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THE NO CHILD LEFT BEHIND ACT'S IMPACT ON INDIAN EDUCATION

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY AND SECONDARY EDUCATION

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

HEARING HELD IN SACATON, AZ, APRIL 28, 2007

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THE NO CHILD LEFT BEHIND ACT'S IMPACT ON INDIAN EDUCATION

Saturday, April 28, 2007
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 9:30 a.m., in Community Council Chambers, Gila River Indian Community Governance Center, 525 West Gu u Ki, Sacaton, Arizona, Hon. Dale E. Kildee [chairman of the subcommittee] presiding.

Present: Representatives Kildee, Grijalva.

Staff Present: Julius Lloyd Horwich, Policy Advisor.

Chairman KILDEE. A quorum being present, the hearing of the Subcommittee will come to order.

I would ask Governor Rhodes to offer an invocation.

Governor RHODES. Let us bow our heads.

Almighty God, Creator, we humble ourselves before you this morning because we are here to ask you again for blessing for our nation and our people.

Lord, we just give you all the praise and glory and we humble ourselves. At this time we ask you to be with this meeting as we discuss and report the needs of our children, the Indian nations, but also in the surrounding towns, Lord. We are asking for your guidance and your blessing on the understanding of one nation to another nation, that there is help that is needed at this time.

And thank you for bringing us together here to discuss these things for the betterment of our people, our communities, the education of the future leaders of these great nations, Lord. I just ask you to keep your hand on each and every one. Bless those that are extended families in their homes and those that will be traveling again, Lord, we ask for traveling mercies on them. We thank you for bringing everyone here safe. Lord, just continue to keep your hand on us and be with us as we discuss our needs, Lord. Be with us that we may understand and discuss those things to the best—for the best of our people.

Lord, we give you all the praise and glory again. And we ask all these things through your Son Jesus, our Lord and Savior. Amen.

Chairman KILDEE. Thank you, Governor.

Pursuant to Committee Rule 12(a) any member may submit an opening statement in writing which will be made part of the permanent record.

In addition, for interested parties who are not testifying formally here today, you may submit written testimony for the record by Monday, May 7th by emailing it to Committee Counsel Lloyd Horwich, to my left here, who can provide you his email address after the hearing. That way it will be made part of the permanent record of this hearing.

I now 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, "The Impact of the No Child Left Behind Act on Indian Education."

It is great to hear from all of you. It is especially great to travel from the Capitol of the sovereign United States to the capital of the sovereign Gila River nation. It's been ten years since I have been here. I have noted the great progress you have made in those ten years, and I commend you for that.

Last year I promised a hearing on No Child Left Behind in Indian Country. And I am delighted to honor that commitment today. I can think of no more appropriate location for this hearing than on this sovereign land of the Gila River Indian Community in the chambers where the tribe's legislative branch meets.

I want to thank Governor Rhodes, who will be our first witness, for making these chambers available and Congressman Grijalva, whose District we are in, for his campaigning for education for Indian children and for all children. It is my privilege to serve with him on this Subcommittee.

My name is Congressman Dale Kildee from Flint, Michigan. And I am the Chairman of the Subcommittee. I am also the founder and Democratic Chairman of the House Native American Caucus, a bipartisan group of 108 members committed to protecting tribal sovereignty, increasing tribal funding and supporting positive legislation in Indian health care, housing and economic development.

Wherever I go, I never leave home without a copy of the Constitution of the United States. This Constitution recognizes the sovereignty of the Indian Nations. It is not granted because it is a retained sovereignty. That has been clarified by the courts since the time of John Marshall. The Constitution, which every Member takes an oath to uphold, says the Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes. It states those three sovereignties. We don't grant sovereignty by this, but we recognize sovereignty. We recognize your sovereignty.

I often say that land and language are the two anchors for protecting tribal sovereignty. Native languages and cultures are among the treasures of this country's heritage, history and diversity. The names of many states, cities, towns, rivers and other geographical names in our country are derived from native words. That is why I was so pleased last year when the Esther Martinez Native American Languages Act, which helps to preserve and protect native languages, became law.

I would say that 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 life and their family's station in life. But in one respect the challenge faced in Indian country 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 with a world class education.

Since 2002 Congress and the President have underfunded the No Child Left Behind Act by $56 billion. And the President's proposed budget for 2008 would underfund it by another 15 billion, for a total of a $71 billion underfunding of No Child Left Behind.

When I review legislation I ask myself whether it would advance or hinder the principles of human dignity. I am sorry to say that the education budgets that recent Congresses and the President passed did not advance those principles. Of course, I am hopeful that with the new Congress we will start to do better. But funding is only a part of reauthorizing No Child Left Behind. That is why we are here today.

We have a distinguished panel of witnesses who will provide us with insight as to how No Child Left Behind has affected Indian education and how we can improve No Child Left Behind to improve Indian education. Because while the need for education may be the same everywhere, the way to educate children is not.

Title VII of No Child Left Behind, the Indian Education Act, recognizes that. Its stated purpose is to support tribes and school districts in their efforts to meet the unique educational and culturally related academic needs of Indian students. I expect that the basic structure of No Child Left Behind, that is the standards, the testing, disaggregation of data, adequate yearly progress and the effects for not meeting that adequate yearly progress will remain. But I am very open to suggestions from our panel and others on how to improve the law within that structure and how to provide tribes and school districts with the flexibility they need to make it work better for all their children, and those children's parents and teachers.

And I thank you for listening to me.

I now yield to my good friend, Mr. Grijalva for his opening remarks.

Mr. GRIJALVA. Thank you, Mr. Chairman.

And I also join with you in thanking Governor Rhodes and the Gila River community for their hospitality and for the accommodation and kindness that they have shown us with this hearing. I appreciate that very much.

And I want to welcome the witnesses to this hearing and to the District of which I have the pleasure of representing in Congress.

You know, Native American education for too long has fallen by the wayside of the national agenda to reauthorize No Child Left Behind. The law is indeed leaving Native American students behind and contributing to a crisis of Indian education. With your help we can begin to reverse this crisis through the reauthorization process. And I look forward to working with you to that end.

In April of 2004 President Bush acknowledged with Executive Order 13336 that Native American students face challenges unlike those of other students. That Executive Order makes clear that the United States Government has a responsibility to ensure that Native American students meet the No Child Left Behind Act standards in a manner consistent with Native American traditions and culture. Unfortunately, the facts demonstrate that we have not kept up our end of the bargain. Native American students are still scoring far behind their peers in overall academic performance and basic skills obtainment. Only 30 percent of the Bureau of Indian Education schools make adequately yearly progress. 83 percent of Native American fourth graders are not proficient in reading, 86 percent are not proficient in math. In fact, these numbers reflect some of the lowest gains of any subgroup. But I believe there is a silver lining to this picture. Thanks in large part to your efforts we are beginning to make strides in improving Native American education for the students.

As our Chairman indicated, the passage of the Esther Martinez Act last year is one of those strides. Many members of Congress are now aware of the need for language immersion instruction and culturally appropriate curriculums. For the first time I believe the importance of significantly changing the law's Native American provisions is now on the table.

So I want to thank you for your testimony today.

In closing, Mr. Chairman, let me just say as this country, this nation of ours and in the Native American community as well, places such a great emphasis and such a great expectation on the education of their children so that future leaders, future progress economic and social can occur to all communities. And this emerging need in this country needs to be addressed. And so through your leadership you have allowed and encouraged this kind of discussion that we are having today. And I appreciate that very much. Because as we shape this reauthorization, it is not about the immediate shortfall of money, which is important and necessary, but it is also that vision that we need to have for what kind of country we are going to have, what kind of leadership we are going to promote and that, indeed, no child get left behind.

With that, Mr. Chairman, thank you. And I look forward to the testimony of our witnesses.

Chairman KILDEE. Thank you, Mr. Grijalva.

Without objection, all members will have seven calendar days to submit additional materials or questions for the hearing record.

I would like now to introduce the very distinguished panel of witnesses here with us this morning. Governor William Rhodes is the Governor of the Gila River Indian Community. He has a long and varied history with the Community. Prior to serving as Governor, he served as Lieutenant Governor, Chief Judge and Fire Chief.

In all his positions, Governor Rhodes has worked to improve the lives of the youth of the Community.

Chairman Wendsler Nosie, Sr. is the Chairman of the San Carlos Apache Tribe. Previously Chairman Nosie served the tribe as a council representative and the Tribal Work Experience Program Director. He has been honored for his accomplishments by the National Council of Churches and Wake Forest University.

