

CHALLENGES FACING BUREAU OF INDIAN EDUCATION SCHOOLS IN IMPROVING STUDENT ACHIEVEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD,
ELEMENTARY AND SECONDARY EDUCATION

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

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CHALLENGES FACING BUREAU OF INDIAN EDUCATION SCHOOLS IN IMPROVING STUDENT ACHIEVEMENT

**Tuesday, September 9, 2008
U.S. House of Representatives
Subcommittee on Early Childhood,
Elementary and Secondary Education
Committee on Education and Labor
Washington, DC**

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2175, Rayburn House Office Building, Hon. Dale Kildee [chairman of the subcommittee] presiding.

Present: Representatives Kildee, Scott, Kucinich, Grijalva, Payne, Holt, Woolsey, Castle, and Ehlers.

Also present: Representative Herseth Sandlin.

Staff present: Tylease Alli, Hearing Clerk; Catherine Brown, Education Policy Advisor; Denise Forte, Director of Education Policy; David Hartzler, Systems Administrator; Lloyd Horwich, Policy Advisor, Subcommittee on Early Childhood, Elementary and Secondary Education; Fred Jones, Staff Assistant, Education; Jessica Kahanek, Press Assistant; Joe Novotny, Chief Clerk; Margaret Young, Staff Assistant, Education; Stephanie Arras, Minority Legislative Assistant; Robert Borden, Minority General Counsel; Kirsten Duncan, Minority Professional Staff Member; Chad Miller, Minority Professional Staff; Susan Ross, Minority Director of Education and Human Services Policy; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Sally Stroup, Minority Staff Director.

Chairman KILDEE [presiding]. A quorum being present, the hearing of the subcommittee will come to order. Pursuant to Committee Rule 12, any member may submit an opening statement in writing which will be part of the permanent record. And I recognize myself for an opening statement.

I am pleased to welcome the public and our witnesses to this hearing of the Subcommittee on Early Childhood Elementary and Secondary Education, "Challenges Facing Bureau of Indian Education Schools In Improving Student Achievement."

Last year, we held a hearing at the Gila River Indian Community in the district of our fellow subcommittee member, Mr. Grijalva. That hearing was on how the No Child Left Behind Act has impacted Indian education generally.

Today's hearing is on issues facing Bureau of Indian Education-funded schools specifically.

Nearly 50,000 students, 10 percent of all Indian students, attend one of the 184 BIE schools. Of the 184, BIE operates 61 directly, and contractors operate the other 123.

It was in the early days of my tenure here in Congress that we began to encourage the contract schools. Al Quie, who used to sit right here, Al Quie, who later on became governor of Minnesota, played a very important role in that. And I think Al Quie and the governor sitting next to me right now have both illustrated through those 32 years that Indian education has been a real genuine bipartisan concern.

I have had an abiding interest in Indian education since my election to the Michigan legislature in 1964. In Michigan, I wrote the Michigan Indian Tuition Waiver Act to bring the state into compliance with its treaty obligations.

The Act provides for a tuition-free education for Michigan Indians at Michigan public colleges. Jackie Vaughn, who has gone on to his eternal reward, and I wrote that bill and the governor signed the bill. A Democratic Legislature passed it, signed by a Republican governor. Again, illustrating that we have a bipartisan concern with our obligations to America's first citizens.

Today, I am able to express my interest not only through my chairmanship of this subcommittee but also as the founder and Democratic chairman of the House Native American Caucus and as a member of the Natural Resources Committee.

I often say that land and language are the two anchors for protecting tribal sovereignty. A third anchor for protecting tribe sovereignty is education.

History has presented us with unique challenges in providing every Indian child with the education he or she needs to better their and their family's station in life. But in one respect, the challenge facing tribes is the same challenge faced anywhere in the United States—our success to the 21st century economy is directly tied to our ability to produce a high quality labor force.

And that ability is, of course, directly tied to our ability to meet the challenge of providing every child, including every Indian child, with a world-class education. And that is why we are here today.

We have a distinguished panel of witnesses who will provide us with insight on the unique challenges facing BIE schools and improving student education.

Because, while the need for education may be the same everywhere, the way to educate children is not. Our witnesses will discuss a recent Government Accountability Office report on how to improve BIE's assistance to tribes to help them implement academic accountability systems under NCLB to take into account Indian culture and languages.

The report describes a number of shortcomings in that assistance.

Moving forward, we must clarify the roles and responsibilities of the many agencies involved—the Departments of the Interior and Education, States, and tribes.

And, in particular, we must ensure that the tribes, which are sovereign entities, are full partners in the process. The law con-

templates that the federal government will work with the tribes, not dictate to the tribes and that the process will work out a system that is relevant to the unique situation of the tribes including their culture and language.

Some of our witnesses also will discuss the need to increase federal support for Indian education, and that also is critical.

So I look forward to the testimony, and it is my pleasure to yield to my good friend, the governor of Delaware, Mr. Castle.

[The statement of Mr. Kildee follows:]

Prepared Statement of Hon. Dale E. Kildee, Chairman, Subcommittee on Early Childhood, Elementary, and Secondary Education

I'm pleased to welcome the public and our witnesses to this hearing of the subcommittee on early childhood, elementary and secondary education—"Challenges Facing Bureau of Indian Education Schools in Improving Student Achievement."

Last year, we held a hearing at the Gila River Indian Community—in the district of our fellow subcommittee member, Mr. Grijalva. That hearing was on how the No Child Left Behind Act has impacted Indian education, generally.

Today's hearing is on issues facing Bureau of Indian Education-funded schools specifically. Nearly 50,000 students—10 percent of all Indian students—attend one of the 184 BIE schools. Of the 184, BIE operates 61 directly and contracts with tribes to operate the other 123. I have had an abiding interest in Indian education since my election to the Michigan Legislature in 1964. In Michigan, I wrote the Michigan Indian Tuition Waiver Act—to bring the state into compliance with its treaty obligations. The act provides for a tuition-free education for qualified Michigan Indians at Michigan's public colleges. Today, I am able to express that interest not only through my chairmanship of this subcommittee, but also as the founder and Democratic Chairman of the House Native American Caucus, and as a member of the Natural Resources Committee. I often say that land and language are the two anchors for protecting tribal sovereignty. A third anchor for protecting tribal sovereignty is education.

History has presented us with unique challenges in providing every Indian child with the education he or she needs to better their and their family's station in life. But, in one respect, the challenge facing tribes is the same challenge faced anywhere in the United States.

Our success in the 21st century economy is directly tied to our ability to produce a high quality labor force. And that ability is, of course, directly tied to our ability to meet the challenge of providing every child—including every Indian child—with a world-class education.

And that is why we are here today.

We have a distinguished panel of witnesses who will provide us with insight on the unique challenges facing BIE schools in improving student achievement. Because, while the need for education may be the same everywhere, the way to educate children is not. Our witnesses will discuss a recent government accountability office report on how to improve BIE's assistance to tribes to help them implement academic accountability systems under NCLB that take into account Indian culture and languages.

The report identifies a number of shortcomings in that assistance. Moving forward, we must clarify the roles and responsibilities of the many agencies involved—the Departments of the Interior and Education, states, and tribes.

And, in particular, we must ensure that the tribes—which are sovereign entities—are full partners in the process.

The law contemplates that the federal government will work with the tribes, not dictate to the tribes. Some of our witnesses also will discuss the need to increase federal support for Indian education, and that also is critical.

Thank you.

Mr. CASTLE. Well, thank you, Mr. Chairman, for this hearing. Thank you for your interest in education and, particularly, Indian education. You are deeply steeped in this, and for that, we are all very appreciative.

And we thank our witnesses for being here for making themselves available to us today. I look forward to your testimony, as a matter of fact.

As most of you know, the federal government, through the U.S. Department of Interior's Bureau of Indian Education, which is the BIE we are referring to, providing educational assistance to Indian children to ensure that they receive a high quality education comparable to their peers.

Currently, the BIE-funded education system for Indian students includes 174 schools and 14 peripheral dormitories for students attending public schools nearby.

The No Child Left Behind Act requires states in the BIE to define and determine whether schools are making adequate yearly progress towards meeting the goal of 100 percent academic proficiency.

In June of this year, the U.S. Government Accountability Office, which we know as GAO, issued a report that examined how the BIE and Indian tribes have implemented the requirements of No Child Left Behind. The report, entitled "Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems," found that BIE and almost all of its schools have adopted state definitions of AYP.

The report did note, however, that the BIE has not completed agreements with several key states, delineating terms that BIE-funded schools access to the state assessment systems. As the BIE moves forward with the process of improving student academic achievement and as No Child Left Behind is considered for reauthorization, I believe, as many proponents of American education do, that we must explore options which can provide additional flexibility to BIE schools in helping them meet the law's requirements.

Although I believe strongly that the BIE should continue to have the flexibility necessary to develop assessments that accurately measure student achievement, Congress must work to ensure that we and the BIE remain committed to the high standards and quality all students and schools should be held to.

I look forward to hearing from today's witnesses about what is happening on the ground regarding this issue.

Thank you. Thank you, Mr. Chairman.

[The statement of Mr. Castle follows:]

Prepared Statement of Hon. Mike Castle, Senior Republican, Subcommittee on Early Childhood, Elementary, and Secondary Education

Good morning and thank you Chairman Kildee for holding today's hearing on the important topic of "Challenges Facing Bureau of Indian Education Schools in Improving Student Achievement." I would also like to thank today's witnesses for sharing their time and expertise with the Subcommittee on this issue.

As most of you know, the federal government, through the U.S. Department of Interior's Bureau of Indian Education (BIE), provides educational assistance to Indian children to ensure that they receive a high quality education comparable to their peers. Currently, the BIE-funded education system for Indian students includes 174 schools and 14 "peripheral dormitories" for students attending public schools nearby.

The No Child Left Behind (NCLB) Act requires states and the BIE to define and determine whether schools are making adequate yearly progress (AYP) towards meeting the goal of 100 percent academic proficiency.

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Although I believe strongly that the BIE should continue to have the flexibility necessary to develop assessments that accurately measure student achievement, Congress must work to ensure we and the BIE remain committed to the high standards and quality all students and schools should be held to.

I look forward to hearing from today's witnesses about what is happening on the ground regarding this issue. Thank you.

Chairman KILDEE. Thank you very much, Mr. Castle.

I would now like to introduce the very distinguished panel of witnesses here with us this morning.

Cornelia Ashby is director of education, workforce, and income security issues for the Government Accountability Office. Ms. Ashby joined GAO in 1973.

In 1992, she was selected for GAO's senior executive candidate development program and in 1994, was appointed an associate director for education and employment issues.

She began her current position in the year 2000.

Dr. WILLARD GILBERT IS PRESIDENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION AND A PROFESSOR OF EDUCATION AT NORTHERN ARIZONA UNIVERSITY.

Dr. Gilbert is an expert on integrating native language, culture, and traditions into school curriculum, a critical issue in Indian education.

Stan Holder is the chief of the Bureau of Indian Education's Division of Performance and Accountability where he administers all programs funded under NCLB for the Bureau.

He has published research on instructional and behavioral programs that improve student achievement and behavioral outcomes. He also is a former vice president of the Wichita and affiliated tribes.

Anne Dudro is chief of staff for the Department of Education's Office of Elementary and Secondary Education. Ms. Dudro joined the Department in 2005, and is a special assistant to the secretary.

She also was appointed that year as a member of the U.S. Delegation to the 33rd General Conference of the United Nations Educational, Scientific, and Cultural Organization.

I now ask unanimous consent to yield to Representative Stephanie Herseth Sandlin to introduce our next witness, Ted Hamilton.

In yielding, I would like to note that it is my pleasure to serve with Representative Herseth Sandlin both on the Natural Resources Committee and the Native American Caucus. She is an outstanding advocate on education and Indian issues.

I yield to her.

Ms. HERSETH SANDLIN. Well, thank you very much, Chairman Kildee and Ranking Member Castle, for holding this very important hearing, for your extraordinary leadership on this issue, and for allowing me a chance to join you on the dais for the purposes

of introducing a fellow South Dakotan and a leader in Indian education, Mr. Ted Hamilton.

Mr. Hamilton is the executive director of the Oceti Sakowin Education Consortium, also referred to as OSEC. He has 22 years of experience working with tribal colleges, grant schools, and public schools across the Great Plains.

Mr. Hamilton was one of the founders of OSEC. It started nearly 10 years ago. Based on the Pine Ridge Indian Reservation, OSEC is comprised of numerous tribal colleges and tribal schools and provides a range of valuable services to these schools.

Through his work with schools eager to develop an alternative adequate yearly progress standard, Mr. Hamilton has become intimately familiar with the impacts of No Child Left Behind in Bureau of Indian Education schools.

I know you will appreciate his insights and perspective on the matters before the subcommittee today.

With 22 schools operated by the Bureau of Indian Education in South Dakota, the topics that will be addressed today are of critical importance to the native communities in my state.

In March of 2006, Chairman George Miller and I conducted a series of visits to Indian country schools in southwestern South Dakota. After meeting with educators, administrators, students, and concerned community members, two themes emerged: the importance of considering native culture within achievement and accountability standards and the unique management challenges created by the BIE's authority over much NCLB implementation.

As we all know, the federal government has a unique government-to-government relationship with American Indian tribes, and this relationship is based on the United States Constitution and hundreds of treaties signed by tribes and the U.S. Government.

Education is one treaty-based responsibility. The GAO study confirms what schools in my district have reported: the federal government still has work to do to better uphold its trust responsibilities with regard to Indian education.

When we consider that only 31 percent of BIE schools, less than one in three, met adequate yearly progress in 2007, it is clear that Congress must work to address the challenges facing these schools. The Department of the Interior and the Department of Education should continue to engage with tribes in a manner that respects tribal sovereignty and empowers tribal self-determination.

So, again, thank you for holding this hearing, for allowing me to introduce Mr. Hamilton this morning. I commend his testimony.

To all of you on the subcommittee, this hearing is a truly important step toward assessing the impact of NCLB in Indian country and guiding our future actions to further improve education of native students across the United States.

Thank you, Mr. Chairman.

Chairman KILDEE. Thank you very much.

And, again, welcome to all our witnesses. For those of you who have not testified before this subcommittee before, I will explain our lighting system and the 5-minute rule.

Everyone, including members, is limited to 5 minutes for presentation or questioning. The green light will be illuminated when you begin to speak. When you see the yellow light, it means that you

have 1 minute remaining. When you see the red light, it means your time has expired and you need to conclude your testimony.

There is no ejection seat there, so you may finish up your sentence or your paragraph and conclude.

Please be certain as you are testifying to turn on and speak into the microphone in front of you and turn it off when you are finished.

We will now hear from our first witness, Cornelia Ashby, director of education, workforce, and income security issues with the U.S. Government Accountability Office.

You may begin.

STATEMENT OF CORNELIA ASHBY, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. ASHBY. Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss the challenges tribal groups and BIE schools face with respect to the measurement of Indian students' academic progress. My testimony is based largely on our June 2008 report on this topic.

