in that they do not require reactions to inputs from employees or managers. These methods include analysis of archival workforce data and personnel office data, review of logs maintained by site historians documenting contextual events, and assessments of external economic and legislative changes. Other methods, such as periodic attitude surveys, structured interviews, and focus groups, will be used to assess the perceptions of employees, managers, supervisors, and personnel regarding the personnel system changes and the performance of their institution in general. Evaluation activities will also take into account the unique nature of this project in terms of institutional diversity.

In addition to the intervention impact model, a general context model will be used to determine the effects of potential intervening variables (e.g., annual budget, regionalization of the personnel function, and the general state of the economy). Potential unintended outcomes will also be monitored, and an attempt will be made by the evaluation team to link the outcomes of demonstration project interventions to institutional effectiveness. In addition to assessing the impact of the individual demonstration project features, the evaluation will also assess the impact of the project as a whole, along with possible in-context effects and effects of intervening variables.

The evaluation will also monitor impact on veterans and EEO groups, adherence to the Merit Systems Principles and avoidance of prohibited personnel practices. In addition, the evaluation will attempt to link the demonstration project effects and outcomes to institutional outcomes such as mission accomplishment and productivity.

The initial evaluation effort will consist of three main phases—baseline, formative, and summary evaluation covering five (5) years. Baseline will collect workforce data to determine the "as-is" state. The formative evaluation phase will include baseline data collection and analyses, implementation evaluation, and interim assessments. Periodic reports and annual summaries will be prepared to document the findings. The summary evaluation phase will focus on an overall assessment of the demonstration project outcomes, looking initially at the first four (4) years, with a follow-on report

covering the first five (5) years. The rationale for summary evaluation after the first four years is to assess whether the demonstration will continue after the fifth year. If the analysis indicates that the interventions show a positive effect towards meeting the goals of the demonstration, then documentation will be generated to support a request that the demonstration progress further. If the analysis indicates that the interventions do not meet the stated objectives, or if HINU does not wish to continue in the demonstration, then documentation and planning for conversion back to the existing personnel system must be prepared. The fifth-year summary evaluation, used in reporting to Congress, will provide overall assessment of all initiatives individually and as a whole. It will also provide recommendations on broader Federal Government application.

#### VIII. Demonstration Projects Costs

##### A. Wage Grade to General Schedule Conversion Buy-Ins

Under this demonstration project, implementation of the broad banding pay structure based on the GS pay structure will incur a conversion cost in moving Wage Grade employees to the General Schedule. To facilitate conversion to this system without loss of pay, employees will receive a basic pay increase necessary to bring them into the General Schedule. As under the current system, supervisors will be able to withhold these pay adjustments if the employee's performance has fallen below fully successful.

##### B. Out-Year Project Costs

The overall demonstration cost strategy will be to balance projected costs with benefits of the demonstration to bring about the projected improvements to the institution. The project evaluation results will be used to ensure that out-year project costs will not outweigh the derived benefits to the demonstration. A baseline will be established at the start of the project, and salary expenditures will be tracked yearly. Implementation costs, including the WG conversion costs detailed above, will not be included in the cost evaluations, but will be accounted for separately.

The amount of money available for contribution increases in the out-years will be determined as part of the annual project evaluation process, starting with a review of the prior year's data for HINU by the Personnel Policy Board, and then will be reported to the President of the institution. The funds determination will be based on a

balancing of appropriate factors, including the following: (1) Historical spending for WGI, quality step increases, and in-level career promotions; (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the institution; and (3) the fiscal condition of the institution. Given the implications of base pay increases for long-term pay and benefit costs, the compensation levels will be determined after cost analysis with documentation of the mission-driven rationale for the amount. As part of the evaluation of the project, HINU will track the base pay costs (including average salaries) under the demonstration project and compared to the base pay costs under similar demonstration projects and under a simulation model that replicates General Schedule spending. These evaluations will balance costs incurred against benefits gained, so that both

fiscal responsibility and project success are given appropriate weight.