I have known Tom Miller for many years. Tom ably serves the Sault Ste. Marie Tribe of Chippewa Indians in my home State of Michigan. He is a member of the tribe's Board of Directors. Tom has also been Superintendent of the Hannahville Indian School for 26 years and a member of the Board of the Association of Community Tribal Schools for 24 years. And I appreciate you traveling from Michigan for this hearing.

Dr. Willard Gilbert is President-Elect 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.

Dr. Roger Bordeaux is the Executive Director of the Association of Community Tribal Schools. He also is Superintendent of the Tiospa Zina Tribal School on the Sisseton Wahpeton Oyate reservation in South Dakota. Dr. Bordeaux has held those positions for 22 and 17 years respectively.

Welcome to all our witnesses.

For those of you who have not testified before this Subcommittee before, I will explain our lighting system.

Everyone including Members is limited to five minutes of presentation or questioning. The green light will be illuminated when you begin to speak. When you see the yellow light it means you have one minute remaining. And when you see the red light, it means that your time has expired and you need to conclude your testimony.

Now if you are in the middle of a paragraph or a thought, I am not going to turn you off. As a matter of fact, there is no ejection seat back there. But if you can try to begin to terminate your remarks.

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

We will now hear from our first witness, Governor Rhodes.

STATEMENT OF WILLIAM R. RHODES, GOVERNOR, GILA RIVER INDIAN COMMUNITY

Governor RHODES. On behalf of Gila River Community, thank you, Chairman Kildee, Congressman Grijalva, and other distinguished Members of the Subcommittee for this opportunity to submit testimony on the impact of the No Child Left Behind Act on Gila River Community.

I am Governor William R. Rhodes of the Gila River Community. The Community is optimistic that the policies underlined in No Child Left Behind Act leave the potential to lead to improved academic achievement for the children across the country. And we support the law's reauthorization. However, we want our children, too, to fully benefit from the Act. And we believe that important changes need to be made to the Act for that to happen.

This testimony focuses on the following four areas that we believe are in need of attention.

First, there is a need for change in the Act to assist tribes with improving teacher recruitment, retention and training.

Second, there is a need for enhanced tribal-state consultation on the requirements and goals of the Act.

Third that the Act allow for expanding upon on the ability of tribes to offer native languages and culture as part of their curriculum without being in competition with the goals of the Act.

Fourth, there is a need for supporting tribes in developing strategies for improved student education, including enhanced support for the role of parents in ensuring student attendance.

With regard to teacher recruitment or retention, the Community, like many other Indian tribes across the country has sought to staff its educational institutions with highly qualified teachers as mandated by the Act. This has created problems that are not easily resolved. Traditionally, reservation schools have always had difficulty recruiting teachers of any kind, let alone ones that satisfy the definition of highly qualified. Potential teachers are not attracted to reservation schools because these schools are often isolated and rural, adding challenges of travel time and transportation cost for teachers.

As a specific recommendation, the Title II teacher quality program could be tailored to help Indian communities improve their ability to attract highly qualified teachers and to retain the teachers we currently have. The Act should require States to consider the needs of these schools when distributing the Title II grant funds. For instance grants under Title II can support Indian education partnerships that improve preservice education for those becoming teachers of Indian students and can support activities that address the professional development needs of teachers already in our schools.

Teachers need consistent training, some of which the Community Education Department has taken the initiative to provide. In 2004, the Tribe adopted as an annual event a reservation-wide teacher-in-service. At this event, Community teachers share best practices in working with Community students; Community leaders provide cultural insights to teachers; and professionals provide training in categories such as math teaching skills, classroom management, and teaching impoverished populations. Additionally, annual truancy prevention training is provided, as well as in-services on choosing and adopting common core textbooks across the Community.

On our second point we also believe that states should be explicitly required under law to consult with tribes on the implementation of standards of the Act. And then tribes need to have a greater voice and role in the decisions made at the state level under the Act and required consultation between state education officials and Indian education officials would assist in advancing the goals of the Act in Indian country.

Greater coordination with the state would also help the Community's government and education department who are trying to implement state standards in a uniform way across all of the Community's schools and to move toward the goal of school unification.

Our education department is trying to unify the schools on the reservation by adopting universal policies regarding academic school safety, health and nutrition, student tracking and emergency response. Increased communication between the State and the Community would help all of our schools better understand that funding agencies support what we are trying to achieve and

expect compliance with the policies and standards of the Act. And that student achievement is measured against the benchmarks in the Act.

Next, native language and culture is an important part of our school's curriculum. The Community feels very strongly that these aspects of curriculum are vitally important in maintaining tribal culture in future generations. Strengthening the Act to provide a well rounded education for all children that builds upon our unique culture and language will further federal policy on several levels and ensure long-term success.

Title III and Title VII currently allow for Native language instruction. However, these provisions should be strengthened so that schools that are successfully achieving their educational goals and meeting the academic standards receive the support they need to continue these programs.

The Community's education department recently hired a Culture Coordinator who will work closely with the schools with strong cultural programs and other interested Community members to develop a standard cultural curriculum, and share that curriculum with our schools that do not yet have such strong programs. A few of the Community schools have strong cultural programs. Students at one of the schools are fluent in O'odham language and consistently study and practice the Community's culture. We desire that all of the Community schools become as proficient in teaching the Gila River Community culture and language, and for all students to demonstrate knowledge of the Community's culture and language. Given the proven link between teaching Native language and student achievement, we believe these programs long term will improve student achievement and strengthen our students' lifelong connection to learning.

Finally, parenting directly effects student attendance and performance. The Community faces an alarming student success and retention situation. For instance, at Community schools, the statistics reveal that:

1. High school graduation rate of the Community students is approximately at 58 percent; and

2. Our high school students have a truancy rate of roughly 56 percent.

Community leaders have begun the process of addressing and remedying these situations. Last year, we conducted a Community Outreach Conference that aggressively and effectively promoted the value of education. It is too soon to tell the direct impact on our conference on the students' attendance and performance. We believe the Act should be strengthened by allowing increased opportunities for parents, families and native communities to become more involved in their children's schools and in the development of their educational programs.

Thank you, distinguished Members of the Subcommittee. And we stand ready to answer any questions you may have or to supply any additional information.

Thank you.

[The statement of Governor Rhodes follows:]

Prepared Statement of William R. Rhodes, Governor of Gila River Indian Community

On behalf of Gila River Indian Community, thank you, Chairman Kildee, Congressman Grijalva, and other distinguished Members of the Subcommittee for this opportunity to submit testimony to the Subcommittee on the impact of the No Child Left Behind Act (NCLB) on Gila River Indian Community ("the Community"). I am Governor William Rhodes of the Gila River Indian Community.

Overall, the Community is optimistic that the policies underlying NCLB can lead to improved academic achievement of children across the country, and supports the law's reauthorization. We want our children, too, to benefit from NCLB and to improve their academic achievement. Based on our experience with the implementation of NCLB, however, the Community respectfully requests that the Subcommittee give careful consideration to ensuring that the reauthorization of NCLB provides a better fit for Indian children and Indian communities. As described further in this testimony, we want Indian tribes and Indian communities to be more involved in NCLB programs, and offer suggestions for ways to improve NCLB for Indian students for consideration by the Subcommittee.

As stated, we support the overarching goals of NCLB. We see, however, many areas for improvement in the law. For instance, we view the Tribally Controlled Schools Act and the Indian Self-Determination and Education Assistance Act, which allow Indian tribes to determine for themselves their educational needs and build their programs around those needs, as models of what is working in Indian Country. As Congress has recognized, Indian education is not a cookie-cutter, one-size-fits-all proposition. Instead, these two Acts give each Tribe the right to determine their own unique needs, and our schools are better off for having been permitted to exercise the self-determination and control that Congress provided in these statutes. We seek this same type of community involvement and authority in the reauthorized NCLB.

The Subcommittee should understand that the Community does not view NCLB as being in tension with this local control principle. Rather, we ask the Subcommittee to recognize that for the NCLB to be fully successful in Indian country, the law must take into account the unique challenges it presents for Indian students and tribal educators.

This testimony focuses on the following four areas that we believe are in need of attention in the discussion of the reauthorization of the NCLB and what it means for Indian Country, based on the experience we have had at the Community: (1) the need for improved teacher recruitment and retention, (2) the need for enhanced tribal—state consultation, (3) the importance of allowing for native languages and culture as part of the curriculum, and (4) the need for strategies for improved student retention, including the role of parents in ensuring student attendance.