As a condition for receiving grants under NCLBA, schools, including BIE schools, must measure yearly progress in meeting academic standards in math, reading, and science. In 2005, as required by NCLBA, the Secretary of the Interior determined that to measure such progress, each BIE school would use the definition of adequate yearly progress of the state in which the school is located.

Recognizing that students in BIE schools may have unique needs and special circumstances, NCLBA allows tribal groups to waive all or part of the secretary's definition of AYP and propose an alternative.

Under BIE regulations, the definition of AYP covers the academic standards and assessments used in measuring academic progress. Although all of the 174 BIE schools have measured academic progress—almost all have measured academic progress in accordance with their state's definition of AYP.

To establish the terms under which BIE schools access assessments and scoring arrangements, BIE has established memorandums of understanding with about half of the 23 states that have BIE schools.

While the remaining states, with the exception of California, have allowed BIE schools access to their assessments, without MOUs, there is increased risk that the terms of access will change. California officials have not given the two BIE schools in the state access to the state assessment because they fear a breach in security. They only administer the assessments to public schools in California.

However, state officials were willing to make an exception for BIE schools, but requested a \$1 million bond in security. BIE and education officials are trying to work with the state to resolve the issue.

Three tribal groups, the Navajo Nation, the Oceti Sakowin Education Consortium known as OSEC, and the Miccosukee, representing BIE schools in five states and about 44 percent of BIE

students are in the early stages of developing alternative definitions of AYP.

Officials from the Navajo Nation with BIE schools in three states have requested technical assistance for developing an alternative definition of AYP, citing the desire to include cultural components in the standards and assessments, compare the progress of Navajo students across states, and develop a Navajo-specific measure that could influence AYP determination regardless of the state in which the school is located.

OSEC seeks to develop alternative standards and alternative assessment to improve student performance, define the graduation rates to include 6 years rather than 4, and replace the attendance component with a language and culture component.

The Miccosukee Tribe of Florida is considering options for developing an alternative assessment in developing standards for Miccosukee culture and language to serve as the additional AYP indicator in lieu of attendance for their students in third to eighth grade.

Other tribal groups have not pursued alternatives for various reasons including the desire to remain compatible with public schools in their state and potential challenges and resources required to develop alternatives.

For example, officials representing BIE schools in California, Mississippi, and Washington told us that it was important that their schools be compatible with the local public schools. In addition, school and Department of Education officials and BIE education line officers identified several potential challenges the tribal groups might encounter, including not enough of the specialized knowledge required and funding and extensive time commitments that might not be sustainable given changes in leadership in both the tribal and BIE levels.

The three tribal groups seeking alternatives reported a lack of federal guidance on the alternative development process and frustration with the pace and quality of communication with BIE. But they have more recently reported receiving some assistance from BIE and Education.

BIE's education line officers, who are the tribal group's primary contact for information on developing an alternative, generally indicated they had not received guidance or training on this provision. In communicating with tribal groups regarding alternative AYP definitions, BIE did not consistently apply its processes for providing accurate and timely responses.

In our June 2008 report, we made recommendations to the Secretary of the Interior related to BIE's ensuring access to state assessments, guidance and training on the process for seeking alternatives, and communication with tribal groups seeking alternative definitions for AYP by establishing internal time frames and processes.

Interior agreed with our recommendations and reported taking actions in response to them.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions.

[The statement of Ms. Ashby may be accessed at the following Internet address:]

Chairman KILDEE. Thank you very much for your testimony, and we will look forward to questioning.
Dr. Gilbert?

**STATEMENT OF WILLARD SAKIESTEWA GILBERT, PRESIDENT,
NATIONAL INDIAN EDUCATION ASSOCIATION**

Dr. GILBERT. Thank you, Chairman Kildee for championing on behalf of native children. I thank you for your support, and we greatly appreciate it.

My name is Dr. Willard Sakiestewa Gilbert, president of the National Indian Education Association. I am also a member of the Hopi tribe.

Today, I would like to share NIEA's membership concerns regarding the disparity in academic achievement between schools funded and operated by BIE and other schools.

NIEA has held 12 field hearings on reauthorization of NCLBA and recently conducted four of its five regional hearings on issues that impact native students who attend BIE-funded schools.

Well over 200 witnesses have testified and have submitted written testimony regarding challenges our native students have encountered by NCLBA, school transportation, construction, maintenance, and facilities needs as well as JOM and tribal education department funding and other pressing issues.

The following is a summary of their testimony.

There is little collaboration between the Departments of Education and Interior in helping BIE students meet requirements of NCLB. For the past 3 years, only 30 percent of BIE schools made AYP goals established by the states in which the goals were located.

In 2004, the executive order was signed that directed the two departments to work together to assist American Indian and Alaska native students in meeting the challenging students academic standards of NCLB Act of 2001 in a manner that is consistent with tribal traditions, languages, and cultures.

NIEA encourages a stronger relationship between the two departments given the limited capacity of BIE and the larger pool of expertise in education and increasing academic achievement that is available at the Department of Education.

In particular, NIEA would like for the Department of Education to serve as technical advisers to the BIE regional and education line officers when the expertise is not available at the BIE on how to improve academic achievement and in development of tribal standards and assessments that are culturally and linguistically appropriate.

BIE should strongly support culturally-based education and native language instruction. Current research demonstrates that cultural education 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.

NIEA proposed amendments to Title VII to provide for more emphasis on meeting the unique cultural, language, and educational

needs of Indian students through enrichment programs that supplement other NCLB programs and will result in successful academic achievement of Indian students.

As reported by the National Indian Education Study of 2007 Part II, BIE students are receiving some exposure to instruction in native language and cultural topics. NIEA believes that these schools will be models for successful integration of native language immersion programs and culturally-based education if given the opportunity, support, and resources need to implement these types of programs that have demonstrated academic success.

But lack of new construction and the poor facilities and maintenance of BIE schools negatively impact the achievement of BIE students.

In March of 2008, the consensus building initiative issued a report that stated in their findings that the conditions of BIE schools—that many schools are ill-equipped for the information age and aging or poor design may lead to a substandard educational environment.

Operation and maintenance needs are not matched by operation and maintenance annual funding. And, overall, overcrowding is a major concern and a source of accelerating physical decline.

On the average, BIE education buildings are 60 years old, but 40 years is the average age for public schools serving the general population.

According to the Hopi tribe chairman, students are at extremely higher risk because of exposure to hazardous materials in their school facilities. In recent years, they have experienced severe reductions in annual appropriations for the building operations, maintenance, and repairs program which then results in the ever-increasing number of projects placed in the facilities, maintenance inventory system.

While waiting for funding, Hopi students and staff were subjected to exposure to hazardous materials, but all the schools have asbestos and radon issues, which puts the students and staff at risk.

The research on school building conditions and student outcomes find a consistent relationship between poor facilities and poor performance. A recent study has shown that students attending school in newer, better facilities score 5 to 17 points higher on standardized tests than those attending in substandard buildings.

It is unjust to expect our students to succeed academically if we fail to provide them about a proper learning environment to be successful.

As reported by a witness at regional hearings in South Dakota—Wounded Knee, located on Pine Ridge Reservation, runs 13 bus routes every day traveling an average of 1,575 miles per school day, totaling 267,715 miles annually.

In conclusion, NIEA is committed to accountability, high standards, and rigorous education. And I would like to leave one word with you, and that is, this is a testimony given by a third grader, Samantha Todechine Navajo.

And she said: “Good afternoon. My name is Samantha Todechine. I am from the Near To Water Clan. I go to school at Black Mesa Community School.

During the winter, when it rains, the road gets muddy. The bus driver always tries to stay on the road, but we always slide off the road.

This past winter was terrible. I live across the wash. The bus couldn't get across the wash to pick us up. So me and my two sisters had to walk about a mile to meet the bus.

I was crossing the wash when I lost both of my shoes in the mud. The bus driver and my sister helped me cross the wash and tried to find my shoes."

Also, Chairman, for the record, we would like to submit our transcripts from the testimonies and also our NCLB amendments. Thank you.

Chairman KILDEE. Without objection, they will be included in the record.

[The material may be accessed at the following Internet address:]

<http://www.niea.org/issues/policy.php>

Dr. GILBERT. Thank you.

[The statement of Dr. Gilbert follows:]

Prepared Statement of Dr. Willard Sakiestewa Gilbert, President, National Indian Education Association

Chairman Kildee and other Members of the Education and Labor Subcommittee on Early Childhood, Elementary, and Secondary Education, thank you for this opportunity to submit testimony on behalf of the National Indian Education Association with regard to the Bureau of Indian Education (BIE) and challenges facing BIE schools in improving student achievement. I would like to give a special thank you to Chairman Kildee for being such a great champion for ensuring that the educational needs of Native students and their communities are met. Indian Country has no greater friend in the Congress than Chairman Kildee.

Founded in 1969, the National Indian Education Association (NIEA) is the largest organization in the nation dedicated to Native education advocacy issues and embraces a membership of nearly 4,000 American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, elders, parents, and students.

NIEA makes every effort to advocate for the unique educational and culturally related academic needs of Native students. NIEA works to ensure that the federal government upholds its responsibility for the education of Native students through the provision of direct educational services. The trust relationship of the United States government includes the responsibility of ensuring educational quality and access for American Indians. Recognizing and validating the cultural, social and linguistic needs of American Indians is critical to guaranteeing the continuity of their communities. The way in which instruction and educational services is provided is critical to the achievement of our students to attain the same academic standards as students nation-wide.

NIEA is committed to accountability, high standards, and the rigorous education of our children and will continue to hold the BIE accountable for ensuring that BIE students meet their academic potential with educational programs that consider their cultures, languages, backgrounds, and identities. We believe with good faith collaboration that we can provide our children with an education that honors their Native identities while simultaneously preparing them for successful futures by providing them with opportunities to incorporate into the curriculum their rich cultural heritages, languages, and traditions.

There are only two educational systems for which the federal government has direct responsibility: the Department of Defense schools and federally and tribally operated schools that serve American Indian students through the (BIE) within the Department of the Interior (DOI). The federally supported Indian education system includes 48,000 elementary and secondary students, 29 tribal colleges, universities and post-secondary schools. Approximately 10% of Native children attend BIE

schools while the remaining 90% attend public schools supported through the Department of Education (DOE).

NIEA's membership is concerned about the disparity in academic achievement between schools funded and operated by BIE and other schools. As a result of these concerns, NIEA scheduled five field hearings this year throughout Indian Country. We have already held hearings in Rapid City, South Dakota, Seattle, Washington, Albuquerque, New Mexico, and Window Rock, Arizona. The purpose of these NIEA facilitated sessions has been to gather information on the challenges faced by BIE schools, including how NCLB is being implemented, and additional concerns of BIE schools impacting the achievement of their students. Testimony from the witnesses focused on the following topics: 1) NCLB and Adequate Yearly Progress, 2) Indian school construction and facilities maintenance, and 3) student transportation. Additionally, testimony regarding services and funding for Johnson O'Malley programs and tribal colleges was offered. These sessions served as a focused follow up discussion to the eleven field hearings NIEA held in 2005 on the implementation of NCLB in Indian Country. The sessions in 2005 served as the basis for the legislative language NIEA has proposed for inclusion in the bill to reauthorize NCLB.

This past June, the GAO issued the report, *Bureau of Indian Schools: Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems* pursuant to a request of Chairman Miller, Chairman Kildee, Representative Grijalva, and Representative Herseth Sandlin. This report highlighted many challenges that BIE and DOE schools, tribal communities, and Indian students face under the Act and raised questions about the effectiveness of the BIE and the Department of Education in providing educational services to Indian students.

The following is a summary of the concerns NIEA has heard throughout the past few years on BIE schools and student achievement. NIEA has provided recommendations for some of the concerns raised, including legislative amendments to NCLB provided to the Committee in March of 2007.

Stronger Cooperation Between the Departments of Education and Interior

Executive Order 13336, signed by President Bush in April of 2004, directed the DOE and DOI, among other Federal agencies, to work together to "assist American Indian and Alaska Native students in meeting the challenging student academic standards of the No Child Left Behind Act of 2001 (Public Law 107-110) in a manner that is consistent with tribal traditions, languages, and cultures."¹

DOE funds the education of Native American students by operating Native American-targeted programs and setting aside funds within programs open to all students and transferring these funds to the BIA for BIE managed schools. Often, that is where the interaction between the two Departments ends, despite the directive given in the Executive Order for the agencies to work together. NIEA encourages a stronger relationship between the two Departments given the limited capacity of BIE and the larger pool of expertise in education available at DOE. In particular, NIEA recommends that DOE serve as technical advisors to the BIE Regional and Education Line Offices when the expertise is not available at the BIE on how to improve academic achievement and in the development of tribal standards and assessments.

Adequate Yearly Progress

For the past three school years, only 30% of BIE schools made the AYP goals established by the state in which the school was located. DOE statistics indicate that student performance at BIE schools is lower than for students in public schools. In response to the lack of performance at BIE schools, DOI has launched the Improving Indian Education Initiative to help BIE students meet AYP under NCLB. NIEA commends BIE for this effort and hopes to see positive gains in BIE student academic achievement as a result. However, NIEA remains concerned about the applicability of state standards to Native children attending BIE schools given the limited, if any, opportunities Tribes have had in the development of these standards.

Tribal communities are in the best position to determine the needs and the appropriate assessment methods for Native students. NIEA's amendments to NCLB provide for the ability of a consortium of tribes, BIE funded schools, or school boards to apply for a waiver of the definition of AYP. As the law is currently written, a single tribe, school board or BIE funded school may apply for a waiver, however, considering the significant amount of time and resources needed to successfully submit an application, very few tribes, if any, have been able to submit an application on their own.

Additionally, NIEA supports a structured process with BIE that provides deadlines for the BIE to respond to tribes that submit an application to waive the defini-

tion of AYP, in addition to an appeals process. As reported in the GAO report “one tribal group alerted BIE of its intent to use an alternative assessment as early as October 2006 but did not receive any response from BIE until June 2007 and technical assistance was not provided until November 2007.”²

Other challenges that have prevented tribes from applying for an alternative definition of AYP include the lack of technical assistance provided to the tribe from the BIE, the lack of funding available to develop the standards and assessments, and the lengthy commitment needed to navigate the process to complete the application.³ NIEA supports a defined process that provides a timeline in reviewing the applications for alternative definitions of AYP and collaboration between DOE and BIE to provide technical assistance to tribes seeking to apply and develop an alternate definition of AYP.