*C. Personnel Policy Boards*

It is envisioned that HINU shall establish a Personnel Policy Board for the demonstration project that will be representative of the employee population and chaired by the President of the institution or delegated representative. The board is tasked with the following:

- (a) Overseeing the pay budget;
- (b) Determining the composition of the CCAS pay pool in accordance with the established guidelines and statutory constraints;
- (c) Reviewing operation of the Institution's CCA5 pay pools;
- (d) Providing guidance to pay pool managers;
- (e) Administering funds to CCAS pay pool managers;
- (f) Reviewing hiring and promotion salaries;

(g) Monitoring award pool distribution by pay pool; Assessing the need for changes to the demonstration project, procedures or policies.

*D. Developmental Costs*

Costs associated with the development of the demonstration system include software automation, training, and project evaluation. Site-specific costs for follow-on training, employee salary conversion, and any in-house software automation will be borne by the institution from such additional sums as may be necessary for the operation of HINU pursuant to Public Law 105-337. The projected annual expenses for each area are summarized in Table III. Project evaluation costs will continue for at least the first five (5) years and may continue beyond that point. TABLE III is an example of the format used. Costs will be determined once an actual plan is selected.

TABLE III.—PROJECTED DEVELOPMENT COST  
[Then year dollar (\$K) by fiscal years]

	2000	2001	2002	2003	2004	2005	2006
Personnel Costs .....	150,000	425,000	400,000	400,000	400,000	400,000	400,000
Travel and Per Diem .....	25,000	5,000	5,000	5,000	5,000	5,000	5,000
Training .....	25,000	25,000	5,000	5,000	5,000	5,000	5,000
Project Evaluation .....	0	75,000	50,000	50,000	50,000	50,000	50,000
Automation .....	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Data Systems .....	0	75,000	5,000	5,000	5,000	5,000	5,000

**IX. Required Waivers to Law and Regulations**

*A. Waivers to Title 5, United States Code*

Chapter 5, Section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal Government for purposes of this section.

Chapter 31, Section 3111: Acceptance of volunteer service. This section is waived only to the extent required to allow volunteer service under provisions of the voluntary emeritus program.

Chapter 33, Section 3308: Competitive service; examinations; education requirements prohibited; exceptions to the extent necessary to accommodate the Scholastic Achievement Appointment's requirement for a college degree.

Chapter 33, Section 3317 (a): Competitive service; certification from registers (insofar as "rule of three" is eliminated under the demonstration project).

Chapter 33, Section 3318 (a): Insofar as "rule of three" is eliminated under the demonstration project. Veterans' preference provisions remain unchanged.

Chapter 41, Section 4107 (a): Prohibition of training for academic degrees.

Chapter 43, Sections 4301-4305 except for 4303 (e) and (f): Related to performance appraisal. In turn, 4303 (3) and (f) are waived only to the extent necessary to (a) substitute "broadband" for "grade" and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303.

Chapter 51, Sections 5101-5102 and Sections 5104-5107: Related to classification standards and grading.

Chapter 53, Sections 5301; 5302 (b) and (9); and 5303-5305 and 5331-5336: Related to special pay and pay rates and systems (Sections 5301, 5302 (b) and (9), and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to

allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Chapter 53, Section 5362: Grade retention.

Chapter 53, Section 5363: Pay retention. This waiver applies only to the extent necessary to: (1) allow demonstration project employees to be treated as General Schedule employees; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (3) replace the term "grade" with "broadband level." Chapter 71, to the extent its provisions (e.g. 5 U.S.C. 7103(a)(12) and 7116) would prohibit management or the union from unilaterally terminating negotiations over whether the project will apply to employees represented by the union.

Chapter 75, Sections 7512(3): Related to adverse action (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and replace "grade" with "broadband level") and 7512(4): Related to adverse action (but only to

the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

*B. Waivers to Title 5, Code of Federal Regulations*

Part 300, Sections 300.601 through 300.605: Time-in-grade restrictions.

Part 308, Volunteer service: Waived to allow volunteer service under the provisions of the voluntary emeritus program.