I. Teacher recruitment and retention.

The Community, like many other Indian tribes across the country, has sought to staff its educational institutions with "highly qualified teachers" as mandated by NCLB. This has created problems that are not easily resolved. Traditionally, reservation schools have always had difficulty recruiting teachers of any kind, let alone ones that satisfy the definition of highly qualified. While the pay scale at the schools in our Community is competitive with many other area schools, this is not the solution to the problem. Potential teachers are not attracted to reservation schools because these schools are often isolated and rural, adding challenges of travel time and transportation cost for teachers.

Moreover, once teachers are recruited, the problem does not end there. The Community has experienced a significant problem with teacher retention. Quite frankly, some teachers, especially new teachers, tend to be hired because their lack of experience keeps them from finding work in more desirable locations. It isn't unusual for these teachers to gain some experience at our schools and then leave the school. As a result, the Community is in a constant state of searching for eligible teachers, knowing that, once recruited, they will almost certainly leave within a few short years.

As an illustrative example, Vah-Ki Middle School on reservation has great difficulty finding highly qualified teachers and must use "emergency certified" teachers. Emergency certification is only good for one year, and if that teacher proves effective in working with the students, but has not acquired 6 required semester hours of coursework, they cannot be recertified. The school now only has 6 highly qualified teachers, and 8 who are emergency certified or have a substitute teacher license. During the 2005-06 school year, this school had to delay opening day by a

week because there were not enough teachers hired. The opening of school was chaotic, with most classes being taught by substitutes.

We think the Title II teacher quality programs can be tailored to help Indian communities improve their ability to attract highly qualified teachers and to retain the teachers we currently have. Congress should place a priority on supporting activities that address the needs of teachers and schools serving Indian students. NCLB should require States to consider the needs of these schools when distributing Title II grant funds. For instance, grants under Title II can support higher education partnerships that improve preservice education for those becoming teachers of Indian students and can support activities that address the professional development needs of teachers already in our schools. Providing these services helps us address the professional needs of our teachers so that they experience success in our classrooms and feel commitment to our students and communities.

Teachers need consistent training, some of which the Community's Education Department provides. In 2004, the Tribe adopted as an annual event a reservation-wide teacher in-service. At this event, Community teachers share best practices in working with Community students; Community leaders provide cultural insights to teachers; and professionals provide training in categories such as math teaching skills, classroom management, and teaching impoverished populations. Additionally, annual truancy prevention training is provided, as well as in-services on choosing and adopting common core textbooks across the Community.

II. States should be explicitly required under law to consult with tribes on NCLB.

We want NCLB to work for our students and we can provide useful suggestions on how to successfully implement the law within the unique nature of our Indian communities. Indian tribes need to have a greater voice and role in the decisions made at the State level under NCLB. State education officials should be required to consult with Indian educational representatives in the development of state accountability systems. They should also consider the needs of Indian parents when developing parent involvement programs.

The Community is trying to implement state standards and, toward that end, would benefit from increased coordination with the State and among the Community's schools. The Community continues to work closely with our school administrators and teachers to move toward the goal of "school unification." Such unification includes adopting universal policies regarding academics, school safety, health and nutrition, student tracking, and emergency response. Increased communication between the state and the Community would help all of our schools better understand that funding agencies fully support what we are trying to achieve and expect compliance with the policies and standards of NCLB. The Community does not demand anything from its schools that they should not be doing anyway, and simply wants to ensure that continuity and structure for our students. Greater coordination between the State, the tribe and our schools would go a long way toward advancing this effort.

There should be stronger emphasis in encouraging states, tribal governments and communities to work together in developing appropriate educational standards and related assessments. Specifically, NCLB should be amended to require that states involve tribes located within their boundaries in the development of state assessments. To facilitate enhanced cooperation, NCLB can be strengthened 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.

III. Native language and culture as part of the curriculum.

The Community's schools incorporate native language and culture into the curriculum. The Community feels very strongly that these aspects of the curriculum are vitally important to maintaining tribal culture for future generations. While current NCLB requirements often make it difficult to meet our native language and culture education goals, the Community wants to continue these types of programs and at the same time we work to increase the academic achievement of our students.

Title VII of NCLB recognizes that native children have unique educational needs due to their cultures and backgrounds. Native children should be given every opportunity to obtain a comprehensive education that allows them to succeed and contribute in building healthy communities. Native learning is strengthened through instruction that integrates basic skills with traditional cultural practices and embraces the knowledge of the environment, native fine arts and crafts, leadership, character and citizenship. Strengthening the NCLB to provide a well-rounded edu-

cation for all children that builds upon our unique culture and language will further federal policy on several levels and ensure long-term success.

Title III and Title VII currently allow for Native language instruction. However, these provisions should be strengthened so that schools that are successfully achieving their educational goals and meeting the academic standards receive the support they need to continue these programs. Research shows that native children perform better academically when they are taught in a manner that is consistent with their traditions, languages and cultures. See, for example, Pease-Pretty On Top, Janine, Native Language Immersion: Innovative Education for Children and Families. Denver: American Indian College Fund, 2000.

The GRIC Education Department has recently hired a Culture Coordinator who will work closely with the schools with strong culture programs and other interested Community members to develop a standard culture curriculum, and share that curriculum with our schools that do not yet have such strong programs. For example, a few of the Community schools have strong culture programs-students at one of these schools are fluent in O'odham language and consistently study and practice the Community's culture. It is desired that all of the Community schools become as proficient in teaching the Gila River Indian Community culture and language, and for all students to demonstrate knowledge of the Community's culture and language. One challenge is that the Community is comprised of two tribes: Pima and Maricopa. The Culture Coordinator will ensure that both cultures and languages are incorporated in the culture curriculum. Given the proven link between teaching Native languages and student achievement, we believe these programs, long term, will improve student achievement and strengthen our student's lifelong connection to learning.

IV. Parenting initiatives and impacts on student attendance and performance.

The Community faces an alarming student success and retention situation. For instance, at Community schools, the statistics reveal that:

1. High school graduation rate of Community students is approximately at 58%; and
2. High school students have a truancy rate at roughly 56%.

The Community leaders have begun the process of addressing and remedying these issues. Last year, we conducted a Community Outreach Conference that aggressively and effectively promoted the value of education. Sessions were selected and designed to provide information to Community members as family units, and included in those sessions were workshops from the GRIC school administrators to educate parents on how their efforts are necessary and complement the effort of educators in keeping our students in school and on track toward high school graduation. It is too soon to tell the direct impact of our conference on student attendance and performance. However, given the truancy and drop-out rates at the Community, this event has been endorsed by tribal leaders as an annual occurrence in order to address this significant problem.

While there are a number of things the Community's government can do to address this problem, such as putting pressure on schools to take stronger steps to ensure attendance and strengthening enforcement of the Community Children's Courts' revised truancy ordinance, we believe NCLB can be strengthened by allowing increased opportunities for parents, families, and native communities to become more involved in their children's schools and in the development of their educational programs. Schools are successful when parents, families, tribes and the local communities are actively involved and engaged in the school's programs and activities.

Thank you, distinguished Members of the Subcommittee, and we stand ready to answer any questions you may have or to supply any additional information.

Chairman KILDEE. Thank you very much, Governor.

Chairman Nosie?

STATEMENT OF WENDSLER NOSIE, SR., CHAIRMAN OF SAN CARLOS APACHE TRIBE

Chairman NOSIE. Habi'd godiliz', good morning, Chairman Kildee and Congressman Grijalva. I'm Wendsler Nosie, Chairman of the San Carlos Apache Tribe. I'm joined with Councilman Jonathan Kitcheyan and Ulman Clark, and Catherine Steele, the Curriculum/NCLB Director with the San Carlos Unified School District.

Thank you for holding this important hearing. We appreciate the dedication to the serious issue you show by the fact that you are here to seek our views. Our goal is to ensure that our children's unique education needs are met and that they have the opportunities to become successful and contributing members of society.

Our reservation is about 128 million acres and is located in a rural and isolated area. We have low infrastructure and many needs. We have over 13,000 tribal members, 30 percent of them under the age of 18. While we have worked hard to develop our economy, we have 76 percent unemployment rate and poverty level of 77 percent.

Our children struggle under staggering poverty and this poverty leaves no part of life untouched.