Increased Collaboration among Tribes, States, and the Federal Government

For tribes that are unable to develop their own standards and assessments and must use the state definitions, states should be required to involve tribes located within their boundaries in the development of state plans to allow for the coordination of activities under the different titles of NCLB. As documented in the GAO report, more often than not, states develop the standards without consultation and inclusion of the tribal communities although the BIE and “almost all of the 174 BIE schools have adopted state definitions of AYP.”⁴

NIEA seeks stronger emphasis in encouraging states, tribal governments and communities, neighboring areas, and the federal government to work together in developing the educational standards and related assessments under Title I.⁵ NIEA’s proposed amendments to the NCLB provide for the inclusion of tribal input in the development of the various state, local educational agency, and school plans. Further, NIEA supports the strengthening of NCLB to provide resources for collaboration among tribes, states, and the federal government to allow for increased opportunities in the development of standards that recognize the cultural backgrounds of Native students. NIEA supports assessments that consider the cultural and educational needs of Native students. Additionally, NIEA’s amendments promote coordination of programs across Titles I and VII to foster better programming to meet the unique cultural, language, and educational needs of Indian students.

Culturally Relevant Programs

Current research demonstrates that cultural education 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.⁶

Title VII of NCLB recognizes that Native children have unique educational needs due to their cultures and backgrounds. The purpose of Title VII⁷ of NCLB is to provide culturally based educational approaches for Native students. 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 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.⁸ 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. NIEA has proposed amendments to focus the purpose of Title VII to include both academic achievement through culturally based education and to increase the cultural and traditional knowledge base of Indian students.

As stated above, Part A of Title VII contains provisions for American Indian Education and provides supplemental grants to the BIE and local educational agencies, tribes, Native organizations, educational organizations, and others to provide programs and activities to meet academic, cultural, and language needs of Native chil-

dren. Native learning is strengthened through instruction that integrates traditional cultural practices with basic skills and embraces the knowledge of the environment, Native fine arts and crafts, leadership, character education and citizenship.

The National Indian Education Study 2007: Part II reported that there is a higher percentage of students in schools with a high density of Indian student population that receive instruction on topics related to native cultures as compared to students in low density Indian student population schools.⁹ Students attending BIE schools fall within the high density schools definition. Additionally, the report goes on to state that higher percentages of BIE school students than public school students had teachers who reported integrating Native culture and history into their curriculum. “For example, higher percentages of fourth- and eighth graders in BIE schools than in public schools had teachers who said the integration of AI/AN culture and history into their curriculum occurred “almost every day.”¹⁰ The study also noted that “teachers’ reliance on AI/AN content or cultural standards for reading/language arts instruction was reported for higher percentages of BIE school students than for their peers in public schools.”¹¹

NIEA believes that the BIE should expand upon the culturally based instruction currently taking place in BIE schools by promoting stronger integration of Native cultures and languages into the curriculum. Given that Native children are performing at far lower academic achievement levels than other categories of students, Title VII programs should be expanded and strengthened to ensure that No Child Left Behind also means No Culture Left Behind through the use of culturally based education to meet the unique educational needs of Native students. NIEA’s proposed amendments to Title VII provide for more emphasis on meeting the unique cultural, language and educational needs of Indian students through enrichment programs that supplement other NCLB programs and will result in improved academic achievement of Indian students

Native Language Programs

Native language immersions programs have fostered higher academic achievement and interest in learning from American Indian, Alaska Native, and Native Hawaiian students. Studies have shown that while Native American children and youth have often experienced stagnant educational achievement, those in Native language immersion programs have demonstrated remarkable promise in educational achievement.¹² National studies on language learning and educational achievement indicate the more language learning, the higher the academic achievement. Native language immersion programs provide a proven method to enable Native students to achieve academically in the areas of math, reading, and science as well as in other content areas. For many Native students living in rural and isolated areas, subjects that are taught in non-cultural pedagogies and removed from a tribal perspective are often lost on Native students due to the non-relevance of the materials to their environment, lives and identities.

The National Indian Education Study 2007: Part II reported that 16% of fourth grade BIE students had teachers who used Native languages frequently during instruction compared to one percent of the public school students.¹³ NIEA is pleased that BIE students are receiving some exposure and instruction in Native languages and supports stronger Native language curriculum at BIE schools. NIEA believes that BIE schools could be the models for successful integration of Native language immersion programs and culturally based education if given the opportunity and support needed to implement these specific types of programs.

Indian School Construction

In 1997, GAO issued a report “Reported Condition and Costs to Repair Schools Funded by the Bureau of Indian Affairs” that documented an inventory of repair needs for education facilities totaling \$754 million. In 2004 the backlog for construction and repair was reported to have grown to \$942 million.

More recently, in March of 2008, the Consensus Building Institute (CBI) with the U.S. Institute for Environmental Conflict Resolution issued a Final Convening Report: Negotiated Rulemaking Committee on Bureau of Indian Affairs-Funded Schools Facilities Construction. CBI reported in their findings of the conditions of the schools that “many schools are ill equipped for the information age”, “security needs and related funding are major sources of concern for many schools”, “aging or poor design may lead to a substandard educational environment”, “operation and maintenance needs are not matched by operation and maintenance annual funding”, and “overcrowding is a major concern and a source of accelerating physical decline.”¹⁴ Additionally, the report stated in the findings that the Facility Management Information System (FMIS) doesn’t sufficiently allow for educational program-

ming needs, including libraries, adequately sized classrooms and gymnasiums, wiring to allow for technological needs and partitions and noise reducing walls.¹⁵

Testifying at the NIEA sponsored BIA/BIE Regional Hearing in Navajo Nation/Window Rock, AZ, Hopi Tribal Chairman, Benjamin Nuvamsa stated, "our students are at extremely high risk because of exposure to hazardous materials in our school facilities * * * [recently] severe reductions in annual appropriations for the building Operations, Maintenance and Repairs (OM&R) program results in the ever-increasing number of projects placed in the Facilities Maintenance Inventory System (FMIS). While waiting for funding, our students and staff are subjected to exposure to hazardous materials * * * almost all schools have asbestos and radon issues which puts the students and staff at risk."¹⁶

The amount of funding over the past few years have failed to fund tribes at the rate of inflation, once again exacerbating the hardships faced by Native American students. Further, the funding that has been allocated over the past few years will not keep pace with the tremendous backlog of Indian schools and facilities in need of replacement or repair. The Mandaree Day School located in Mandaree, North Dakota has taken out a loan in the amount of \$3 million to cover the costs of building a new education facility. The Mandaree Day School could not wait any longer for the funding from DOI to build their school. The loan only covers the facility structure and the 210 children attending this school have no playground and the teachers do not have a paved parking lot.

The purpose of education construction is to permit BIA to provide structurally sound buildings in which Native American children can learn without leaking roofs and peeling paint. It is unjust to expect our students to succeed academically, if we fail to provide them with a proper environment to achieve success.

Indian Education Facilities Improvement and Repair Funding

The continued deterioration of facilities on Indian land is not only a federal responsibility; it has become a liability of the federal government. Old and exceeding their life expectancy by decades, BIA schools require consistent increases in facilities maintenance without offsetting decreases in other programs, if 48,000 Indian students are to be educated in structurally sound schools.

Of the 4,495 education buildings in the BIA inventory, half are more than 30 years old and more than 20% are older than fifty years. On average, BIE education buildings are 60 years old; while, 40 years is the average age for public schools serving the general population. 65% of BIE school administrators report the physical condition of one or more school buildings as inadequate. Although education construction has improved a bit over the last few years, the deferred maintenance backlog is still estimated to be over \$500 million and increases annually by \$56.5 million. As noted by the House Interior Appropriations Subcommittee in its Committee Report accompanying the FY 2006 Interior appropriations bill, "much remains to be done." Of the 184 BIE schools, 1/3 of the schools are in poor condition and in need of either replacement or substantial repair.

School Transportation

Student transportation impacts student attendance and the ability of school districts to offer educational programs. BIE provides extensive student transportation required of largely rural and widely dispersed school service populations. According to the FY 2009 DOI Budget Request, Departmental Highlights, during the current school year, BIE-funded school buses will travel nearly 15 million miles, often over gravel or dirt roads. As reported by a witness during the session NIEA held in Rapid City, South Dakota, the Little Wound School, located on the Pine Ridge Reservation in South Dakota, runs thirteen bus routes each day during which the buses travel on average, 1,575 miles per school day totaling 267,750 miles annually for "regular bus runs not including activity runs."¹⁷ An additional seven buses run each day for the after school activities for athletic trips, field trips, activity runs, medical trips, etc., totaling 106,083 miles per year. In addition, Navajo Nation's Black Mesa Community School Principal Marie Rose testified that "students ride the bus four hours a day. However, when it rains or snows the average bus ride is seven hours a day, if the roads are in drivable condition, which many times are they are not."¹⁸

The FY 2009 DOI Budget Request notes that the condition of roads often traveled by BIE-funded school buses increases the wear and tear on vehicles, requiring more routine maintenance and more frequent replacement of vehicles by BIE compared to other school systems and further notes that the remote location of the BIE schools also results in higher fuel costs relative to other locales.

The cost of fuel is steadily rising and transportation costs is a major concern for a number of school districts that serve American Indian and Alaska Native students and if assistance is not available through federal or state resources, the high cost

of transporting students in rural areas may offset precious funding that could potentially be used for instructional purposes. Little Wound School has reported that a shortfall of \$170,411.15 for transportation funding “has had a tremendous effect on our budget.”¹⁹

Johnson O'Malley Funding

President Bush continues to attempt elimination of Johnson O'Malley (JOM) grants and NIEA and the Johnson O'Malley Association Board urge Congress to continue supporting these programs crucial to Indian students.

Although the purpose of JOM funding administered by the BIA is to support Indian students in public schools, we find that JOM programs have an impact on the education of many of the Indian students attending BIE schools due to the transitory nature of Indian students between BIE and public schools.

JOM grants are the cornerstone for many Indian communities in meeting the unique and specialized educational needs of Native students who attend public schools. Many Indian children live in rural or remote areas with high rates of poverty and unemployment. JOM helps to level the field by providing Indian students with programs that help them stay in school and attain academic success. Even though JOM funding is extremely limited due to BIA budget constraints, it is being used across the country in a variety of basic as well as innovative ways to assist Indian students to achieve academically. JOM funding provides vital programs designed to build self-esteem, confidence, and cultural awareness so that Indian students may develop and mature to become productive and contributing citizens within their communities and society respectively. For example, JOM funds help students achieve and succeed by providing such services as: eyeglasses and contacts, resume counseling, college counseling, culturally based tutoring, summer school, scholastic testing fees, school supplies, transition programs, musical instruments, Native youth leadership programs, student incentive programs, financial aid counseling, fees for athletic equipment and activities, caps and gowns, art and writing competitions, etc. Other programs administered by the federal government, such as NCLB funding at DOE, do not allow funding for these types of activities.

For example, in Vinita, Oklahoma, Native students have benefited in a variety of ways through its JOM program funds. by providing “opportunities and activities that assist in the development of the students leadership skills, enhances their self-esteem, provides cultural education and pride and provides assistance to extremely stretched parent budgets so their children have cultural educational opportunities that they might not otherwise have. These activities have involved the students, parents, community, schools and representatives from the Cherokee Nation. Increased enrollments at Vinita have seen an increased need for additional JOM funding therefore cutting the JOM funding would be detrimental to all Native students including those in Vinita.”²⁰

Under-funding of JOM is exacerbated by certain factors. In 1995, a freeze was imposed on JOM funding through DOI, limiting funds to a tribe based upon its population count in 1995. The freeze prohibits additional tribes from receiving JOM funding and does not recognize increased costs due to inflation and accounting for population growth. NIEA urges that the JOM funding freeze be lifted and that other formula-driven and head count-based grants be analyzed to ensure that tribes are receiving funding for their student populations at a level that will provide access to a high quality education.

Tribal Education Departments

As mandated in many treaties and as authorized in several federal statutes, the education of Indian children is an important role of Indian tribes. The involvement of tribes in their children's educational future is key to the educational achievement of Indian children. Tribal Education Departments (TEDs) provide tribes with the opportunities to become actively involved in the education of their children. The authorization for TED funding in DOI and in DOE is contained in Title VII, Section 7135 of NCLB. Despite this authorization and several other prior statutes, federal funds have never been appropriated for TEDs. The use of TEDs would provide tribes with greater ability to meet the educational needs of their students and would ensure that tribes can more readily improve the education of their youngest members.

TEDs develop educational policies and systems for Indian communities that are attuned to the cultural and specialized academic needs of Indian students. TEDs partner with the federal government and state governments and schools to improve education for tribal students. NIEA requests that both DOI and DOE fund tribal education departments.

Conclusion

As part of its efforts on reauthorization, NIEA will continue to perform as much outreach as possible so that Congress can better understand the needs of Native students, thereby allowing student needs to be addressed during reauthorization of NCLB. I speak to you on behalf of all our Native children and the need to ensure their successful academic achievement. We, NIEA's membership, are their voice and as President of NIEA, I am obligated and privileged to advocate for their future.

I would like to leave with this last thought by Charles Eastman (Santee). "The public position of the Indian has always been entirely dependent upon our private virtue. We are never permitted to forget that we do not live for ourselves alone, but also for our tribe and clan. Every child, from the first days of learning, is a public servant in training."⁷

NIEA thanks the Committee for its tremendous efforts on behalf of Native communities. With your support we are hopeful that we can improve the programs and funding for education that Native communities deserve.

Kwakwha!

ENDNOTES

¹ Executive Order No. 13336, American Indian and Alaska Native Education (April 30, 2004).

² United States Government Accountability Office, (June 2008). Bureau of Indian Education Schools, Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems, p. 8.

³ *Ibid.*, p. 5.

⁴ United States Government Accountability Office (June 2008). Bureau of Indian Education Schools, Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems, p. 4.

⁵ NIEA's Amendments to the No Child Left Behind Act, March 2007.

⁶ 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).

⁷ Title VII of the No Child Left Behind Act incorporates the Indian Education Act of 1972. 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

⁹ National Indian Education Study 2007: Part II.

¹⁰ National Indian Education Study 2007: Part II, p. 39.

¹¹ National Indian Education Study 2007: Part II, p. 40.

¹² Pease-Prety on Top, J. (2003). Native American Language Immersion: Innovative Native Education for Children & Families. American Indian College Fund: Denver, Colorado.

¹³ National Indian Education Study: Part II, p. 38.

¹⁴ The Consensus Building Institute with the U.S. Institute for Environmental Conflict Resolution (March 5, 2008). Final Convening Report: Negotiated Rulemaking Committee on Bureau of Indian Affairs—Funded School Facilities Construction, pp. 16-18.

¹⁵ *Ibid.*, p. 19.

¹⁶ Bureau of Indian Affairs and Bureau of Indian Education: Hearings before the National Indian Education Association, Widow Rock, AZ (August 21, 2008) (testimony of Benjamin Nuvamsa, Hopi Tribal Chairman).

¹⁷ Bureau of Indian Affairs and Bureau of Indian Education Transportation Cost Funding: Hearings before the National Indian Education Association, Rapid City, SD, (July 10, 2008) (testimony of Janice Richards, President, Little Wound School).

¹⁸ Bureau of Indian Affairs and Bureau of Indian Education: Hearings before the National Indian Education Association, Widow Rock, AZ (August 21, 2008) (testimony of Marie Rose, Black Mesa Community School Principal, Navajo Nation).

¹⁹ *Ibid.*, p. 3.