Part 315, Sections 315.601 and 315.602: Probationary period.

Part 316, Section 316.303: Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316, Section 316.305: Eligibility for within-grade increases.

Part 332, Section 332.402: "Rule of three" will not be used in the demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligible.

Part 351, Sections 351.402 through 351.403: Competitive Area and Competitive Levels; Section 351.504(a) and (c); Credit for Performance; and Section 351.601 through .608: References to competitive levels are eliminated.

Part 351, Sections 351.701 (b) and (c): Assignment rights (bump and retreat): To the extent that the distinction between bump and retreat is eliminated and the placement of demonstration project employees is limited to one broadband level below the employee's present level, except that a preference-eligible employee with a compensable

service-connected disability of 30 percent or more may displace up to two broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Part 410, Section 410.308(a): Prohibition of training for academic degrees.

Part 430, Subpart A and Subpart B: Performance management; performance appraisal.

Part 432, Sections 432.101, 432.102, 432.106 and 432.107: (Only to the extent necessary to (a) substitute broadband for grade and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303).

Part 432, Section 432.103 through 432.105: Performance-based reduction-in-grade and removal actions.

Part 451, Sections 451.106(b) and 451.107(b): Awards.

Part 511, Section 511.201: Coverage of and exclusions from the General Schedule (To the extent that positions are covered by broadbanding.) Part 511, Subpart A; Subpart B; subpart F, Sections 511.601 through 511.612: Classification within the General Schedule; and Subpart G: Effective Dates of Position Classification Actions or Decisions.

Part 530, Subpart C: Special salary rates.

Part 531, Subpart B, Subpart D, Subpart E: Determining rate of pay; within-grade increases and quality step increases.

Part 538, Grade and Pay Retention (only to the extent necessary to eliminate grade retention and to provide

that, for the purposes of applying pay retention provisions: (1) Demonstration project employees are to be treated as General Schedule employees; (2) grade is replaced by Broadband level; and (3) pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced).

Part 550, Sections 550.703: Severance Pay, definition of "reasonable offer" (by replacing "two grade or pay levels" with "one broadband level" and "grade or pay level" with "broadband level").

Part 575, Sections 575.102(a)(1), 575.202(a)(1), 575.302(a)(1), and Subpart D: Recruitment and relocation bonuses, and retention allowances, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule positions).

Part 752, Sections 752.401(a)(3): Reduction in grade and pay (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and to replace grade with broadband level) and 752.401(a)(4) (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employees' total rate of pay).

Part 2635, (only to the extent necessary to allow outside employment and activities that may conflict with their official duties and responsibilities.)

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## Appendix D

Corrective Action – HINU Accountability Review – April 17 – 19, 2007

The following actions were provided to the Human Resources Officer during the close out briefing on April 19, 2007.

1. **Cleveland, Nathan**  
Actions back to 01-19-06 must be corrected to reflect GS pay plan. The demonstration project does not define grades 1-3 and the employee occupies a position at the GS-01 grade level.
2. **Miller, Lucas P.**  
Mr. Miller was selected for a contingent appointment and was entitled to full benefits under this appointment. The SF-50 action needs to be corrected to provide basic life insurance coverage. The employee needs to be offered the opportunity to enroll in all benefits: life insurance, health insurance and thrift savings plan. The service computation needs to be reviewed and corrected and his retirement coverage needs to be changed to FERS.
3. **Beets, Lynn M.**  
Legal authority on appointment action needs to be corrected to read:  
ZLM – PL 105-337
4. **Chapin, Bridgette K.**  
Legal authority on appointment action needs to be corrected to read:  
ZLM – PL 105-337
5. **Horne, Sharon L.**  
Legal authority on appointment action needs to be corrected to read:  
ZLM – PL 105-337
6. **Warner, Linda**  
Initial appointment action needs to be cancelled. Correct appointment action should be: 170 Exc Service Appt with legal authority: ZLM – PL 105-337. A remark for the probationary period needs to be included on the SF-50 action. Ms. Warner's service computation date needs to be reviewed to include her prior Federal service and her retirement coverage needs to be reviewed.
7. **Jimboy, Twylla**  
Action needs to be corrected to reflect the higher grade level and salary for appointment.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
CHARLES P. ROSE

Your written testimony noted that in the course of the Department consultations with Indian tribes, a common theme was raised by tribes that there should be more collaboration between the tribes and the state about how Indian students are educated. The tribal testimony received during these consultations indicated that the best way to promote such collaboration would be to elevate and fund tribal education agencies.