Mr. Chairman, as a school teacher you know that our children cannot do well in school if they have poor housing, nutrition and medical care. The situation only seems to get worse. Unfortunately, the Federal Government continuously fails to fund or underfunds key programs in Title VII as well as basic programs for the poor, such as housing improvement programs, welfare assistance and Johnson O'Malley. I know that these programs are not part of the NCLB, but they are all interrelated because all of these programs impact our children. Many students in poverty do not have the experience needed to enable them to successfully learn when they reach kindergarten or the early grades. This situation results in poor test scores. This problem creates a domino effect that widens the achievement gap even more when these students reach upper grades.

There are two public school districts that the children from the reservation attend. The Fort Thomas Unified School District and the San Carlos Unified School District.

The Fort Thomas Unified School District is comprised of two schools, the Fort Thomas Elementary and the Fort Thomas High School. The elementary school had 249 students registered this year and the high school had 293 students. Based on this year's Arizona School Report Card the elementary school failed to meet the AYP for the past three academic years. However, it did last year and currently is in Title 1 School Improvement Year 2 status.

The high school did not meet AYP in the past academic year despite meeting it for the two years prior. Subsequently, it is in Title 1 warning year status.

The San Carlos Unified School District is comprised of four schools. Rice Primary School, the San Carlos Intermediate and the San Carlos Junior High and the San Carlos High School.

Rice Primary School has 334 students, the intermediate school has 285 students, the junior high has 314 students and the high school has 324 students. Based on this year's Arizona School Report Card three of these schools did not meet AYP. The high school has not met AYP in six years and is currently in Title I restructuring implementation phase. The intermediate school is in Title I corrective action status. Rice Primary did not meet AYP for the past two years and is in Title 1 warning year status. The junior high met AYP for '05 and '06, but did not in '06 and '07 and is in Title 1 school improvement year 4 restructuring.

In other words, only one school out of the six on the reservation, Fort Thomas Elementary, met the AYP for '06 and '07. Half of the schools failed to make AYP for two consecutive years. One of the schools, San Carlos High School, has never made AYP since NCLB.

We face a dire situation over our children's educational needs. Testing scores demonstrate the incredible disparity between our children and other children within the State. Given the severe poverty levels on the reservations it is difficult if not impossible to meet all the requirements imposed on our schools by the NCLB. We urge Congress to provide full funding for the mandates imposed by NCLB because of the isolation on the reservation and highly qualified teachers are difficult to recruit and retain. NCLB needs to be amended to allow school districts to train emerging endorsed teachers beyond one school year. The school district reported that non-Native teachers lack proper training to effectively break the barriers of cultural differences. We urge the Congress to provide full funding for professional development and service training and any career ladder programs. Our teachers have not been given the proper resources to help our children learn. This needs to change if our schools are to meet the NCLB goals for 2014.

We have a lot of work to do to achieve these goals in NCLB, but we cannot do it without your support. Our children have been left behind for a long time, and hope that we can work together to ensure that the reauthorization brings positive change.

Thank you.

[Statement of Chairman Nosie follows:]

Prepared Statement of Wendsler Nosie, Sr., Chairman of the San Carlos Apache Tribe

Good morning, Chairman Dale Kildee and Congressman Raul Grijalva. I am Wendsler Nosie, Sr., Chairman of the San Carlos Apache Tribe based in San Carlos, Arizona. I am honored to be here to testify today before this Committee to provide the views of the San Carlos Apache Tribe on the impacts of the No Child Left Behind Act (NCLB) on our students on the San Carlos Apache Indian Reservation and our tribal members who are students in the surrounding communities. I am joined by Tribal Council Member Jonathan Kitcheyan, who is also on the Tribal Council's Education Committee, and Catherine Steele, Curriculum/NCLB Director with the San Carlos Unified School District.

Before I begin, I would like to take this moment to thank you for holding this important hearing on the educational needs of Indian students in Indian Country. We appreciate the dedication to this serious issue you show by the fact that you are here—far away from Washington, D.C.—to seek our views, to see our lands, and to meet our people. In particular, I want to thank Chairman Kildee for his decades of tireless and passionate advocacy on behalf of Indian Country. His efforts on behalf of Indian tribes are well known and we appreciate the priority he has made in addressing our students' unique educational needs. Also, we are very thankful that we have Representative Grijalva representing our great state of Arizona and that he works on these important issues on our behalf.

Our goal is to ensure that our children's unique educational needs are met and that they have opportunities to become successful and contributing members of society. We believe that this can be accomplished if the federal government fulfills its trust responsibility to Indian people. Title VII of NCLB states:

It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with local education agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.[1]

This is a powerful statement, and we urge the Committee, as it moves forward with the reauthorization of NCLB, to put teeth behind these words. It seems that, even though this statement of policy is contained in NCLB, folks in Washington and in the state treat it as if it is compartmentalized to Title VII and not applicable to the other titles in NCLB. Instead, we believe that this statement of policy should guide the educational programs for Indian children in all the titles of NCLB. In fact, research shows that Native children who participate in Native language and culture programs perform better academically than their peers who do not participate in such programs.

As you know, our Indian children struggle due to the staggering poverty and unemployment on the Reservation. This poverty leaves no part of life untouched. Mr. Kildee, as a school teacher, you know that our children cannot do well in school if they have no home, insufficient food, few supplies, inadequate transportation, poor medical care, unsafe communities, or broken families. The situation only seems to get worse. Unfortunately, the Administration and the Congress have continually failed to fund or underfund key programs in Title VII for Indian people. Further, the Administration continues to propose eliminations or cuts in basic programs at the BIA for the poorest of the poor, such as the Housing Improvement Program, the Tribal Work Experience Program, Burial Assistance, Welfare Assistance, and Johnson O' Malley. Correspondingly, the Congress either restores only the bare minimum or implements the Administration's recommendations. I know that these programs are not part of NCLB but they are all inter-related because all these programs impact the ability of our children to perform in school.

As you can see, at San Carlos, the federal government has fallen short in its obligations. We are hopeful though that with your help that we can improve the educational opportunities for our children through the reauthorization of NCLB and through increased funding for NCLB and for other programs critical to the well-being of Indian people.

The San Carlos Apache Indian Reservation

To better understand the educational needs of our students and other needs of our people that impact our educational needs, it is helpful to know about the Reservation itself as well as the history of the Apache people. The aboriginal territory of the Apache Nation included the western part of Texas, the current states of Arizona and New Mexico, and the country of Mexico. The Apache Treaty of Santa Fe in 1852 was executed by Mangus Colorado and others on behalf of the Apaches. Pursuant to the Treaty, lands within the aboriginal territories of the Apache Nation were to be set aside for a permanent Tribal homeland and the United States promised to provide for the "humane" needs of the Apache people. In exchange, the Apache Nation agreed to the end of hostilities between the two nations.

The San Carlos Apache Indian Reservation was established by an executive order of President Grant on November 9, 1871. Through the concentration policies of the United States, various bands of Apaches were forcibly removed to the San Carlos Apache Indian Reservation. These bands included the Coyoteros, Mimbrenos, Mongollon, Aravaipa, Yavapai, San Carlos, Chiricahua, Warm Springs, and Tonto Apaches. Famous Apache leaders who were located at San Carlos included Geronimo, Cochise, Loco, Eskiminzin, Nachie, Chatto, and others. Throughout history, the United States in 1873, 1874, 1876, 1877, 1893, and 1902 diminished the size of the Reservation several times by executive order due to the discovery of silver, copper, coal, water, and other minerals and natural resources.

The San Carlos Apache Reservation has a land base of 1.8 million acres, but only a small percentage of the Reservation can be used for residential building purposes. The remainder of the Reservation is comprised of some of the most rugged terrain in the Southwest, including deep stands of timber, jagged outcroppings, and rocky canyons. As a result, the Reservation lacks infrastructure in all but two general housing areas. On the western edge of the Reservation, the Tribe has 3 districts: 7-Mile Wash, Gilson Wash, and Peridot. Located on the eastern edge of the Reservation is the District of Bylas.

The Reservation now, at its current size, spans three Arizona counties: Gila, Graham, and Pinal. The total population is 13,299 members, which is based upon figures compiled by the Tribe's Enrollment Office. 30% of the population is under the age of 18 years; 60% are between the ages of 18-54; 4% are between the ages of 55-61; and 6% are 62 years of age or over.