²⁰ Bureau of Indian Affairs and Bureau of Indian Education: Hearings before the National Indian Education Association, Widow Rock, AZ (2008) (written testimony submitted by Lisa Trice-Turtle, Cherokee Nation).

Chairman KILDEE. Stan Holder?

STATEMENT OF STANLEY R. HOLDER, CHIEF, DIVISION OF PERFORMANCE AND ACCOUNTABILITY, BUREAU OF INDIAN EDUCATION, U.S. DEPARTMENT OF THE INTERIOR

Mr. HOLDER. Good morning, Mr. Chairman and members of the committee. My name is Stan Holder. I am the chief of the division of performance and accountability for the Bureau of Indian Education in the Department of Interior.

I am pleased to be here to speak on behalf of the department concerning the recent GAO report entitled, "Bureau of Indian Education Schools; Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability System."

The division of performance and accountability acts as the state educational agency for the Bureau of Indian Education. As such, the division is responsible for oversight and supervision for 184 instructional and residential programs in 23 states.

Fifty-nine of the programs are operated by the BIE, and 125 are tribally operated under the provisions of Public Law 107-110 and Public Law 93-638.

The GAO report states accurately that BIE has attempted to negotiate MOUs with all 23 states to facilitate the assessment process. This process is mandated by the final rule for implementation of No Child Left Behind.

Today, BIE has been successful in acquiring 11 MOUs with states that have BIE instructional programs. BIE shares the GAO's concern for gaining MOUs with the 12 remaining states. BIE has encountered varying responses from the states that range from silence to unreasonable conditions.

Two states that have presented unique barriers are California and New Mexico. California's initial response to the BIE's proposal to establish an MOU contained the requirement for a \$1 million bond to be put in place to ensure test item security.

Negotiations were stagnant until 2 months ago when, with the assistance of the Department of Education, dialogue was reestablished with the California Office of Assessment. BIE would like to achieve a reasonable agreement and have an MOU in place in the not-too-distant future.

The state of New Mexico initially agreed to and signed an MOU with BIE. Shortly thereafter, New Mexico rescinded the MOU and then insisted that BIE consult with a New Mexico tribe to establish an MOU with the state.

This presents an issue since BIE is required to utilize New Mexico's assessment process under the final rule. The final rule was the result of the negotiated rulemaking which is supposed to be the highest form of consultation.

The GAO report also addresses some of the issues encountered in BIE's effort to provide technical assistance to tribally-controlled schools that have requested alternate AYP progress definition waivers.

To date, there have been three such requests. The three requests are from the Navajo Nation, the Miccosukee Tribe of Florida, and the Oceti Sakowin Education Consortium or OSEC, which is made up of 17 tribally-operated schools in North and South Dakota.

The BIE and representatives of the Department of Education met with the Navajo Nation within days of the Nation's initial request. The BIE has also provided technical assistance to the Navajo Nation via a contractor. BIE has not received additional correspondence or requests from the Navajo Nation or the Dine' Department of Education that acts on behalf of the Navajo Nation.

The BIE and the Department of Education have had various meetings and site visits with the Miccosukee tribal school, tribal elected officials, and their tribal attorneys. The BIE and the De-

partment of Education have provided technical assistance to the tribe via site visits and through a contractor.

The most recent communication that we received from the tribe was a call from the Miccosukee tribal school's administrator stating that the school and the tribe did not require any further technical assistance from the BIE.

BIE staff have traveled to South Dakota to meet with the Oceti Sakowin Consortium representatives beginning in 2005 to assist OSEC in developing their initial request for an alternative AYP definition waiver.

The BIE and the Department of Education have met with OSEC representatives to explain and provide technical assistance on a waiver request process and a peer review process for establishing an alternative assessment.

BIE has also provided technical assistance to OSEC through a contractor. Most recently, the BIE transferred funds to OSEC's fiscal agent for the purpose of initiating development of a Dakota, Lakota, and Nakota language assessment process to carry out the community activities and meetings necessary to develop that assessment and to carry out legal research on proposed changes to the BIE accountability workbook in an effort to expedite that process.

The BIE is addressing the four recommendations made in the GAO report which is stated in my written testimony.

In closing, I would like to state that the education of Indian children is critical to improving the quality of life of Indian communities. Assessments and resulting AYP determinations are valuable measures used to determine the quality of instruction in the classroom.

These measures provide administrators and teachers the opportunity to improve instruction so that students can achieve academic success.

NCLB has provided a framework and goals for all students to be proficient in math and reading by 2014. Indian students in BIE and public schools face unique challenges—poverty, loss of identity, and isolated communities are but a few of these challenges.

However, our children will compete for employment, post-secondary education opportunities, and career opportunities on a global scale.

It is all of our responsibility to ensure that they are prepared to meet these challenges.

I thank you for the opportunity to appear here today, and I will be happy to answer any questions the committee may have.

[The statement of Mr. Holder follows:]

Prepared Statement of Stanley Holder, Chief, Division of Performance and Accountability, Bureau of Indian Education, Department of the Interior

Good morning, Mr. Chairman and Members of the Committee. My name is Stan Holder, and I am the Chief, Division of Performance and Accountability for the Bureau of Indian Education at the Department of the Interior (Department). I am pleased to be here today to speak on behalf of the Department about the recent GAO report entitled, Bureau of Indian Education Schools: Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems. (GAO-08-679)

Background

The Bureau of Indian Education (BIE) was established on August 29, 2006. The BIE is the former Office of Indian Education Programs, which was renamed in 2006 to reflect the parallel purpose and organizational structure BIE has in relation to other programs within Indian Affairs. The BIE supports education programs and manages residential facilities for Indian students of federally recognized tribes at 184 elementary and secondary schools, and dormitories. The BIE operates 59 schools and dormitories with the remaining 125 operated by the tribes through contracts or grants. These schools are located on 63 reservations in 23 states. The BIE has the responsibilities of a State Educational Agency (SEA) for this nationwide school system.

During the 2007 to 2008 school year, BIE-funded schools served approximately 44,000 Indian students and residential boarders; however, less than 10 percent of all American Indian children in the United States attend BIE-funded schools. Approximately 5,000 teachers, professional staff, principals, school administrators, and support personnel work within the BIE-operated schools.

GAO Report

The “No Child Left Behind Act of 2001” (NCLB), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), emphasizes accountability for results in improving the academic success of students served by these programs. The statute requires schools receiving ESEA, Title I funds to achieve adequate yearly progress (AYP) based on annual targets towards the goal of all students achieving academic proficiency in reading and mathematics by school year 2013-2014. Under the statute, a school’s achievement of its annual AYP targets is based primarily on student assessment results broken out by race and ethnicity, poverty, disability status, and limited-English-proficiency status.

The NCLB required the Department of the Interior to undertake formal negotiated rulemaking to create regulations in certain areas, including regulations defining AYP for BIE-funded schools. A team comprised of federal officials, tribal leaders, and Indian education professionals developed the regulations through “consensus” decision-making. All twenty-five committee members agreed to the final negotiated product. These regulations became effective on May 31, 2005.

The regulations defining AYP, mentioned above, provided that tribally-controlled schools would implement the definition of the State in which the particular school was located but could waive all or part of the State definition and propose an alternative definition. The alternative definition would be subject to approval of the Secretaries of the Interior and Education.

On June 27, 2008, the Government Accountability Office (GAO) issued a report entitled *Improving Interior’s Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems*. The report identifies the challenges associated with the implementation of the AYP final rule. It also included four recommendations that I would like to discuss briefly.

Recommendation—establish Memoranda of Understanding with States that lack agreements with the BIE

There are currently 23 different State definitions of AYP being applied throughout the BIE school system, leaving the BIE without a single standard AYP determination process. Instead, the BIE’s responsibility was to approach the States with the expectation that the States would enter into a written agreement to provide assessments and scoring results, and, in some cases provide AYP determinations for BIE-funded schools in their respective States.

Currently, the BIE has 11 MOUs in place with the following states: Idaho, Iowa, Kansas, Maine, Montana, Nevada, North Dakota, Oregon, South Dakota, Washington, and Wyoming. The BIE continues to pursue MOUs with the following 12 states: Arizona, California, Florida, Louisiana, Michigan, Minnesota, Mississippi, New Mexico (once signed and then rescinded), North Carolina, Oklahoma, Utah, and Wisconsin, in order to complete an MOU with each.

One of the recommendations contained in the GAO report is that the BIE finalize the remaining 12 MOUs. GAO is concerned that States without an MOU could change policies regarding access to State assessments and scoring services. The BIE agrees that MOUs should be entered into with the remaining States. We are working with tribal governments in pursuing negotiations with these States.

Recommendation—provide assistance to tribally controlled schools seeking a different definition of AYP

Another issue raised by the GAO is its concern regarding the assistance provided to Tribes that would prefer to pursue an alternate AYP definition waiver. Two

tribes, the Navajo Nation and the Miccosukee Tribe, and one tribal consortium, the Oceti Sakowin Education Consortium (OSEC), have begun to develop alternatives to State AYP definitions, in part, to make standards and assessments reflect their tribal culture. The report states that the two tribes and the tribal consortium identified a lack of federal guidance and communication, including having received limited technical assistance from the BIE.

In response, the BIE has contracted with Research in Action, Inc to provide technical assistance to the Navajo Nation and OSEC to organize the Tribes alternate AYP definition initiatives and expedite the process. The contractor has identified the need for both the OSEC and the Navajo Nation to develop focused purposes, expected outcomes, and the administrative infrastructure needed to work with an assessment vendor. This development structure will also assist tribal groups in understanding the need for an administrative infrastructure to initiate and maintain an assessment system.

Navajo Nation

The Navajo Nation submitted a request for an alternate AYP definition waiver request to BIE in November 2007. BIE responded and attempted to set a date for an initial meeting with the Navajo Nation on November 15, 2007. Representatives from the BIE and the Department of Education met with Navajo Nation representatives on March 6, 2008, as an initial step in the technical-assistance process. The Department of Education's representatives explained the requirements for developing, administering, and maintaining a standards and assessment system, including the external peer review of each assessment system to ensure that it meets the requirements of the ESEA.

The Navajo Nation discussed the conceptual framework they would use to assess students. The frame work was based on standards and assessments that would have the results weighted on social pathology that exists in reservation communities. Both BIE and the Department of Education provided guidance as to the difficulty that would be embedded in such an approach. Also expressed was the concern that adding weight based upon the proposed process would minimize the identification of these social issues and could possibly decrease efforts to address the therapeutic and rehabilitative services to address them. The BIE has not received further correspondence or requests from the Navajo Nation for alternate AYP definition waiver purposes. The BIE consultant, Research In Action is still available to the Navajo Nation for technical assistance, upon request.

Oceti Sakowin Education Consortium (OSEC)

OSEC made its initial request on August 6, 2006. BIE staff have met with OSEC to explain the process and to establish tasks and timelines to facilitate its request. We are waiting for the OSEC to provide a focused process that would pass the peer review process in the Standards and Assessment Peer Review Guidance dated April 2004 (and updated December 2007) and distributed by the U.S. Department of Education (Education) for all State and tribe standards and assessments systems.

Extensive discussions have taken place between the BIE and OSEC to arrive at objectives that are in compliance with statute and can be accomplished and supported by the current structure of the BIE. For example, OSEC's most recent request is to (1) extend the time frame for all students to be proficient by 2014 to 2018; and (2) extend the Annual Measurable Objectives (AMO) to reflect this change. These changes are statutory and would require amendments to the ESEA.

Miccosukee Tribe

The Miccosukee Tribe submitted a request for an alternate AYP definition waiver to BIE in 2007. The Tribe also requested that the school be held harmless for AYP-determination purposes until the alternate AYP definition was granted. The BIE has honored this request with the expectation that the Tribe would move quickly to request the amendment to the State Accountability Workbook, develop standards and assessments, and prepare for peer review.

The BIE and the Department of Education met with the Miccosukee Tribe in the State of Florida on November 20, 2007, and again on February 8, 2008, to provide technical assistance and an overview of the requirements for a standards and assessment system, and an overview of the peer review requirements. In addition, the BIE has offered ongoing technical assistance to the Tribe through the BIE contractor, Research in Action.

The Miccosukee Tribe has communicated verbally to the BIE that it does not need further technical assistance in the form of funding or contractual support and that the Tribal Council has determined that the Tribe will absorb the cost and be responsible for developing the request. As of this date, BIE has not received any further

information. However, a determination will have to be made concerning how long a school can be held harmless for an AYP determination.

Recommendation—provide guidelines and training to tribally controlled schools seeking an alternative definition of AYP

Another recommendation in the GAO report was for the BIE to provide guidelines and training to tribally controlled schools on the process for seeking and approving alternatives to defining AYP. As mentioned above, we are assisting tribally controlled schools in pursuing alternate AYP definition waivers. We are providing guidance and training through presentations at national education meetings and conferences throughout Indian Country. In addition, the BIE is working on formalizing its guidance and training and will provide it to the public on its website when ready.

Recommendation—BIE should establish internal response time frames and process to ensure timely responses to tribal groups requesting assistance

The GAO recommended that the BIE establish internal response times and processes. The BIE is logging in all correspondence and responses, including e-mails, regarding technical assistance requests. Upon the receipt of a technical assistance request, the BIE will identify and provide a point person to work with the Tribe on its request. A consultant will provide guidance and a project-management document identifying the activities and timelines for the technical assistance with the tribal entity. BIE will require that a progress report be provided at regular intervals and Education Line Officers will receive training on standards, assessments, and accountability expectations for alternate AYP definitions.

Conclusion

In closing, I would like to state that the education of our children is everyone's responsibility. Assessments, and the resulting AYP determinations, are one important measure used to determine the quality education children are receiving. They provide administrators and teachers the opportunity to improve and tailor instruction to raise achievement and close achievement gaps. NCLB has provided the frame work and goals to facilitate this process. It is up to us, working together, to set the standards and use the information we receive from assessments, to facilitate improved instruction and truly close the achievement gap for Indian students.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions you may have.

Chairman KILDEE. Thank you very much for your testimony.
And Ms. Dudro?

STATEMENT OF ANNE CAMPBELL DUDRO, CHIEF OF STAFF, OFFICE OF ELEMENTARY AND SECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION

Ms. DUDRO. Good morning. Thank you Chairman Kildee, Ranking Member Castle, and all the members of the subcommittee for inviting the U.S. Department of Education to share with you what we are doing to improve the education of Indian children and provide technical assistance to tribal schools.

My name is Anne Dudro. I am the chief of staff for the Office of Elementary and Secondary Education, and I am pleased to be here today to speak on behalf of the department about the recent GAO report entitled, "Bureau of Indian Education Schools (sic): Improving Interior's Assistance Would Help Some Tribal Groups Implement (sic) Academic Accountability Systems."

The Elementary and Secondary Education Act, as amended and reauthorized by No Child Left Behind of 2001 provides federal aid for disadvantaged students to state and local education agencies as well as the Bureau of Indian Education.