*Question 1.* What approaches have been used by school systems to promote collaboration with stakeholders on how school children should be educated?

Answer. One approach to collaboration is consultation with parents of Indian children and Indian tribes in the development of educational programs. For example, as part of the Department of Education's Impact Aid program, local educational agencies (LEAs) are required to consult with parents and tribes, and in the Indian Education formula grant program a parent committee must approve the LEA's plan for the use of program funds. Additionally, a small number of LEAs have entered

into agreements with tribes regarding increased tribal involvement in State-operated schools located on tribally controlled lands.

*Question 2.* How should state schools be incentivized to engage in such collaboration with Indian tribes?

Answer. Because American Indian and Alaska Native (AI/AN) students have unique cultural needs, the Administration believes that States and tribes should work together when making decisions that affect AI/AN students. Tribes are often best positioned to understand the potential consequences of education policies and plans for AI/AN students. We believe that States have an incentive to collaborate with tribes because tribes can support States in such areas as training teachers, implementing specific educational programs, and collecting and reporting data.

You also noted that these consultations identified additional educational challenges Indian children face due to violence, drug abuse, and high unemployment rates in their community.

*Question 3.* How can the reauthorization of the Elementary and Secondary Education Act accommodate these additional challenges so that Indian children can achieve academic success?

Answer. Addressing the full continuum of student and community needs is critical to helping Indian children overcome these significant challenges, allowing them to graduate from high school and preparing them for college and the workplace. The Administration has proposed three programs for a reauthorized Elementary and Secondary Education Act of 1965 that would support student success from the cradle through college and into a career. The Successful, Safe, and Healthy Students program would provide support for improving school safety and promoting students' physical and mental health and well-being, including activities to prevent and reduce substance use, school violence, harassment, and bullying. The Promise Neighborhoods program would provide grants for the development and implementation of effective community services, strong family supports, and comprehensive education reforms for children in high-need communities. And a reauthorized 21st Century Community Learning Centers program would help grantees implement in-school and out-of-school strategies that provide students and, where appropriate, teachers and family members, with additional time and support to succeed. We are also looking into ways to encourage more meaningful and productive consultation and collaboration between tribes, LEAs and SEAs so that the expertise of tribal leaders can be better used to strengthen schools that serve AI/AN students.

The National Indian Education Study recently issued by the Department of Education found that on the National Assessment of Education Progress in both reading and math, Department of Interior Bureau of Indian Education students scored significantly lower than Indian students in public schools. For example, fourth grade BIE students scored 25 points lower in reading than Indian students in public schools and a 23 point gap among eighth grade students.

*Question 4.* To what do you attribute these significantly lower scores?

Answer. We find the achievement gap between BIE schools and LEA-operated public schools very troubling, and intend to work closely with our colleagues in the BIE to help raise achievement in those schools. Although the National Indian Education Study (NIES) and the National Assessment of Educational Progress are not designed to identify the causes of differences in student achievement, the NIES found that AI/AN students in Bureau of Indian Education (BIE) schools are more likely to be English Learners and more likely to be eligible for free or reduced-price school lunch than their peers in LEA-operated public schools. These and other challenges may contribute to the lower scores in BIE schools. Nonetheless, we know that demographics are not destiny and many schools all over the country are successful with students in similar situations.

*Question 5.* How will you increase support and collaboration from the Department of Education to the Bureau of Indian Education to reduce the disparity in scores not only between BIE students and their counterparts in public schools, but also non-Indians in public schools?