Although some tribal members have moved away due to economic depression on the Reservation and other reasons, a high majority of our members, 84%, live on the Reservation. While we have worked hard to develop our Reservation economy, 76% of our Reservation population is unemployed compared to the national unem-

ployment rate of 4.4% and the state of Arizona rate of 3.9%. We suffer from a poverty level of 77%.

Public Schools that San Carlos Apache Students Attend

There are two public school districts that children from the San Carlos Apache Reservation attend, the Ft. Thomas Unified School District and the San Carlos Unified School District. Both school districts' governing board members consist of many members of the San Carlos Apache Tribe, including the Vice Chair for the Tribe and a Tribal Council Member. The governing board president for the San Carlos Unified School District has been actively engaged in bringing the tribal community to the schools through his role as the health educator.

The Arizona Department of Education supplies yearly academic report cards for all school districts within the state. The most current report card is for school year 2006-2007. AYP measurements are determined using four objectives: number of students tested, meeting test objectives, graduation rate, and attendance rate. During the first 100 days of the school year for 2006-07, the attendance rate for students in both school districts was over 90%. However, as you will see below, the academic achievement rates for these schools, as measured under the current law, do not positively correlate to the high attendance rates. Most of our schools are not making AYP because they have failed to meet at least one of the four objectives. For example, in the 2006-07 academic year, San Carlos High School did not make AYP because of the low percentage of students tested. In FY 2006, San Carlos Intermediate and San Carlos Junior High School did not make AYP because of the low percentage of students tested. Also, San Carlos High School failed to make AYP in FY 2006 because it did not meet the graduation requirements due to the drop out rate at the school. Another large determinant on the ability of our students to academically perform in school is the high poverty level on the Reservation. For example, almost all of our students take buses to school and live far distances from their schools.

The Ft. Thomas Unified School District

The Fort Thomas Unified School District is comprised of two schools:

(1) Fort Thomas Elementary School (FTES); and

(2) Fort Thomas High School (FTHS).

The elementary school had 249 students registered in the 2006-07 school year and the high school had 293 students. 95% of the students enrolled in the Ft. Thomas Unified School District are members of the San Carlos Apache Tribe. The Ft. Thomas Unified School District is located on the east side of the Reservation and serves the Bylas community.

Based upon the Arizona School Report Card Academic Year 2006-07, the FTES failed to meet AYP for the past three academic years. However, it did last year and currently is in Title 1 School Improvement Year 2 status (SI Year 2).[2] The FTHS did not meet AYP the past academic year despite meeting it for the two years prior and subsequently is in Title I warning year status.

The Ft. Thomas Unified School District believes that the AYP definition needs to be more user friendly because they are making progress in our schools but the inflexible AYP labels do not reflect the progress. Rather, the definition of AYP should include additional measurements of success, especially measurements that gauge the progression of individual student growth over time not only in math, reading, and writing but also in other areas.

Based upon the Arizona School Report Card Academic Year 2006-07, Ft. Thomas Unified School District students received AIMS testing in mathematics, reading, and writing. In the area of mathematics testing, of the 33 third grade FTES students tested, only 21% met the standard compared to statewide results showing that 53% met the standard and 18% exceeded. Of the 42 fifth grade FTES students tested in math, only 14% met the standard compared to statewide results showing that 49% met the standard and 19% exceeded the standard. Math testing for FTHS eighth graders showed, of the 52 students tested, 10% met the standard compared to statewide results showing 47% met the standard and 12% exceeded the standard. Math testing for FTHS tenth graders showed that, of the 33 students tested, 39% met the standard compared to statewide results showing that 51% met the standard and 14% exceeded the standard.[3]

In the area of reading testing, of the 33 third grade FTES students tested, only 15% met the standard compared to statewide results showing that 56% met the standard and 11% exceeded the standard. Of the 42 fifth grade FTES students tested in reading, only 26% met the reading standard compared to statewide results showing that 58% met the standard and 9% exceeded the standard. Of the 52 FTHS eighth graders tested in reading, 12% met the standard compared to the statewide results showing that 58% met the standard and 5% exceeded the standard. For 34

FTHS tenth graders tested in reading, 44% met the standard compared to statewide results showing 64% met the standard and 8% exceeded.

The San Carlos Unified School District

The San Carlos Unified District is comprised of four schools:
(1) Rice Primary School (RPS) (grades K-2);
(2) San Carlos Intermediate (SCI) (grades 3-5);
(3) San Carlos Junior High School (SCJHS) (grades 6-8) and
(4) San Carlos High School (SCH) (grades 9-12).

Rice Primary School has 334 students (no AIMS testing takes place before second grade). SCI has 285 students. SCJHS has 314 students. SCH has 324 students. 99% of the 1,257 district students are members of the San Carlos Apache Tribe or members of other recognized tribes.

Based upon the Arizona School Report Card Academic Year 2006-07, of the four schools within the district, three did not meet AYP for academic year 2006-07. SCH has not met AYP in six years and is currently in Title I Restructuring (Implementation Phase);[4] SCI is in Title I Corrective Action status;[5] and RPS did not meet AYP for the past two years and is in Title I warning year status. SCJHS met AYP for academic year 2005-06 but did not meet AYP in 2006-07 and is in Title I School Improvement Year 4 or Restructuring (Planning Phase).[6]

Also, based upon the Arizona School Report Card for academic year 2006-07, San Carlos Unified School District students received AIMS testing in mathematics, reading, and writing. Mathematics testing for the three schools that tested this area included the following results: for SCI, of the 85 third grade students tested, 19% met the standard compared to statewide results showing 53% meeting the standard and 18% exceeding. For SCJHS, of the 92 eighth grade students tested, 18% met the standard compared to statewide results showing 47% meeting the standard and 12% exceeding. For SCH, of the 79 tenth grade students tested, 9% met the standard compared to statewide results showing 51% meeting the standard and 14% exceeding.[7]

Reading testing results for SCI show, of the 73 third graders tested, 23% met the standard compared to statewide results showing 56% meeting the standard and 11% exceeding. For SCJHS, of the 91 eighth grade students tested, 23% met the standard compared to statewide results showing 58% meeting the standard and 5% exceeding. For SCH, of the 86 tenth graders tested, 27% met the standard compared to statewide results showing 64% meeting the standard and 8% exceeding.

The chart below depicts the rating or status of the public schools for this school year based on the results of Arizona's Instrument to Measure Standards Dual Purpose Assessment (AIMS DPA) in grades 3-8, High School AIMS, and the TerraNova standardized testing in grades 2 and 9.

SAN CARLOS UNIFIED SCHOOL DISTRICT 2006-2007 AZLEARNS AND NCLB STATUS

School	Arizona Learns	NCLB
Rice Primary	Failing	Warning
Intermediate School	Underperforming	Corrective Action
SC Junior High School	Underperforming	Restructuring-Planning
SC High School	Performing	Restructuring-Implement

The following is data reported under NCLB for the San Carlos Unified School District. The school district is struggling with the Corrective Action label it has received for this school year 2006-2007.

SAN CARLOS UNIFIED SCHOOL DISTRICT 2006-2007 NCLB DATA

District AYP Determination

Met Percent Tested?	No
Met Test Objectives Reading or Math?	No
Met 90% Attendance Rate?	Yes
Met Graduation Rate?	No
Made AYP?	No

Below is additional information provided by the San Carlos Unified School District:

Grade	My District	My District	Arizona Schools	
	% Proficient in Math	% Proficient in Reading	% Proficient in Math	% Proficient in Reading
3	19	23	53	11
4	45	19	45	19
5	25	32	49	58
6	12	14	46	60
7	24	31	52	58
8	18	23	47	58
10	9	27	51	64

It is overwhelmingly apparent that the children of San Carlos face a dire situation with regard to their educational needs. Testing scores demonstrate the incredible disparity between Apache children on the Reservation and other children within the state. Attendance records show that these children are in school and exposed to educational instruction and learning activities, so there is the possibility to improve given the right tools.

To summarize, only 1 school out of 6 on the Reservation—Ft. Thomas Elementary School—made AYP for the academic year 2006-07. Half the schools on the Reservation have failed to make AYP for 2 consecutive years. One of the schools—San Carlos High School—has never made AYP since the enactment of NCLB. Further, when comparing test scores of Apache students to other students state-wide, Apache students are scoring at far lower proficiency levels.

Impact of Poverty on the Educational Needs of Students at San Carlos

As mentioned above, the poverty level on the San Carlos Apache Reservation is 77% and the communities on the Reservation are rural and isolated. This creates many basic needs for our students because of the lack of housing, overcrowded housing, poor nutrition, lack of school supplies, lack of opportunities, and public safety risks due to violent crime, domestic abuse, drug use, and gang violence.