Specifically, there are several requirements to which states and the BIE receiving Title I funds must adhere. They are: Develop academic content and student achievement standards, measure

student proficiency in reading, math, and science with assessments aligned with these standards, and determine whether schools are making adequate yearly progress with the goal that all students will meet or exceed the state's proficient level of academic achievement in reading and mathematics by 2014.

The ESEA requires the Secretary of the Interior to adopt a definition of AYP and use it to make accountability determinations for all BIE-funded schools.

In 2005, after negotiated rulemaking, the Department of the Interior published a final rule establishing the definition of AYP for BIE-funded schools as the definition of AYP used by the state in which a BIE-funded school is located.

However, in recognition of the sovereign nation of tribes, the SEA allows the governing body or school board of a BIE-funded school to apply for a waiver from all or part of the state's definition of AYP and propose an alternative definition.

Such alternatives are subject to the approval of the Secretaries of Interior and Education.

In February of 2007, the two agencies signed an agreement to establish basic procedures for the review and approval of any alternative definitions of AYP submitted to the Interior by BIE-funded schools.

Over the past year, the Department of Education has worked with BIE to provide technical assistance to three tribal groups that have requested alternatives to state AYP definitions, particularly in the form of developing new standards and assessments that include components of native culture.

On August 23rd of 2007, GAO held an entrance conference with the department. At that time, the department had not been informed of any tribal requests for technical assistance related to alternative definitions.

On September 6th of the same year, the department was subsequently informed of the request of the Miccosukee Tribe and a consortium of the Dakota Tribes, the OSEC. Upon receiving the formal request from Miccosukee and after follow-up conversations with the BIE, three staff persons from the department traveled to the Miccosukee Reservation in Florida on November 20th to provide technical assistance.

Nine days later, the department staff participated in a similar meeting in Rapid City, South Dakota, to provide technical assistance to the OSEC.

Upon the conclusion of these two meetings, the department contracted with an external expert, who is a former assessment director for a state educational agency, to provide additional technical assistance to both tribal groups.

Shortly thereafter, on December 5th, the Department was also informed of a request from the Navajo Nation for technical assistance during a Title I monitoring visit to Albuquerque.

On March 6th, the department staff and the contractor participated in the technical assistance meeting with the Navajo Tribe in New Mexico. The Navajo meeting focused on a conceptual framework for their assessment and accountability systems. We have received no additional communication regarding any subsequent meeting.

The request from the OSEC and the Navajo Nations for alternatives to state definitions of adequate yearly progress include consideration of both an accountability component and a standards assessment component, while the request from the Miccosukee focuses solely on the development and implementation of new assessments.

There are seven requirements as outlined in statute in regulation and further elaborated in the department's Standards and Assessment Peer Review Guide first published in April of 2004 and then updated again in 2007.

They are: One, to develop academic content standards that specify what all students are expected to know and demonstrate in reading, language arts, mathematics, and science.

Two, develop academic achievement standards that are aligned with the state or tribe's academic content standards.

Three, use a single assessment system for all students.

Four, demonstrate that the assessments meet standards for technical quality, including that they are valid and reliable measures of student knowledge.

Five, demonstrate that the assessments are aligned with the state or tribe's content standards.

Six, provide for the inclusion of all students, including students with disabilities, in the state or tribe's assessment system.

And seven, produce reports at the individual student's school, LEA, and SEA levels.

After an assessment system is fully developed, it must be presented to the Department of Education for peer review. The peer review determines if the organization, whether a state or tribe, adheres to the standards for assessment development as outlined in the guidance. In this manner, the department ensures that tests are valid and reliable for the purposes for which they are designed.

To conclude, the department has been working with our colleagues at the BIE to respond in a timely manner to the requests we have received for technical assistance from the tribes. Department staff, once made aware of any requests, has met with the tribes to discuss the issues and provide initial technical service.

Furthermore, the department has provided for, and will continue to provide and pay for, additional technical assistance through a contractor to help the BIE and tribes.

We take our responsibility to help ensure a high quality education for all Indian children very seriously. We also have a responsibility to guarantee that all schools that receive federal education funding abide by the applicable statutes and regulations.

We are doing all that we can to support our colleagues at the BIE to meet the needs of the tribes, BIE-funded schools, and American Indian students.

Thank you for the opportunity to appear here today, and I am happy to answer any of your questions.

[The statement of Ms. Dudro follows:]

Prepared Statement of Anne Dudro, Chief of Staff, Office of Elementary and Secondary Education, U.S. Department of Education

I. Introduction

Thank you, Chairman Kildee, Ranking Member Castle, and all the members of the Subcommittee for inviting the U.S. Department of Education to share with you

what we are doing to improve the education of Indian children and provide technical assistance to tribal schools. My name is Anne Dudro, I am the Chief of Staff for the Office of Elementary and Secondary Education, and I am pleased to be here today to speak on behalf of the Department about the recent Government Accountability Office (GAO) report entitled, Bureau of Indian Education Schools: Improving Interior's Assistance Would Help Some Tribal Groups Implement Academic Accountability Systems. (GAO-08-679)

II. Requirements for Assessments and Accountability under No Child Left Behind

The Elementary and Secondary Education Act (ESEA), as amended and reauthorized by the No Child Left Behind Act of 2001 (NCLB), authorizes Federal aid to State and local educational agencies, as well as the Bureau of Indian Education (BIE), for the education of disadvantaged students. As a condition for receiving grants under Title I, Part A of ESEA, States and the BIE are held accountable for the academic achievement of students in all public schools, including BIE-funded ones.

The U.S. Department of Education (the Department) provides Title I, Part A, and other formula grant funds to the U.S. Department of the Interior (DOI) for its use and for distribution to tribally controlled schools and BIE-operated schools under the provisions of section 9204 of the ESEA. Under section 9204(a)(2), the Department provides these funds to Interior under an Agreement entered into by both agencies consistent with the requirements of the programs.

Specifically, Title I requires that states and the BIE develop academic content and student achievement standards; measure student proficiency in math, reading, and science with assessments aligned with these standards; and determine whether schools are making adequate yearly progress (AYP) toward meeting the goal that all students will meet or exceed the State's proficient level of academic achievement on the State reading and mathematics assessments by 2014.

Section 1116(g)(1)(A) of the ESEA requires the Secretary of the Interior to adopt a definition of AYP and use it to make accountability determinations for Bureau of Indian Affairs¹ (BIA)-funded schools. In 2005, after a negotiated rulemaking involving Federal and tribal officials, the Department of the Interior published a final rule establishing the definition of AYP for BIE-funded schools as the definition of AYP used by the State in which a BIE-funded school is located.

However, in recognition of the sovereign nature of tribes, section 1116(g)(1)(B) of the ESEA allows the tribal governing body or school board of a BIE-funded school to apply for a waiver from all or part of its State's definition of AYP and propose an alternative definition. Such alternatives are subject to the approval of the Secretaries of the Interior and Education. In addition, section 1111(m) of the ESEA identifies the various assessments that BIE-funded schools may use depending on who accredits those schools, and gives the Secretary of the Interior responsibility for approving the use of assessments where the school would not use the assessments of the state in which the school is located.

In February of 2007, the Departments of the Interior and Education signed an agreement to establish basic procedures for review and approval of any alternative definitions of AYP that a tribal governing body or school board of a school funded by the BIE might submit to DOI. Provision for such procedures between the two agencies is governed by section 1116(g)(1)(B) of the ESEA and by final DOI regulations in 25 CFR Part 30.

When a tribal governing body or school board requests technical assistance in developing an alternative definition of AYP, the BIE is responsible for providing that technical assistance. The interagency agreement calls for BIE to notify the Department's Office of Elementary and Secondary Education, which oversees the accountability provisions under Title I of the ESEA, of all requests by tribal governing bodies or school boards for technical assistance. Also under the agreement, the BIE is to request guidance as needed in providing technical assistance.

III. Requests for Alternate Definitions of AYP

Over the past year, the Department has worked with the BIE to provide technical assistance to three tribal groups that have requested alternatives to State AYP definitions, particularly in the form of developing new standards and assessments that include components of native culture.

On August 23, 2007, GAO held an Entrance Conference with the Department. At that time, the Department had not been informed of any tribal requests for tech-

¹The Bureau of Indian Education (BIE), formerly the Office of Indian Education in the Bureau of Indian Affairs (BIA) was formed in late June 2006. The BIE is now a separate bureau from the BIA.

nical assistance related to alternative definitions. On September 5, 2007, the BIE sent an email to the Department requesting a teleconference regarding assessment issues, which ED convened for the next day. During this teleconference, the BIE informed the Department of requests BIE had received from the Miccosukee Tribe and from a consortium of the Dakota tribes, the Oceti Sakowin Education Consortium (OSEC). Also during this teleconference, the Department asked BIE to forward the formal requests from the Miccosukee and OSEC. Upon receiving the request from the Miccosukee on September 25, and after follow-up conversations with BIE, three staff persons from the Department traveled to the Miccosukee reservation in Florida on November 20 to provide technical assistance. On November 29 of that year Department staff participated in a similar meeting in Rapid City, South Dakota to provide technical assistance to the OSEC. Upon the conclusion of these two meetings, the Department contracted with an external expert, who is a former assessment director for a State educational agency, to provide technical assistance to both tribal groups.

On December 5, 2007, the BIE informed Department staff of a request BIE had received from the Navajo Nation for technical assistance, during a Title I monitoring review in Albuquerque. At that meeting, the BIE provided the Department with a copy of the Navajo Nation request and a copy of BIE's response to the Navajo request proposing a meeting between the three parties. According to the BIE, the Navajo Tribe was delayed in responding, but on March 6, 2008, Department staff and a contractor participated in a technical assistance meeting with the Navajo Tribe in Albuquerque. The Navajo meeting focused on a conceptual framework for their assessment and accountability systems, and we have received no communication regarding any subsequent meetings.

IV. Requirements for Alternatives to State Definitions of AYP

The requests from the OSEC and Navajo Nations for alternatives to State definitions of adequate yearly progress include consideration of both an accountability component and a standards and assessment component, while the request from the Miccosukee focuses solely on the development and implementation of new assessments. The accountability component is involved when different elements, such as the use of an oral language proficiency assessment, are considered when determining if a school has made AYP. The standards and assessment component involves developing an assessment other than that provided by a State (e.g. a more culturally appropriate assessment than that used by the State).

While accountability and assessment are related activities, the approval process for these various requests is different. Accountability relates to the annual determination of whether a school or local educational agency is making AYP; it depends upon the assessment results as well as other factors such as the assessment participation rate, the attendance or graduation rates, and, in the request of OSEC, oral language proficiency. The ESEA leaves the authority for the determination of proficiency and adequate yearly progress to the State educational agencies or other appropriate entity so long as the certain statutory requirements are met. While it is reasonable for a tribe to desire to develop its own accountability system, any request by a BIE-funded school to deviate from the State's assessments or process to calculate AYP would need to be submitted by the tribe to the BIE. These tribal amendments would need to be reflected in the BIE's accountability plan, and submitted for review and approval by ED. This is the same procedure used for all other States' accountability plans. The BIE would need to note in their accountability plan that certain amendments to AYP definitions would apply only to the tribal schools requesting the alternative definition.

The development and implementation of new standards and assessments must meet the statutory and regulatory requirements of Title I which are guided by the Department's Standards and Assessments Peer Review Guidance, first published in April 2004, and updated in December of 2007. There are seven requirements outlined in statute and regulations and further elaborated in the peer review guidance. Under Title I, States, or in this case tribes, must: (1) develop academic content standards that specify what all students are expected to know and be able to do in reading/language arts, mathematics, and science; (2) develop academic achievement standards that are aligned with the State or tribe's academic content standards; (3) use a single assessment system for all students; (4) demonstrate that the assessments meet standards for technical quality, including that they are valid and reliable measures of student knowledge (5) demonstrate that the assessments are aligned with the State or tribe's content standards; (6) provide for the inclusion of all students, including students with disabilities, in the State or tribe's assessment system; and (7) produce reports at the individual student, school, LEA, and SEA levels.

When the assessment system is fully developed it must be presented to the Department for a Peer review. The Peer review process does not involve looking at individual content standards or the format or content of the tests. It is focused on whether the organization, whether it is a state or a tribe, followed certain processes for assessment development as outlined in the Department's Peer Review Guidance to ensure the tests are valid and reliable for the purposes for which they are designed.

V. Conclusion

In conclusion, the Department has been working with our colleagues at the BIE to respond in a timely manner to the requests we have received for technical assistance from the tribes. Department staff, once made aware of any requests, have met with the tribes to discuss the issues and provide initial technical assistance and the Department has provided and paid for, and will continue to provide and pay for, continued technical assistance through a contractor who is an expert in State standards and assessment systems. We have a Federal responsibility that all schools that receive Federal education funding abide by the applicable statute and regulations and we are doing all we can to support our colleagues at the BIE to meet the needs of the tribes and BIE-funded schools.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions you may have.

Chairman KILDEE. Thank you.
Mr. Hamilton?

**STATEMENT OF THEODORE HAMILTON, EXECUTIVE
DIRECTOR, OCETI SAKOWIN EDUCATION CONSORTIUM**

Mr. HAMILTON. Thank you, Chairman Kildee, Ranking Member Castle, members of the committee for inviting me to testify today.

I want to thank Representative Herseth Sandlin for the introduction—it was quite nice—and for her leadership both here in Washington, D.C. on behalf of our state and in South Dakota.

I am the executive director of the Oceti Sakowin Education Consortium, and my name is Ted Hamilton.

The consortium is made up of, currently, 14 tribal schools, four tribal colleges in South and North Dakota, and provides a wide range of services, as Representative Herseth Sandlin explained.

In the past 8 years, OSEC staff have provided services to schools at the request of school superintendents and principals through a cooperative-like structure. Unlike a traditional educational cooperative model, OSEC maintains a school needs-based model that creates annually-contracted projects specifically developed for each school's needs.

This process provides a clear picture of the needs of the schools and our higher education process.

I want to stress that OSEC is not an advocacy or representative organization. The schools that are our members own us, and we believe that our school boards and the tribal education departments should be heard in policy-level discussions.

We do, as an organization, provide technical support as requested relating to policy-level decisions.

I have been asked today to discuss the work of our organization related to the creation of a definition of adequate yearly progress for some of our schools and our reaction to the GAO study. And I have also been asked to make some comments on some other issues related to our membership.

I handed in a fairly thick written testimony, and I will refer to that as I go through this.

Related to No Child Left Behind and the GAO report, the GAO report is a good case to point out some more general difficulties our schools are having with the BIE system.

When NCLB was authorized, there was a process defined in the Act called “negotiated rulemaking.” And in negotiated rulemaking, members of the committee were assured that the tribes would be provided support, both technical and fiscal, in development of alternative assessments and standards.

As an interim step, schools would follow the accountability workbook of the states in which they reside. Two of the members of the negotiated rulemaking committee, Dr. Roger Bordeaux of Tiospa Zina Tribal School, and Deb Bordeaux of Loneman School, argued against the use of state workbooks and their associated standards and finally reluctantly agreed to the state standards and assessments provisions.