Answer. Recently, we have been working closely with the Department of the Interior (DOI) and the BIE, and we plan to build on this collaborative relationship. During the past year, Secretaries Duncan and Salazar have met twice to create an agenda for reform. DOI staff has assisted ED in developing ED's tribal consultation plan, and ED has provided increased and targeted technical assistance to BIE staff. Additionally, over the next few years, we plan to (1) assist BIE with its initiative to transform some of its lowest-performing schools into science, technology, engineering, and mathematics academies; (2) provide technical assistance to the BIE regarding its collective bargaining agreement; and (3) join DOI in the First Lady's *Let's Move in Indian Country* initiative.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
HON. CHAD SMITH

*Your written testimony indicates that while the No Child Left Behind Act increased accountability through standardized testing, highly qualified teacher requirements, specific teaching objectives in the core academic subject areas, and higher levels of transparency, it discouraged creativity and the importance of teaching critical thinking skills. Your tribe would specifically like to see less emphasis on testing and more flexibility in establishing your own tribal measurables.*

Standardized testing is a necessary tool for assessing academic progress and ensuring universal accountability in our school systems. Testing common education standards provides a uniform system of assessment, which is simple to measure and report. However, there are additional areas of developmental progress that are equally important for establishing a foundation for success. When measuring student growth, factors in addition to academic performance, attendance and graduation must be considered.

Cherokee Nation has established a framework of attributes, which drives our programming for all tribal initiatives. These attributes were distilled from common themes in our tribal language, which is our most prolific resource for harvesting Cherokee cultural intelligence. Attainment of the qualities of these attributes is crucial for developing leadership for our Nation and sustaining our communities. *Respect. Determination. Integrity. Leading by Example. Communication. Confidence. Cooperation. Responsibility. Teaching Others. Patience. Humility. Strength.*

Although standardized testing is a valuable tool for assessing academic growth, it cannot take into account the fundamental aspects of leadership and personal growth. Ignoring these vital concepts in favor of concrete statistics does a disservice to building the collaborative intelligence necessary to carry our communities forward.

*Question One: What types of measurables would you recommend to ensure that Indian children are making adequate academic progress?*

Additional measurements should include individual formative and summative assessments, to be completed by the classroom teacher, for each student during each academic year. Standards for measuring the successful completion of each grade level should not necessarily be based on age equivalency. Individual student portfolios should be compiled, to track pre-established benchmarks for measuring academic and non-academic competencies. Emotional intelligence (EQ) scores should be captured, in addition to Intelligence quotient (IQ) scores. At the end of the pipeline, measuring acceptance into institutions of higher education or career tech training programs will provide a statistical base of data to assess program success.

*Question Two: How would these measurables promote accountability to ensure Indian children are learning and achieving academic success?*

The proposed measurables would work in conjunction with standardized testing to allow for an even greater amount of accountability. Using the standardized testing mechanism alone only gives a hard number final test result, with no indicators for the other qualities that contribute to academic success. Standardized tests do not measure emotional intelligence (EQ) at all, and have at best, as loose correlation with intelligence quotient (IQ). The proposed measurables would address accountability on a holistic spectrum of development, rather than limiting assessment to a summative test. Employing a more-inclusive assessment tool will provide a greater opportunity to engage a student in remediation, before premature promotion to the next grade level. Early detection of deficiencies will prevent the compounding of problems for those students needing academic intervention.

Language preservation, accurate historical curricula and cultural instruction are areas of paramount importance for Cherokee Nation's education system. Our language is the basis for our cultural intelligence, and must be infused into the public school system to reach as many students as possible. Accurate American Indian history curricula must be introduced into school systems to increase the understanding and academic integrity of all youth. Cultural instruction must be provided to preserve and protect this rich intellectual resource that contributes to the ethnic landscape of American diversity. Congress must provide additional authorizations and funding to allow tribal governments to develop creative solutions for language programming, history curricula development and implementation, and cultural instruction in public schools. Although these areas of study are not tested through common core standard assessments, their implications are as vast and fundamental as core academic areas.

\*Response to written questions received after hearing's print deadline will be retained in Committee files.\*