For example, in 2004, 64 babies out of 256 were born to San Carlos Apache tribal members addicted to meth, and 24-25% of pregnant women at San Carlos tested positive for meth. In 2005, the number of babies born addicted to meth was even higher. About 50% of all newborns at San Carlos test positive for alcohol or drugs. Babies born to mothers on meth can be born meth-addicted themselves and suffer birth defects, low birth weight, tremors, excessive crying, attention deficit disorder, and behavior disorders. Also, they often have intestinal, cognitive, and heart problems.

Further, in 2004, there were 101 suicide attempts on the Reservation. The age range was 15 to 54 years old with 50 individuals being females and 51 being males. Of the suicide attempts in 2004, 25 of the individuals were 18 years of age or under, 13 were between the ages of 19 and 21, and 17 were between the ages of 22 and 25. Of the 101 suicide attempts, two resulted in death.

Naturally, these types of conditions psychologically, mentally, and physically impact our children, including their ability to perform academically. These situations also affect their outlook on life, their motivation, and ability to have hope for the future. Many students living in poverty do not have the experiences needed to enable them to be successful in learning when they reach kindergarten and the early grades. This situation results in poor test scores. This problem creates a domino effect that widens the achievement gap even more when these students reach the upper grades (4-12).

As an economically disadvantaged community, we rely heavily on Title I dollars. For example, the San Carlos Unified School District was awarded a total amount of $1,215,150.00 with a carryover of $104,447.71 for the school year 2006-2007. Each year, its Title I grant has been reduced by nearly 10% from the prior year's funding. The following is a chart that shows the number of students at each school in the San Carlos Unified School District, the poverty rating for each school based on the results of the Free and Reduced School Lunch program applications, and the amount that each school received.

SAN CARLOS UNIFIED SCHOOL DISTRICT 2006–2007 TITLE I PROGRAM FUNDS

School	No. of Students	Poverty Rate	Funded Amount
Intermediate School	285	95.94%	$132,532.00
Junior High School	314	93.73%	$137,120.00

SAN CARLOS UNIFIED SCHOOL DISTRICT 2006–2007 TITLE I PROGRAM FUNDS—Continued

School	No. of Students	Poverty Rate	Funded Amount
High School	324	90.14%	$167,691.00
Rice Primary	334	85.29%	$162,594.00
*St. Charles	128	93.75%	$61,163.00
*Peridot Lutheran[8]	91	90.11%	$41,795.00

The schools on the Reservation do receive funding for educational purposes in addition to Title I. For example, the San Carlos Unified School District receives the following funds for our students and their unique educational needs:

Title VII	$229,392.00
JOM	$80,000.00
Title VIII (Impact Aid for 2005-2006)	$7,001,315.00
Title III	$0.00
Title II	$151,307.00

The Ft. Thomas Unified School District received a total of $3,715,939.47 for FY 2005-06 and the funding consisted of the following:

Title I LEA	$901,525.00
Title IIA Improving Teacher Quality	$121,988.15
Title IV Safe and Drug Free Basic	$29,208.32
Title VII	$79,642.00
Title VIII Impact Aid	$3,715,939.47

Given the severe poverty levels on our Reservation, it is difficult, if not impossible, to meet the myriad of requirements imposed upon our schools by NCLB. We urge the Congress to provide full funding for the mandates imposed under NCLB.

Also, IDEA and other special education laws need to be fully funded. For numerous reasons, Indian Country schools, including the schools on our Reservation, have a much larger percentage of special education students. Additionally, these students should not be counted in with regular education testing data, and those requiring accommodations on testing should be allowed them without penalization.

Recruitment, Retention and Training of Teachers

San Carlos is located approximately 110 miles from Phoenix over the mountains. The nearest towns are Globe and Safford and they are about 30 minutes away from the nearest tribal communities. Because of the isolation on the Reservation and lack of housing, Highly Qualified (HQ) teachers are difficult to recruit and difficult to retain. For example, last year the third grade class at San Carlos Intermediate School was taught by three teachers that were emergency certified. Two of these teachers were not renewed for the next school year due to their status as not being HQ. Below is additional information on the HQ teacher challenges at this particular school.

SAN CARLOS INTERMEDIATE SCHOOL HIGHLY QUALIFIED TEACHERS

Teachers	Highly Qualified	Not Highly Qualified
Third	4	2
Fourth	5	1
Fifth	3	3
Total	12 = 67%	6 = 33%

For the Ft. Thomas High School, 14% of teachers in the school have Emergency/Provisional Certification and 7% of core classes are not taught by Highly Qualified Teachers. NCLB needs to be amended to allow the school districts to train emergency endorsed teachers beyond one school year.

The school districts report that non-Native teachers lack proper training to effectively break the barriers of cultural differences. Also, it appears that teachers who do not understand the unique needs of their students do not take ownership of their class and, instead, view themselves as visitors.

We urge the Congress to provide full funding for professional development, in-service training, and Indian career ladder programs. For example, under Title VII, Part A, Subparts 2 and 3, there are some terrific Indian professional development programs and in-service training programs for teachers of Indian children; however, these programs have never been funded. If our Indian children are to succeed, then

their teachers need to have the proper tools to help their students succeed. For far too long, our teachers have not been given the proper resources to help our children learn. This needs to change if our schools are to meet NCLB's goals by 2014.

We also urge the Congress to create additional programs to recruit Indian teachers and to train non-Native teachers in the unique needs of Indian students, such as in Title II of NCLB and in the TEACH Act. One way to help us make our salaries competitive with other schools for HQ teachers is to allow us to use impact aid dollars for salaries and benefits beyond the revenue control limit. 49% of our school funding is derived from impact aid.

Also, given that we are located in an isolated area, we will always have a teacher shortage without available housing options. This creates a challenge for us when competing against other schools on recruitment and retention of HQ teachers. We request assistance in addressing this problem.

Importance of Language and Culture in the Classrooms

Our Tribe is committed to ensuring that our children receive a culturally based education. Through this type of education, they become more engaged in school, can more readily identify with the curriculum, and are more likely to stay in school. In the San Carlos Unified School District, all four of its schools offer a language and culture class at each site. The high school has an additional class that teaches the culture and history of the Apaches. The school district employs five Native teachers to operate these classes. Currently, the Ft. Thomas Unified School District does not offer language and culturally based curriculum because of the lack of certified teachers in this area. However, Ft. Thomas does offer cultural instruction through an after-school program (21st Century). This program has been successful in building self-esteem and self-confidence in the students and increasing their interest in learning beyond the regular school day.

Parental Support Issues

According to the San Carlos Unified School District, parents, generally speaking, take a hands-off approach and do not get actively involved in school activities. Perhaps it is because of the history of the Apaches where they were forced to attend boarding schools and their parents had no voice in their education. Schools invite parents today but still continue to have only a small number come in to discuss their children's progress. It is estimated that only 40% of parents come to the schools. There may be other factors to account for this, such as lack of transportation, overextended work schedules, and social ills.

The Ft. Thomas Unified School District reported that parental involvement is not where it should be but they are making it a priority. Also, Ft. Thomas has begun to include the tribal government in its education process and activities.

Curriculum Development

The schools have choices when it comes to textbook adoptions although it is actually the teachers who do the selection by voting at least by 70%. Once the choice is made the series being recommended is placed on public display for parents to review. The schools ensure that the textbooks are aligned to the state standards.

Arizona Intervention and Solutions teams have conducted site visits as part of their interventions and their common finding is that the teachers in the schools are not teaching to state standards. Also, they found that there was a lack of student engagement. This past year another finding was that the professional development activities at Rice Primary School and San Carlos Junior High School are not aligned to the Arizona School Improvement Plan (ASIP).

Conclusion

We have a lot of work to do to achieve the goals of NCLB, but we cannot do it without a strong partnership with the federal and state governments. We have felt that our children have been left behind for a long, long time and hope that we can work together to turn things around so that our children and our children's children can grow up on the Reservation, get a quality education, and fulfill their life-long dreams and hopes. With such champions as you spearheading the Indian education components of NCLB, we have hope that this important endeavor can be accomplished so that NO Indian child is left behind.

ENDNOTES

[1] NCLB, § 7101.