When they came home in 2002, we had a meeting, and eight of the schools decided they would pursue an alternative definition by pooling some resources. OSEC was asked to manage the process and to act as a single point of contact with the Bureau in the project.

I am attaching two of my testimonies and an appendix of the timeline of our work. So we have been doing this now since the last 4 years. It has been going on for a while.

Our first attempts to get this worked on, we were told repeatedly by the Bureau that we could not apply as a group of schools for an alternative definition. We were told it would be too expensive and that there was no money for this type of work.

While we were required to have our school boards pass multiple resolutions agreeing to work together through the OSEC organizational structure we generally did not receive any correspondence from the Bureau other than letters telling us that they did not have to help us.

In reading the No Child Left Behind Act, tribes and tribal schools that wish to waive the state definitions for their own definition are required to submit an alternative definition within 60 days of alerting the Secretary of the Interior of their intent to waive NCLB requirements.

The Secretary of the Interior is then required to give a written response either supporting or denying the waiver. This allows the tribe or tribes to begin a negotiation process with Interior.

After four submissions, beginning in 2005, the OSEC schools finally received their first written response to their proposed definition in August of 2008. A significant aspect of developing an alternative definition is the creation of educational standards and assessment tools.

At the core of our concern about using state AYP definitions is a lack of culturally-appropriate content standards. On page five of the testimony, I quote the U.S. Code of Federal Regulations which requires the use of content standards—or that content standards used in schools be culturally appropriate and that the primary native language of the school population be assessed annually.

The state of South Dakota doesn’t develop its educational standards to meet those regulations and is not bound by those regulations.

Our organization has repeatedly asked for funding to develop assessment instructions for the standards we have created. We met with BIE and DOE officials in late November of 2007. We were told funding would be available for assessment development.

We were told to conduct a bidding process with companies for assessment development, create a plan, and submit that plan.

That was the third time we had completed that process. We also submitted our third accountability workbook for approval at that time. To help us, we were assigned a consultant from the Department of Education that was referenced before, Mr. J.P. Boudain. Mr. Boudain helped us review the bids we received and helped us create a final budget that we submitted on March 4th of 2008.

The long and the short of it was we found out today, actually—Mr. Holder told me today that the Bureau was going to provide us some resources. For the Native American portion of this, we haven't received any dollars for the rest of the assessment.

In the testimony, I go on to talk about the Bureau's work with us and the number of problems we have. On page eight, we talk about some problems that we have had with determining adequate yearly progress, telling parents if their schools are succeeding or not.

We have yet to have a year where we have met the deadline to let parents know that their schools are succeeding or not. And this year, we will once again, miss that deadline if we follow the Bureau's plan.

We also have real questions about the Bureau acting as an SEA for our schools. A state education agency should be—in our reading of the Indian Education Act—should be in the role of the Indian tribal-controlled education departments. It should not be—if we are going to continue to maintain government-to-government relationships—between the Bureau of Indian Education and the Department of Education.

And we feel that it is a violation of the government-to-government relationship to have the Bureau acting as an SEA for the tribes.

In conclusion, because I see my little red light here, I want to say one thing, and it is a message from two people. Once is Lionel Bordeaux, the president of Sinte Gleska University, who you, Mr. Kildee, know. And the other one is from my wife who is Ardis Iron Cloud. And she is a full-blood member of the Oglala Sioux Tribe.

Lionel said to me to tell your committee that every 40 years, we talk about the Bureau growing in strength, growing in numbers, and the federal government continuing to tell tribes what to do. And every 40 years, testimony is given and there are rooms—and as an archivist for the Oglala Sioux Tribe, which was one of my jobs I went to one of those rooms and saw the bound papers going back over a hundred years of testimony to congressional committees about education.

And we keep seeing the Bureau, once again, dictating to the tribes what needs to happen instead of the tribes having control over their education. So we are hoping that this year, this won't happen and we won't be back here 40 years from now.

And from my wife, I am running for election in South Dakota on our state House of Representatives. And one of my platform issues

is that currently in South Dakota, the Indian liaison for tribes is housed in the department that deals with tourism. And I noticed that in the House of Representatives, Native American issues are handled in the Natural Resources Committee.

Now, my wife told me native people are not natural resources, and they are not tourist subjects. I have a son who is studying physics at the South Dakota School of Mines and Technology. And while he talks about getting his degree, he talks about coming home and doing for his tribe, taking the knowledge that he has learned—and benefitting from the help from the state of South Dakota—but strengthening the tribe.

And I am hoping that this work today and answering any questions that you on the committee have might help so that we are not here 40 years from now and that the tribes can continue to have a voice and be heard in this arena.

I thank you very much for your time today.

[The statement of Mr. Hamilton may be accessed at the following Internet address:]

<http://www.osdlc.org/AYP/documents/2008-09-09-TheodoreHamilton.pdf>

Chairman KILDEE. Thank you very much, Mr. Hamilton.

I have been in Congress 32 years. I am not sure when those 40 years began or ended, but maybe I will see the full 40 years, God and the voters willing, of course, on that.

You know, we are dealing here with something that is simple and yet complex. We clearly—and I never leave home without it—I carry the Constitution with me. And this Constitution does not grant sovereignty to the Indian tribes. It recognizes sovereignty.

It is a real sovereignty. Indian tribes are not the Knights of Columbus, which I belong to. They are not the VFW, which my son belongs to. They are sovereign nations, and they are not granted that sovereignty. It is a retained sovereignty.

And it is recognized in the Constitution in two different places where it talks about all treaties entered into are the supreme law of the land.

Article 1, Section 8 of the Constitution says the Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes.

It recognizes all three as sovereigns: foreign nations, the several states. We have 50 sovereign states making up the United States. It doesn't grant France or Germany or the Russian Federation its sovereignty. It says that we recognize that sovereignty.

So it is a real sovereignty. And that might create some complications, but it is real.

And when we have three sovereignties—we also—most of us up here have two citizenships. Probably most of you down at the witness table have three real citizenships.

I am a citizen of the United States. I am very proud of that citizenship. I am a citizen of Michigan, and I have obligations, responsibilities, and rights that flow from both those citizenships. And that is it. I have two citizenships.

My Chippewa and my Pottawatomi, my Indian tribes, those members, those citizens, have three citizenships. And they have

rights and responsibilities that flow from all three of those citizenships. We know, for example, the Indians have proven their U.S. citizenship time and time again because a larger percentage of Native Americans have served in our armed forces than any other group.

They are citizens, and good citizens of the state of Michigan and contribute a great deal, by the way, to the state treasury. And then they are citizens of their sovereign tribes.

So those are the realities that the law has to work around. And whenever we enact a law, we cannot ignore the Constitution. And that is why, very often, we get into some of these contacts between these three sovereignties. And that might create some difficulties, but they are difficulties that are based upon the Constitution itself.

So I appreciate all of you struggling with this, defending your sovereignty, and recognizing the sovereignty when you deal with the Indian tribes. It is extremely important.

And that is true on the state level. You know, most—I think all the schools really pretty well accept the AYP program of the states. But the state, when it has these Indian schools, is required to sit down in good faith and talk to the Indian schools, the Indian leaders in good faith and try to work out what standards and testing the AYP will be on the state level. That is a requirement.

And then when the Secretary of the Interior is looking for alternatives to that, he or she has the obligation to sit down, sovereign to sovereign, one not more equal than the others—you can't be more equal. You are either equal or not equal. Sit down and discuss and try to find some common agreement. And that takes patience.

When we negotiate with friends, that takes patience. When we negotiate with the Russian Federation, that takes patience. But I think we have to recognize that when we sit down with that person at the other side of the table, it is not "Oh gosh, we've got more work to do, these Indians want something." No, these sovereigns want something.

And that sovereignty is guaranteed by the U.S. Constitution. And I think that is the attitude that we have to take in. And then, perhaps, we can make some progress. And it won't always be easy when you have to recognize the other side has an equal voice at that table, and you have to reach agreement. And not an imposed agreement. When you get a memorandum of understanding, it can't be something that is handed and said this is our understanding. It is a memorandum of understanding based upon mutual agreement. And that is very important.

So the Indians have the obligation to protect their sovereignty. Those who are not representing the Indian tribes directly have the obligation to recognize that and address the matter in that fashion.

Let me ask this, as my sermon today. I especially try—when at seminaries, I do preach a bit at times. But I agree with that very strongly.

Let me just start—I will throw the question out. I will throw it out to the GAO first.

In general, what would you say is the most significant obstacle in tribal-federal and tribal-state relations?

Any of you may—

Ms. ASHBY. All right. From the work we did with regard to tribal-state—and I will take that first because that is a little bit easier—it is negotiation of the memorandums of understanding, the MOUs. There are MOUs currently with 11 of the 23 states in which the BIE schools are located.

For the other 12 states, those MOUs have not been developed to date except for California. The tribal schools have had access to the assessments and standards and the scoring in all the states. But without an agreement, some type of contract, there is no guarantee that they will continue to have access or they will continue to have access under the same conditions.

So it puts the tribal schools at risk because if they don't have access to assessments, of course, that is the whole basis for the accountability system under the No Child Left Behind Act.

California, of course, has not granted access because of its concern about security. And that needs to be worked out, and that has not been worked out, as I understand it, to date.

So that is a major problem.

With regard to the tribal groups and the BIE, there certainly was a rocky start in terms of providing assistance and responding to requests for assistance or just requests to, you know, maybe brainstorm sometime. Generally, in the early years, it wasn't necessarily an official question for assistance as much as the tribal groups needing to know what they would have to do to get assistance to carry out their waivers or what they might do in terms of alternative assessments.

And they, apparently, did not get the degree of assistance and response that they needed. Things have improved, as we said in our statement and in the report.

Beginning last fall and continuing into this year, there have been meetings between BIE and Education and the three tribal groups who have officially sought waivers or sought to begin the process for seeking waivers.

So things seem to be on a better footing. But as you said in your statement, what is needed is more communication, better communication, continued responsiveness, and sincerity on all sides so that obstacles can be addressed and agreements can be worked out.

Chairman KILDEE. Thank you very much.

Dr. Gilbert, do you have a comment?

Dr. GILBERT. Thank you, Mr. Chairman. I do have a comment, and that has to do with assessments.

One of the main reasons why we are here today, again, like you said, is to address those particular issues that deal with our children and our educational system.

Our concern has always been with the idea of state and tribal relationships. Everywhere from assessment and accountability, AYP, and so forth.

But one of the things that we struggle with is the idea of assessment. One test doesn't fit all. And when you talk about culturally and linguistically inappropriate exams for our children, that is one of the reasons why our children, perhaps, aren't doing well on these exams.

Something that we need to take a look at, not only that, but also to work closely with our state education agencies to collaborate

with one another to come up with some other types of assessment techniques besides just one test. For example, exams that may be portfolio assessments and some others that provide that avenue of how we can better assess our children and the growth of our children.

Thank you.

Chairman KILDEE. Mr. Holder?

Mr. HOLDER. Needless to say, managing 23 accountability systems is no easy task for Bureau of Indian Education. Also, some of the resistance that we have encountered with the states as far as developing the MOUs to ensure our access to their accountability systems and to be able to administer the tests and receive the scores has been a challenge.

I believe that in the 20 years that I have been around Indian education, there has been significant discussion on developing tribal standards or Indian standards for our students. No Child Left Behind is the statutory framework that the BIE follows as far as managing programs, as far as state accountability is concerned. And there is a provision for tribes to request an alternate AYP definition that is contained in the statute.

We follow the statute and support the statute. That is our position. We partner with the Department of Education to achieve that end. And I have pursued this, and very aggressively, since I was placed back in my position as the chief of the division.

And we will continue to do so. Our ultimate goal—and I have expressed this to Mr. Hamilton—is to get an assessment on the ground, to be able to move forward with this. We are concerned, though, that we are developing a prototype where we are venturing into unknown territory. So we want to make sure, to the best of our ability, that we are following the statute, that we are doing things in the best interest of Indian students. That is why we are partnering with the Department of Education to provide this technical assistance.

And we will continue to do so in the future.

Chairman KILDEE. Thank you.

Ms. Dudro?

Ms. DUDRO. The only thing I would add is that, certainly, our agency recognizes the authority and the right of the tribes to ask for an additional alternative AYP definition. But we acknowledge that development of a standards and assessments system is not an easy process.

And we still have states, very large states such as California, that are still struggling with developing their own system.

We have provided, and will continue to provide, TA with our staff and our consultants, but we do look to our colleagues at BIE to work with the tribes to help expedite this process.

As noted in the GAO report, this process can be rather lengthy, taking anywhere from 1 to 3 years. And we want to do everything in our ability to follow what is in the statute and provide BIE schools with the technical assistance they need in order to develop their own definition of AYP.

Chairman KILDEE. Mr. Hamilton?

Mr. HAMILTON. Mr. Kildee, I was—of the personal beliefs and spirits I think you were channeling some people from our meetings

in your discussion prior to this because a lot of the things you said about sovereignty are the things that we talk about on a daily basis where we live.

And when you asked the question, what struck me was the relationship between the Bureau of Indian Education and the tribal education departments and the tribal schools.

And what we are seeing increasingly is the tail wagging the dog. In Indian education, we fund our schools through ISEP money, primarily. And No Child Left Behind is kind of 18 to 20 percent of our budget. And yet it is taking up the bulk of our time.

And what is happening is we are seeing that the Bureau of Indian Education is using it to increase its growing infrastructure, growing its bureaucracy and growing an oversight that is pretty much unnecessary.

And it is because of that idea, the issue is what is that level of respect? Are we respecting the government-to-government relationship between the tribal schools, the tribal counsels, and the federal government?

We have taken to court and won in court issues around the MOUs. When the Bureau came to us and said we are restructuring, they put into a consultation—what they called a consultation—a package that said you are going to restructure the Bureau, and you are going to have this MOU. And we took it to court and the judge said “you didn’t even do proper consultation.”

And yet the Bureau moves forward, referring to themselves. And it is in the written testimony here about being the 51st state.

And one of the things that is deeply concerning to me is this concept that we can treat Native Americans as the 51st state, as we have heard in the past, this concept of Pan-Indians, that all Native American tribes are the same. As you said, each tribe and each treaty defines sovereignty.

The challenge to me is that we have hundreds of sovereignties out there. And that the sovereignty that my son and my wife have through their relationship with the Oglala Sioux Tribe is different than the sovereignty that one of my nephews has because he is a member of the Navajo Tribe.

And those are two completely different sovereignties. It is not that he is Native American. It is that Arlo is a Navajo. And when he talks, he talks about growing up in a hogan with his grandparents and that they eat sheep there.

We don’t in South Dakota. We eat beef. And that is a plug for the beef industry.

But there are differences. And I think this—as you say is a simple issue, but it is a critical issue as defining the starting point.

Where do we start with educating our children and maintaining a culture and maintaining a community and maintaining a way of life? And if everybody is treated the same, then we have lost the battle to begin with. There is nothing so unequal as treating unequals equally. And each of the tribes is its own sovereign nation.