[2] Title I School Improvement Year 2 is defined as a Title I school that has not made AYP for 3 consecutive years. Upon identification, the school must: notify parents/legal guardians of the school status; develop and implement a School Improvement Plan within 90 days of the identification; set aside 10% of the school's Title I funds for professional development for teach-

ers and the principal; the district must offer parents the option of transfer and offer supplemental education services to eligible students, and offer support to the school in its school improvement efforts.

[3] The Arizona Report Card Academic Year 2006-07 does not show the percentage of Ft. Thomas Unified School District students who exceeded the AIMS standard.

[4] A Title I Restructuring (Implementation Phase) is defined as a school that has not made adequate yearly progress (AYP) for six consecutive years. Upon identification, the school must: notify parents/legal guardians of the school status; develop and implement a School Improvement Plan within 90 days of the identification; set aside 10% of the school's Title I funds for professional development for teachers and the principal; the district must offer parents the option of transfer and offer supplemental educational services to eligible students, and offer support to the school in its school improvement efforts. In addition, the school must prepare a restructuring plan and make necessary arrangements to carry out one of the three restructuring activities. See Section 1116(b) (8) of NCLB for a list of the restructuring activities.

[5] A Title I Corrective Action is defined as a school that has not made adequate yearly progress (AYP) for four consecutive years. Upon identification, the school must: notify parents/legal guardians of the school status; develop and implement a School Improvement Plan within 90 days of the identification; set aside 10% of the school's Title I funds for professional development for teachers and the principal; the district must offer parents the option of transfer and offer supplemental educational services to eligible students, and offer support to the school in its school improvement efforts. In addition, the school must choose and implement at least one of six corrective actions. See Section 1116(b) (7) of NCLB for a list of the corrective action options.

[6] A Title I School Improvement Year 4 or Restructuring (Planning Phase) is defined as a school that has not made adequate yearly progress (AYP) for five consecutive years. Upon identification, the school must: notify parents/legal guardians of the school status; develop and implement a School Improvement Plan within 90 days of the identification; set aside 10% of the school's Title I funds for professional development for teachers and the principal; the district must offer parents the option of transfer and offer supplemental educational services to eligible students, and offer support to the school in its school improvement efforts. In addition, the school must prepare a restructuring plan and make necessary arrangements to carry out one of the three restructuring activities. See Section 1116(b) (8) of NCLB for a list of the restructuring activities.

[7] The Arizona Report Card Academic Year 2006-07 does not show the percentage of San Carlos Unified School District students who exceeded the AIMS standard.

[8] The San Carlos Unified School District serves two private schools that are located within the boundaries of the district on the San Carlos Apache Indian Reservation. These two private are parochial schools. One school is a Lutheran school (Grades k-8); while, the other is a Catholic school (Grades k-6). Title I does allow its funds to be shared with the private schools.

Chairman. KILDEE.

Thank you very much for your testimony.

Mr. Miller? Give my regards to Chairman Payment.

STATEMENT OF TOM MILLER, BOARD OF DIRECTORS, SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

Mr. MILLER. In fact, he sends his greeting, as does the Board of the Directors of the Sault Ste. Marie Tribe of Chippewa Indians.

We would like to take this opportunity to thank you for allowing us to testify on the effects of No Child Left Behind on the tribes.

Our tribe is approximately 33,000 members. And we are effected across the range of both public and BIE funded systems.

No Child Left Behind is a well-intended law. And being an educator first and a tribal council member second, that's how I rate myself. No Child Left Behind was really a well intended law. Maybe not particularly thought out before it was implemented. Its glaring weakness is its effectively underfunded mandated. In systems that already taxed for operational, whether they be public or BIE education systems, we are already stressed to the limit. Accepting a rule or a law as this which has additional requirements without money following it puts us in a no win situation.

Funding must accompany the requirement of any law if it is to succeed. If education is truly as important as we all say it is with these meetings and everything else we're doing, then I do not know why we are even talking about funding, but we are here and we are doing it right now.

Another point that many educators have brought up to me in the No Child Left Behind law is that largely the law is a negative law. Not that it is a bad law, but it is a negative effect law. If you go through it, you will see that there are penalties for not doing well but there are no rewards for doing well, other than we are going to leave you alone. So we think that needs to be looked at, like we do with the discipline with the children. Children seem to react better to positive reenforcement than negative reenforcement.

The BIE system is largely and historically underfunded on a regular basis by at least $1500 per student. We pick up one unfunded mandate and we are beyond the capabilities of doing anything.

The other thing that we have is that in facilities. No Child Left Behind assumes that all the schools have adequate facilities to begin with. That is not so. In the BIE funded system we are far beyond. We are in a race now to catch up. We are running into problems with the process that we have. So we need to really make sure that funding catches up in facilities and also that we get educators involved in building schools. We have the situation of non-educators basically running our construction system, and it is not working to this point.

A number of other things effect the tribe of Chippewa Indians is that Johnson O'Malley has been taking a steady decrease and been threatened with funding. We need to make sure that that stays where it is at. Because all these reductions in laws, whether they be directly related to No Child Left Behind or not, effect us. It reduces the amount of educational funds that we have to work with.

Title VII is averaging about $250 a student now in the reimbursement. That is down. I think it has to stop and it has to go the other way. We need to increase, not decrease the amount of funding that we have in those programs that are particularly handling Native American students in public systems and providing a cultural tie to the tribes.

Title VII, Impact Aid. Reduced 29 million in the 2008 budget. The $1.34 billion budget that is needed effects many of the students that are on or near reservation lands and the ability of those public schools in that area to adequately educate native students. It also effects the ability of those schools to provide adequate educational facilities.

Here is what I think I am trying to paraphrase here, is that every education is important. And there seems to be a lot of concerns with students. I have more faith in the students of today than I guess than many do. They know ten times what we know. If you do not believe that, when you get in trouble with a computer call a child over, he will fix it for you.

So I think that we are going to come out okay in this. I think that it is basically taking the educational information that we are teaching children and maybe channeling that to what makes them marketable or able to go on to college, or whatever the goals would be of that student. But I do have the faith in the youth of today. And I think you for the opportunity to test it.

[Statement of Mr. Miller follows:]

Prepared Statement of Tom Miller, Member, Board of Directors, Sault Ste. Marie Tribe of Chippewa Indians

Good morning Chairman Kildee and members of the Subcommittee on Early Childhood and Elementary and Secondary Eduaction. Testimony opportunities such as this today are important in a process that allows for the tribes to submit meaningful comments and suggestions that will affect Indian Education. Mr. Chairman, your support of the tribes and in particular, the education of our native american children, is well known and greatly appreciated. On behalf of the Sault Ste Marie Tribe of Chippewa Indians, I would like to personally thank you for your steadfast support over the years. My name is Tom Miller, and I am an elected member of the Sault Ste. Marie Tribe of Chippewa Indians governing Board of Directors. Our Tribe includes over 33,000 members, making it one of the largest Tribal Nations in the United States. Our membership includes a significant number of school-aged children, in the BIE funded system and in public schools, all of whom are impacted by No Child Left Behind. I am also the Superintendent of the Hannahville Indian School which is located on the Hannahville Indian (Potawatomi) reservation in the Upper Peninsula of Michigan. In addition to this, I am the school board chairperson for the Bahweting Anishnabe School, located on the Sault Ste Marie Tribal reservation, also located in the upper Peninsula of Michigan. On behalf of the Sault Ste. Marie Tribe of Chippewa Indians and Native American students in all schools, I urge your continued commitment to No Child Left Behind and to effective education by providing greater funding and flexibility necessary for improvement of BIA education, facilities and the implementation of Title VII and VIII.

No Child Left Behind Act

The No Child Left Behind Act is a well intended law with an overall goal of increasing the educational levels of our students that is commendable. As it now stands, it is largely an unfunded mandate. This is of an extreme concern to the schools within the BIE funded system which has historically been underfunded and cannot assume any unfunded mandates. We are reccomending that the funding be appropriated at adequate levels which will allow the schools to be able to pay for the required activities that will better achieve the goals of NCLB.

Bureau of Indian Education (BIE)—Title X, Section D

The Bureau of Indian Education will need increased appropriations to allow the schools to successfully compete in this race to raise overall academic achievement and make adequately yearly progress (AYP). Our base funding with the Indian School Equalization Program (ISEP) had yearly trailed the national average of student revenue by at least $1500 per student. This coupled with stagnant levels of the Title programs, have limited our abilility to keep pace with many of the activities needed to increase overall educational performance (e.g. teacher quality). We also need a period of stability within the BIE system that will allow us to affect the needed changes that must take place with many schools. The recent attempt by the Bureau to reorganize over the objections of the tribes is classic example of why we must have this stability during this important period. If this proposed reorganization had taken place, the schools would have been in a state of chaos and the education of the students would have affected negatively. A better idea would include working with the tribes that are in that particular agency or region to design an effective model for the BIE to better service the schools and studnets. Adequate funding and stability within the BIE system are absolutely necessary if we are to meet the raised bar on education as required by NCLB.