And when we look at what has gone on here, what we are seeing is a homogenization of Native American peoples, and this issue that we have is just the tip of the iceberg. We can talk about meeting this requirement or meeting that requirement. But at the core

of it is how have you assured not only this subcommittee but the government itself—assured that each tribe has a way of saying this is what is important for us, for our children to learn.

Chairman KILDEE. Thank you very much.

I now yield generous time to the ranking member of the committee, the Governor Castle.

Mr. CASTLE. Well, thank you very much, Mr. Chairman. And I don't believe that I have the knowledge of the chairman in terms of all these issues. So some of my questions are more informational in developing what is the issue and the problem as opposed to answers at this point.

And let me start with you, Mr. Holder, and perhaps, Dr. Gilbert could help with this and others.

You stated in your written testimony that less than 10 percent of all American Indian children in the United States attend BIE-funded schools. And I think it is about 44,000 total.

My question is why is that. And I think I know the answer to these things. I am not sure. I would like to hear from you.

Why is that? I assume it is disbursement of the population, people not living in areas where the schools are available. But perhaps there is a matter of choosing which schools one wants to go to, too.

And I was just curious as to what the explanation for that percentage is.

Mr. HOLDER. The Bureau of Indian Affairs Schools were put in place historically on reservations, and I believe that off-reservation boarding programs were also established in the early part of the century, some dating back to the 1870s.

As time evolved and communities began to grow in these particular areas, the Bureau schools continued to provide educational services to those populations. However, public schools have also been established on the reservations. And it is a matter of choice for the students as to what school that they choose to attend, the Bureau-operated school or the public school.

We operate and maintain as close communication as we can with the public schools, also, because we have mobility of students between those schools. But the answer to your question actually lies in the history of the development of Bureau schools and educational systems on reservations and adjacent Indian communities.

Mr. CASTLE. What might be the reason—and this is just conjecture, I understand that—but what might be the reason that a child might choose a public school versus a BIE school? Might the parents be interested in the cultural development they might get at the BIE school, or is it just a question of proximity for the most part? What is the motivating force to keep these going as they are?

Mr. HOLDER. I believe there is always a diversity of reasons for students to choose to attend a particular school or for parents to choose to send their child to that particular school.

In some cases, it is proximity, such as on Pine Ridge, you have the Pine Ridge School that is operated by the Bureau of Indian education. That is a K through 12 program.

Most of the schools—and correct me if I am wrong, Ted, I can't pull it off the top of my head—out in the districts are K-8 schools or K-6 schools. So when the students complete at those schools,

they have very limited choices—either Little Wound School in Kyle or Pine Ridge, which are about 60 miles apart.

In some cases, they are bussed off reservation to a small community called Oreck. So it depends on proximity to the school, the availability of space and other factors involved in that. I believe that more and more, parents and students are choosing to attend schools that provide a substantial cultural program and that integrate culture and language into the curriculum.

Mr. CASTLE. Yes, sir. Mr. Hamilton?

Mr. HAMILTON. If I may add something, I have raised nine kids on the Pine Ridge Indian Reservation. My wife and I have nine. So we have had children go to Bureau-operated schools, Bureau-funded schools, state schools, and parochial schools, which are our choices on that reservation.

The state schools—my wife teaches at one of them—spends about \$4,000 more per child per year than the Bureau-funded schools do. So there is an issue of resources.

I walk into my wife's classroom, every child has a computer. Every child has a music program accessible to them. There is a nice gymnasium. There is quite a nice set-up there, they are brand new buildings.

This is not the way it is at the Bureau-funded schools.

My oldest children have moved to Rapid City, and their children attend a public school because of the unemployment realities of Pine Ridge. They moved off reservation, and when we talk about the large number of children who go to public schools, many of them are there for economic reasons.

Mom and dad have to have a job, and they have to support their families. And like any family, they go where the jobs are.

It is—I don't know—we don't know if they have the right people here, but I know from the work that we do with the South Dakota GEAR UP Grant, because that is one of the projects that we run, that over 60 percent of the native children in the public school systems drop out; that the success rate with native children in South Dakota in the public schools is just marginally better than in the BIE-funded and operated schools.

There is not much difference statistically.

We can play a little bit with numbers, but what it comes down to is that native kids are not doing well in the public schools. Lots of times they are there because that is where we can find work, and that is where our families can find work.

I spent a lot of time in Rapid City, South Dakota, with my grandchildren, and I met with the superintendent of schools there. And I said I am concerned because my grandson has a 5 percent chance of graduating from high school in Rapid City Schools right now because, in Rapid City, there is a 95 percent drop-out rate amongst native boys.

Mr. CASTLE. I am looking for a brief answer on this. I was trying to ask the question of Ms. Ashby, if I can get to it. But just as a follow up, you know, we have Nanticoke Indians in Delaware, and they all speak English as well or better than I do—all of you do as well. And my question is: Is English as a second language an issue in any of the tribal circumstances we have in this country today?

Mr. HOLDER. I would like to respond to that simply because we have carried out a reading-first program that deals primarily with the development of language vocabulary and, ultimately, reading skills. What we have experienced is that the tribal students that speak the tribal language as a first language have a much easier time gaining the skills to read in English.

That something that confounds the process is the third language that often develops in tribal communities or ethnic communities where the tribal or ethnic language isn't spoken as a pure language.

So there is that interference with the progression of the process associated with reading simply because decoding phonemic awareness and phonics are pretty much distorted by that spoken language. So the—establishing the tribal language—we have one school, Lukachukai, in Arizona, that initiated an early childhood immersion project back in 2002.

The first cohort of students were assessed by the Arizona State Assessment last year, and the school made adequate yearly progress.

So we see the benefits of establishing a pure tribal dialect and in building English upon that dialect.

Mr. CASTLE. Thank you.

Dr. Gilbert?

Dr. GILBERT. If I may, immersion programs on Indian reservations have become very successful. And one of the issues that we are concerned about is not only language but also culture as well.

So we believe that if we can start a child at a very young age in an immersion program where they are speaking and learning about their language and their culture from K grade to fourth grade, for example, and they are immersed in their culture and so forth, then by the time they graduate from high school, not only will they be bilingual but they were also—in some cases, may be trilingual—but also they will achieve academic performance from K to twelfth grade because based upon Mr. Holder's comments, it is correct in saying that results of exams of children who are in immersion programs performed better than children who are not in immersion programs.

So we know that for a fact.

And the other issue I would like to just briefly mention is that if a child learns their first language at a very young age, then that transition into learning a second language comes much easier for them because the skills that they use in learning their first language, they will pick up the English language very quickly or another language, whatever language that may be.

So thank you.

Mr. CASTLE. Just briefly. I know my time is up. I wanted to ask Ms. Ashby sort of a complicated question. I will try to simplify.

And you stated in your testimony that only a third of the BIE schools actually make AYP. In your—did that study or in your studies, have you identified what schools that have made AYP, BIE schools that made AYP, have done differently or what specific efforts they have made to reach the AYP?

In other words, is there some way we can help by defining that?

Ms. ASHBY. No, I am sorry. We have not done that. That certainly would be an interesting study and a useful one, I think. But that is not something that is in the scope of the work we did.

Mr. CASTLE. I mean, just as a final comment, I know, in Delaware, it is very interesting for me to go from school to school. And I find that some schools are really focused on what it is that they can do. And their neighbor school, maybe five miles away has not, and they haven't done anywhere near as well.

And the schools that have, have done remarkably well. It is a worthwhile subject matter, I think.

I yield back, Mr. Chairman.

Chairman KILDEE. You asked a very good question. We used to have what is called the National Diffusion Network where you could find out why certain schools were succeeding.

It would be very interesting if we looked at that one-third who were reaching AYP and see what we can learn from them that might be transferrable to the other schools. So, perhaps, that is something we can all explore.

Now, it is my pleasure to call upon the gentlelady from California, Ms. Woolsey.

Ms. WOOLSEY. Thank you, Mr. Chairman. Thank you for the interesting hearing and interesting witnesses.

Education is the future of our country. It is the future of every single child, every student. And certainly, it is the future of sovereign Indian nations.

And, you know, Indian education was here before AYP and No Child Left Behind. So I am wondering—and I feel certain that you have some statistics or at least you have a general sense of the difference between graduation rates between BIE schools and public schools or parochial schools that you know what percentage of BIE-educated kids go to community colleges or 4-year colleges.

And what are their careers when they are through with the school system? And how does it compare to the public education system because it is all about what is best for those students.

So would anybody be willing to talk to me about that? And it is before AYP. It is bigger than that, I think.

So, Ms. Ashby, do you have any statistics on this?

Ms. ASHBY. I don't have any statistics on the top of my head. I do know that, in general, students in BIE-funded schools do poorly. Most things you would like at in terms of graduation rates, attendance rates, test scores. So there is definitely a problem.

But I will say that in doing work for the report we issued in June, as well as work on other reports we have issued involving Indian students and work that is currently ongoing, I am making site visits across the country. I have met well-educated Indian adults in all professions that are highly capable and they are like people anywhere else.

They go to school. Some go to college at the tribal colleges. And going back into the 1990s, I did some work on tribal colleges.

But many go to the same schools that everyone else goes to. They don't all going to tribal schools by any means. And they are accomplished as anybody else.

Ms. WOOLSEY. Well, and isn't the goal to be able to be an adult and raise their children in—so that their children have a future also? How are we doing there?

Ms. ASHBY. But—excuse me. Having said that, I don't want to leave the impression that there aren't issues. There are lots of issues.

And as with every ethnicity, there are people who do well and lots of people who don't do well. And our responsibility of the nation is to help those who need a helping hand. And with regard to Native Americans, Indians, that certainly is the case.

Ms. WOOLSEY. Mr. Hamilton?

Mr. HAMILTON. If I can get your e-mail address or your aide's, I can send you a study we are just finishing up that looks at test scores over the last 3 years between the tribal schools in South Dakota. It will only give you South Dakota. It won't give you the nation.

But what we found is that, in general, in the public schools, public schools that are adjacent or on reservations, do just about the same as—in terms of test scores—as the BIE-funded schools. BIE-operated schools don't do quite as well. It is kind of harder to find their data. But we have been able to pull it up lately.

The Bureau has started to add—to put stuff on their Web site so we can start looking at this stuff finally.

We are seeing a growth in native students going to college. The Tribally-Controlled-College Act has had a huge impact on the number of native people on the reservations going to college. We are not seeing that in the public sector.

If you go to South Dakota, we have, across our entire state, about 12 to 14 percent of our population are natives. And that holds true for the student population. Actually, the student population is slightly larger because we have more native kids than non-native kids in the state.

Well, that is not quite true. We have about 18 percent in percentages.

We only had 125 incoming freshman in the board of regents last year, which is about 1 percent of the population.

The bulk of native students go to tribal colleges out of high school. So there is a—we have been using the South Dakota GEAR UP Grants, monies—we run a program, actually, or a consortium in partnership with our state where we—this year, we have 380 students. And we have, of the kids coming in, after 4 years in that program, we have a 92 percent placement rate into college.

It has been a very successful program, but it is very difficult to maintain the funding for it because we have to continually go and ask funding agents how do we keep this thing going.

And I know we have approached the Bureau to see if we can create a stable funding for this every year because it is a really good program.

Ms. WOOLSEY. Thank you. Mr. Chairman, can Ms. Dudro—
Okay. Thank you.

Ms. DUDRO. Good morning. Certainly, the one thing that I would add on behalf of the Department, I cannot give you statistics off the top of my head as well, but I could certainly supply you with the National Indian Education Studies Parts 1 and 2 that our depart-

ment just funded over the last 2 years which provides a tremendous amount of data.

And similar to what my other panelists have told you, we do know that Indian students are not performing at the same rates as their counterparts. And certainly, it is worse if you attend a BIE school.

The National Assessment of Educational Progress, the NAEP, has not historically sampled Indian education, Indian students at the same level.

And so we have actually supported—our agency has supported an oversampling of Native American students. So in the last 2 years, in 2005 and 2007, we have more data on the performance of Native American students than we have ever had before.

And as I mentioned, it is still not as good as their counterparts, but we have seen some progress in the last 2 years.

Ms. WOOLSEY. Okay. Thank you, Mr. Chairman.

Chairman KILDEE. Thank you very much, Ms. Woolsey.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I think some of the questions I had were answered, at least, for South Dakota.

Ms. Ashby, did you ascertain whether teacher salaries at the Indian schools were better or worse than the surrounding schools in the area?

Ms. ASHBY. We did not.

Mr. SCOTT. Did anybody—Mr. Hamilton, you said the funding was higher, actually, in South Dakota.

Mr. HAMILTON. Bureau-operated schools use the—we believe it is called the Department of Defense pay scale. I am not really sure where that pay scale comes from.

Their teachers are paid significantly higher. Bureau-funded schools, the tribal grant schools run about \$8,000 to \$10,000, give or take, a little bit less than the public schools.

So there are discrepancies in how resources are given out for teacher pay.

Mr. SCOTT. Is that the same in other states, Dr. Gilbert?

Dr. GILBERT. In hearing our testimonies, on the Navajo Reservation, what it concerns is that—the issue of pay for teachers on reservation schools is much lower than the public schools. The other issue having to do not only with pay but also with maintaining our teachers on the reservation schools, I have heard stories where teachers come to our reservations, teach for 1 year and then leave half a year and then move 1 month and 1 day and leave before they even go into a classroom.

So this is a major concern for us because we have a major—

Mr. SCOTT. Why is that?

Dr. GILBERT. I am sorry?

Mr. SCOTT. Why?

Dr. GILBERT. Well, because high turnover rates that we have not only in teachers but also administration as well, when you come to our reservations, for example, the closest Sears Roebuck store can be about 200 miles away. So we don't have the facilities and so forth that Flagstaff or Phoenix or other big cities may have.

Mr. SCOTT. Who pays for school construction and equipment like computers and science labs and whatnot? Is that the federal, state, and local? Who pays? Who foots the bill for that?

Mr. HOLDER. The Office of Facilities, Construction, and Management in the Bureau of Indian Affairs is responsible for school construction and school renovation projects.

Mr. SCOTT. It is on the federal level?

Mr. HOLDER. Right.

Mr. SCOTT. Okay.

Mr. Hamilton talked about drop-outs in South Dakota. What is the graduation rate in other states in the Bureau schools and in the public schools?

One of the challenges we have in No Child Left Behind is that we are sitting up calculating those who take the test and are actually there and ignoring the fact that half of them didn't show up because they have dropped out. And the school cannot possibly be given—should not be given credit for adequate yearly progress if half the students have dropped out.

In South Dakota, apparently, a lot of people—a lot of them are dropping out, not graduating. We need to get a hold of what the drop-out rate is in the—if we don't know, a strong attempt will be made to get a better drop-out provision in No Child Left Behind when it is reauthorized.

Dr. Gilbert?

Dr. GILBERT. Yes. For public and BIE schools, 49—the drop-out rate is 49 percent males and 51 percent females. That is the current percentages that we have in regard to public and BIE school drop-outs.

Mr. SCOTT. Well, obviously, some work needs to be done on that. I think it was Mr. Holder indicated that some of the students feel isolated in the public schools.

What is done for after school programs to make sure people are—their children are engaged in their education?

Mr. HOLDER. Could you repeat the question, please?

Mr. SCOTT. Did you indicate that the students seem, in the public school, seem isolated? Not much engaged in the education process?

Mr. HOLDER. Well, I believe that public schools—not all public schools. I believe that New Mexico has a very strong Native American support program in their schools where they have a high density of Indian students.

However, I believe that some Indian students do choose to go to Bureau-operated schools or tribally-operated Bureau-funded schools to be in more close contact with their language and culture for the program that they provide there at the schools.

Mr. SCOTT. Is anything being done in after school programs, mentoring, or other college-access programs—you mentioned GEAR UP, Upward Bound, to keep people in school and headed toward college rather than dropping out?

Mr. HOLDER. We have two programs that are available in the Bureau. One is Title IV, Part B, which is 21st Century Community Learning Centers. That provides an appropriation for before, after, and extended-year programs to provide academic and behavioral support to students.

In addition to that, we procured departmental funding through the Department of Interior to provide tutoring and mentoring grants to schools to support students, also.

Mr. SCOTT. And how many people have taken advantage of it?

Ms. Dudro, do you want to comment?

Ms. DUDRO. Yes. I was just going to mention that the Department of Education, through Title VII, has also approximately \$9.1 million for special programs for Indian education, including after-school programming and secondary—post-secondary educational training.

Mr. SCOTT. And how many students—what portion of the students have access to those programs? Are you funding enough so that most of them can participate?

Ms. DUDRO. I couldn't give you the percentage off the top of my head.

Mr. SCOTT. All right.

Dr. GILBERT. If I may—

Mr. SCOTT. Mr. Hamilton and then Dr. Gilbert.

Dr. GILBERT. Just very, very quickly—another after-school program that can be very successful, but unfortunately, it always seems to be low on the totem pole in regard to funding is the Johnson-O'Malley programs.

JOM programs have become very successful in providing those opportunities for our students, in particular, after-school programs. And what we have learned and what we have found in these programs is their students become very successful not only academically but also socially as well.

Mr. SCOTT. Mr. Hamilton?

Mr. HAMILTON. We started to see attempts at creating relationships between boys clubs and girls clubs, which are kind of non-education programs formally and the Bureau systems. We need more funding for that.

One of the issues, at least where I live, is a transportation issue. You know, we all know about the price of gas. That is exacerbated when your child has a 50-to 60-mile, 100-mile—in this case, the Navajo, a 200-mile drive—from where the boys club is or the girls club to home. And a lot of those programs don't have transportation programs associated with them.

And so our schools are facing issues saying we would like you to stay after school. We don't have enough resources to pay for you to drive back and forth. And, in my community, with an average household income of about \$6,200 a year, maybe \$6,300 a year, it gets pretty expensive pretty quick to drive your pick-up truck 50 miles to pick up your child and 50 miles back home at 14 miles per gallon.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman KILDEE. Thank you very much, Mr. Scott.

The gentleman from New Jersey, Mr. Payne?

Mr. PAYNE. Thank you very much. Mr. Chairman, thank you for calling for this important hearing and your interest for many, many years in this area.

I wonder, Ms. Ashby, in your testimony, you described some actions that BIE has taken in response to your recommendations. Can you discuss those?

And also what more needs to be done to ensure the tribal groups are aware of their options regarding accountability systems and those that are interested in pursuing them are able to pursue them?

Ms. ASHBY. BIE has begun to address our recommendations. As I said earlier, since last fall, in particular, there have been meetings with the three tribal groups that are interested in seeking alternatives to the AYP definition. Those meetings have been, apparently, somewhat fruitful.

There is a consultant that is working—and this may be the consultant financed by the Department of Education, I am not sure. Maybe it is working with both BIE and Education.

But there is now a consultant working with the tribal groups. There are plans to provide information on how to seek alternatives. There is a conference coming up this fall.

So there are things in the works. But certainly, as we often say at GAO, more needs to be done. For example, MOUs still have not been negotiated with the other 12 states. California still is not allowing access. And there is no alternative being developed for the two tribes that are in, the two tribal groups in California—the two schools, rather, in California that need access to an assessment or need an assessment that is valid and reliable so that it can be accountable under No Child Left Behind.

So that needs to be done quickly because, as I said earlier, the schools are at risk of having at least the conditions upon which they have access changed.

So there have been actions taken, but we hope to see continued action and, ultimately, the MOUs negotiated and structures set up to provide timely responses to any tribal group that is interested in seeking an alternative.

Mr. PAYNE. What agency in the Department of Education is responsible for, perhaps, seeing that your recommendations are being moved forward more rapidly?

Ms. ASHBY. I believe this comes under the Title I office. At least a good deal of the money is Title I money for low-income schools. And I am not sure if there are other agencies as well.

Mr. PAYNE. Well, maybe since we have someone from the Department of Education, maybe we will make you the bad fellow.

What are you all—what is happening in your enforcement or your encouragement of this moving forward?

Ms. DUDRO. Sure. As stated, GAO is correct. The Office of Elementary and Secondary Education oversees Title I as the primary office that is responsible for working with the BIE to ensure that tribes have the opportunity to apply for an alternative AYP definition.

The Department sponsors BIE at a little over \$210 million annually. Primarily \$129 million, approximately, comes out of the Office of Elementary and Secondary Education, and the remaining funds come from our Office of Special Education.

As I mentioned in my testimony, written and oral, we have a memorandum of agreement with the Bureau of Indian Education and set up a process for helping BIE process through requests that they receive from the tribe. And as stated in the GAO report, we try to answer those requests in the most timely manner.

Mr. PAYNE. Thank you.

Mr. Hamilton, you know, you testified that many federal grants for assisting Indian students and teachers go to organizations that have little specific experience with Indian issues. Can you expand on that?

And also, you mentioned can you discuss the difficulties created when the AYP determinations are not made until well after the start of the school year and where that situation has improved recently?

Mr. HAMILTON. Related to contracts grants going to organizations that don't have a history—or maybe they don't have a history with us. I can think of two specific examples.

When—

Mr. PAYNE. Does Halliburton do this kind of stuff?

Mr. HAMILTON. Close. [Laughter.]

We won't go into that. We have been involved with some of those kind of things, too, unfortunately.

But we did have—at one point, when I was working with the restructuring at Wounded Knee District School, we were told by the Bureau that we would have a consultant come in, and they took a \$10 million chunk of money and paid for the University of Utah to provide support in South Dakota.

A Nan Gutshaw who came up one day—a very nice lady—and was gone. We didn't see her again. We did a lot of work, but we didn't see her. And as a matter of fact, that was the only help that that school got directly from the Bureau in their restructuring process. Our organization has helped them the rest of the time.

And recently, the Department of Education has a grant process to train Native American principals. And my wife, who keeps coming up in my life, is actually in part of that master's program.

And even though the tribal colleges put in for this program, one of the grants ended up at Montana State University, which my wife is part of that cohort group. And she is becoming a principal. And she has yet to have a native instructor even though we have a large number of Native Americans with PhDs who could be teaching. She has not been instructed on what it is to finance or run a Bureau-operated or a Bureau-funded school.

It is been very much a public school preparation. And we have had a lot of talks about that where there is—there needs to be some oversight of saying how—when we take large amounts of resource and we are going to help out the tribes, making sure that the tribes have some sort of voice in what goes on.

And those are just two of many examples. I could give you a list.

The other part of your question. I have got to help refresh my mind here. My ADD-ADHD kicked in. So what was the other half of your question there?

Mr. PAYNE. Well, I had asked one about the consultants and, secondly, about when the AYP starts late in the system, the disability that it has to the kid.

Mr. HAMILTON. In law, the Bureau is not obligated to provide school choice for parents. In reality, where I live there are five different elementary schools vying for children and parents move their children from place to place depending on their perception of the health of the school.

We were talking earlier about why kids go to specific schools. And parents do pay attention.

NCLB is designed to inform parents, and we haven't informed parents. This year, Pine Ridge won't find out until probably mid-October what their AYP determination is.

Last year, we didn't find out last fall's data until April. I am not even sure when the letters went out the year before, but I know that we have a consistent problem with informing parents.

And we are expected, in the restructuring and the corrective action planning process, to include parents in how we improve our schools. And I know as the leader in the restructuring process for Wounded Knee District School, we have parent meetings on a quarterly basis. So every 3 months, we sit down with parents, not only our parent committee, but we have general meetings across the whole community asking people to come in and talk about the school.

We have to inform them. And if we don't get data back quickly or in a timely fashion, then we have problems.

Mr. PAYNE. Well, let me thank you all for your testimony. And let me just say that it is deplorable that, as you indicated, 95 percent of Native American boys will not finish high school. I mean, that is totally unacceptable. It is genocide in—educational genocide. And if you are not prepared, you are dead.

And so I would hope, Mr. Chairman, we could follow up and see if there can be some change, a quantum leap, in what is going on.

Once again, let me thank you for calling this very important hearing.

Chairman KILDEE. Thank you very much, Mr. Payne. And thank you for your continued interest and involvement in Indian education.

I am going to thank the witnesses. Hopefully this can be one of those turning points. We brought some very, very important people together here this morning at the same table. And I hope this can be a turning point.

I have been here 32 years, and I think things are somewhat better. But I am frustrated. I am impatient, you know, with our efforts to try to improve Indian education. We need dollars. We need sense and cooperation working with you. You have levels of expertise that are extremely important.

I think all of us up here and you out there have a moral obligation, really, because you have all been given a responsibility in one way or another to help develop Indian education in this country. And we should take that as a moral obligation.

So thank you for your testimony this morning. It has been a very informative meeting. I hope that everyone leaves here today with renewed commitment to working together on this—state, federal, and tribal level—to work as equals. And it is so important as you walk into that room to recognize that you are walking and talking to equals.

They are real sovereignties. It is not the Knights of Columbus, as much as I like the Knights of Columbus. It is not the VFW. It is a sovereign group.

So we want to make sure that we make use of the great benefits of Indian culture and Indian language to overcome the great chal-

lenges that we are facing in Indian education. And you are the people, and we up here, let us work together. Let us really take that as an obligation.

And we are told that we are to be seekers after justice. And I am convinced that all of you are that. That you really want justice. The question is how we best achieve that justice.

Several years ago, I introduced three bills to recognize—to reaffirm the recognition of three tribes in Michigan: Little Traverse, Little River, and the Pokagon Band of Potawatomi. Thank God they had saved great records. They had great genealogical studies. But we did it through the congressional process and passed three laws.

And I asked President Clinton at that time if he would have a bill-signing ceremony in the Oval Office. And he agreed to do so. So the three chiefs from Michigan came down with many of their citizens. And, by the way, the always use the word “citizen” rather than “member” because I think citizen really illustrates sovereignty.

You know, the Knights of Columbus has members, but Indian tribes have citizens. Right?

But we filled the Oval Office. And the president used probably 30 different pens, you know, W and pass the pen around, I, L—for three different bills.

And when he finished—the president is very gregarious. He got up and walked around shaking hands and hugging everybody. And the three chief executives, the three chiefs of these tribes were still standing there with me behind the desk.

So I turned to them. I said, “Why don’t you sit down in the president’s chair?” One of the U.S. Senators said, “Dale, I don’t think we can do that.” I said no. We can’t because we are not chief executives of sovereign nation. These three are.

So they took turns sitting down in the president’s chair which was a great thing, I thought. And they had their pictures there sitting in the Oval Office in the president’s chair.

I did tell one of them on the way out that the only thing I ever had on that chair was my eye. But they actually occupied it. And it—I think illustrations of sovereignty are important, but the real recognition, the day-by-day things that touch people’s life of sovereignty is more important than the symbolism.

And this area of education—I started out my life being a teacher, and I taught school for 10 years. From there, I moved into this arena. But education is so important.

So as you meet with one another, as you meet with—in your respective capacities, recognize that that sovereignty is a real thing and that you are going in there dealing with people, not one with a higher degree of authority than the other, but people who have the obligation to protect the sovereignty of their respective governments.

Thank you very much.

Mr. PAYNE. Mr. Chairman, yield for a second?

Chairman KILDEE. Mr. Payne, yes.

Mr. PAYNE. Let me just mention that about 18 years ago, I guess it was, that Congressman Major Owens, who chaired the, then, Select Committee on Education, had hearings. We went to Santa Fe.

We went to several of the Native American nations and actually met with tribal leaders even in traditional programs. And it was very, very exciting and very interesting. And, perhaps, sometime in the future, next year or the following year, we can revisit some of the areas where we can really get first-hand knowledge of what is happening there.

And so I remember it as if it were just yesterday, but like I said, it was almost 20 years ago. So I just wanted to mention that, Mr. Chairman.

Chairman KILDEE. If I can take just another 2 minutes. About 31 years ago, I started to visit Indian schools out West. Carl Perkins was chairman. And I kept adding amendments to education bills saying that—SEA, State Education Agencies, LEAs, Local Education Agencies, were eligible recipients.

And I always added an amendment saying “and Indian tribes” for all the education bills. And he would accept all these amendments.

So finally, he said that we don’t have an Indian education subcommittee, but could you head up a task force. Well, I used to travel to Indian schools, and I will tell you, that was 31 years ago. I visited some Indian schools that a federal judge would have not allowed prisoners to be in.

I know because we had a jail in Genesee County, my district back home—that the federal judge ordered torn down. We blew it up. We blew it up because it was not fit for human habitation. Actually, some in the public school system would have been happy to get that building.

But it was better than some—much better than some of the Indian schools I was visiting. And I determined then that we really, really had to move fast. And that was 31 years ago, and that has not been fast. We have so much to do. We have such an obligation.

And when we can spend trillions of dollars and billions of dollars on other things, we certainly can spend some money to invest in the education of those people from whom we took much land, took many other things.

As a matter of fact, let me just finish by saying this. I introduced, I mentioned, the Michigan Indian Tuition Waiver Act. When the Michigan Indians go to college, the state pays the tuition. That is still a law in Michigan.

But I introduced that because I went down and read the Treaty of Detroit. And the treaty promised education. And while it was a treaty with the federal government, the beneficiary really turned out to be the state of Michigan getting all that land. And I felt that they should carry out their obligation.

So 31 years is a long time. I hope I have made some progress. But I still feel guilty we have not made enough progress.

But, again, we have to work hard.

Do you have anything—any closing remarks before I—

Again, I want to thank Governor Castle for his continued presence. He is always present at these hearings. And that is extremely important. I appreciate that.

As previously ordered, members will have 7 calendar days to submit additional materials for the hearing record. Any member who

wishes to submit follow-up questions in writing to the witnesses should coordinate with majority staff within the requisite time.

Without objection, this hearing is adjourned. Thank you.

[Whereupon, at 11:54 a.m., the subcommittee was adjourned.]