At present, the Bureau of Indian Education (BIE) funded schools are in a process of attempting to catch up in the construction of new and or renovated educational facilities. Many of the requirements of NCLB assume that the schools have the facilities that will allow them to perform the educational services that are needed to achieve academic success or adequate yearly progress. As of now, our BIE facility process of new and replacement school construction has a serious disconect with education. There are long periods of delays, mainly related to disagreements between the tribes and the Office of Facilities Management & Construction (OFMC) on the targeted number of students that the school will be sized for. This has ultimately led to reductions in the yearly appropriations for construction because of the delay in the utilization of the appropriated construction dollars. Tribal input is not being given it's proper consideration in this process. School construction needs to be brought under the direction of BIE. This will bring educators on the Bureau side into the building of schools and greatly improve the present process.

Title VII

Experienced educators within Indian Country will report that Indian children learn better and perform better academically, if they understand the connection between academic curriculum and Tribal culture. Title VII programs are used as a bridge, connecting academic and cultural studies together. Currently, the Title VII formula grants provide approximately $250 per Indian pupil at public school districts. The programming supplements traditional school curriculum with cultural programming. Tragically, most school systems are unable to implement adequate cultural programs due to inflexible schedules dictated by the No Child Left Behind Act. Often, before the "connection" between the academic subject-matter and the cultural import is made, the rigid schedules force teachers to stop teaching and focus solely upon testing. Native American students lose out. Equally as unfortunate, most school districts receive inadequate funds to implement Title VII Indian Education programs for all students. Most focus on academic tutoring at the elementary school age and provide little or no services to students at the middle and high school ages. Our experience has shown that middle and high school years are critical periods for our Native American students, as this is when we experience our highest dropout levels. It is important for Title VII services include school retention services. Please note also, that Title VII funds may be used for professional development of teachers. There is a need to provide cultural training for teachers, to assist them in working better with our Native American students and families. School districts are hard pressed to divert Title VII funds away from direct academic services and support these training needs. Additional Title VII funds for this purpose would assist school districts in supporting this important need.

I urge you to support greater flexibility in curriculum and testing schedules. Increased flexibility would encourage the development of programs that would effectively combine academic subject matter with cultural relevance, improving Native American students' chances for success. I also urge you to provide for a 5% increase of $9.3 million over the FY 2007 Continuing Resolution level of $195.8 million for No Child Left Behind Title VII funding. Specifically: $4 million of the increase should go to national research activities (Title VII, Part A, Sub Part 3), focusing on analyzing effective approaches and the current status and needs of Indian children in school. The remainder should go to the Restoration of funding for Education for Native Hawaiians and Alaska Native Education Equity. President Bush's cut eliminated its funding.

Title VIII

The Title VIII Impact Aid Program is being reduced by $29 million from the proposed FY 2007 Continuing Resolution level, under the President's FY 2008 Budget proposal. Please note the proposed FY 2007 Continuing Resolution level is already inadequately funded, as the need for new school facilities far exceeds the funding provided to build new facilities. The Sault Ste. Marie Tribe of Chippewa Indians has several school districts within its area. School construction needs have exploded over recent years. Many of the schools are old and in need of repair, or in need of being re-built.

I urge you to provide a total of $1.342 billion be allocated for Impact Aid. The increase of $85 million for the FY 2007 Continuing Resolution level would allow for some progress to be made in meeting the public school construction needs on reservations throughout the country. Keep in mind that the funding used for Impact Aid helps meet the needs of Indians and non-Indians alike.

Conclusion

Thank you for listening to me in my capacity as a Native educator and an elected tribal representative. By working together, we can make a positive difference in the world for our children.

Chairman KILDEE.

Thank you very much, Mr. Miller.

And Johnson O'Malley, I agree with you. Congressman Grijalva has made that a very special interest of his. And I am sure he will make comments on that also. This is one of his areas of expertise.

Now Dr. Gilbert.

STATEMENT OF DR. WILLARD S. GILBERT, PRESIDENT-ELECT NATIONAL INDIAN EDUCATION ASSOCIATION

Dr. GILBERT. Good morning, Congressman Kildee and Congressman Grijalva. It is a pleasure to see both of you again.

On behalf of the National Indian Education Association I would like to thank you for the opportunity to give testimony before the House Education and Labor Committee on the No Child Left Behind reauthorization and impact on Indian education.

Founded in 1969, NIEA is the largest organization in the nation dedicated to Native education advocacy issues and professional development for our Native and non-Native educators who teach our Native students.

NIEA's top legislative priority is to strengthen Indian education through traditions that provide a meaningful tribal involvement and setting the educational priorities for Indian students.

NIEA has actively prepared for the NCLB's reauthorization by conducting 11 field hearings with over 120 witnesses in Native communities across the country and has based the recommendations on the hearings of testimony of our membership. Key categories are at the heart of these recommendations.

Number one: Improve Title VII to address the unique cultural and educational needs of Native children. Title VII and NCLB recognize that Native children have unique educational needs due to their cultures and backgrounds and the purpose of Title VII in NCLB is to provide cultural-based educational approaches for Native students. These approaches have been proven to increase student performance success as well as awareness and knowledge of student cultures, languages and histories. Native learning is strengthened through instruction that integrates traditional cultural practices with basic skills. NIEA is proposing amendments to focus the purpose to include both academic achievement through culturally-based education and to increase the cultural and traditional knowledge base of Indian students. This concept is not new to education.

As far back as 1928 the Marion Report recommended incorporation of tribal languages in culture programs in school curriculum, recommended Native teachers to teach in schools serving Native students, and also was a forerunner in the idea of a culture-based education.

The Indian Education Act of 1972 provided funding to develop culturally-based curriculum and actively engaged parental participation to develop Native language and culture programs and to increase the number of Native teachers. Current research demonstrates that cultural education can be successfully integrated into the classroom in a manner that provides Native students with instruction in four subject areas. Any subject matter may be successfully taught in curricula to instill the Native traditional and culture concepts and knowledge.

NIEA's science connections research project that I personally conducted with the Navajo tribes successfully integrated data culture, language and traditions into the science curricula and demonstrated that it improved student academic achievement and attitude toward science and science education.

All the innovative programs that have improved academic success in Indian Country incorporate language and culture. The Yukon Indian Education program in Yukon, Oklahoma uses funding from Title VII to purchase materials for arts and crafts lessons that incorporate reading and math. Additionally, the Title VII program has helped 11 schools update their libraries with approximately 900 books with Native American content.

The Anchorage School District has developed a culturally responsive six year instructional plan to chart a course for closing the academic achievement gap while concurrently increasing achievement for all students through implementation of a culturally responsive continuum.

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 result in academic achievement for Indian students.

Number two: Strengthen NCLB to provide support for instruction in Native American languages. Research demonstrates that Native children perform better academically when they are taught in a manner that is consistent with their traditions, language and cultures.

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 example, students in a Lower Kuskokwim School District in Alaska receive instruction in their Native languages and achieve Adequate Yearly Progress. As in the Navajo immersion school, both the third and fifth graders are performing at higher levels than their mainstream counterparts in the state reading, writing and math assessments.

There are 18 public immersion schools in Hawaii and they out perform Hawaii students in public general education. Native language immersion students are meeting and exceeding the state standards of English and academic standards nationally and we are making the academic benchmark of AYP under NCLB.

Number three: Improve cooperation among tribes, states and the Federal Government. NIEA seeks stronger emphasis on encouraging states, tribal governments and communities, neighboring areas, and the Federal Government to work laterally in developing educational standards and related assessments. NIEA's proposed amendments provide for the inclusion of tribal input on the development of the various state, local and school plans.

Additionally, NIEA's amendments promote coordination of programs across Title I and Title VII to foster better programming to meet the unique cultural languages and educational needs of Indian students.

Many Native communities are located in rural areas where the number of highly qualified teachers is in short supply. NIEA seeks to strengthen NCLB by including programs to build capacity within Native communities for increasing the pool of teachers.

And number five: Increase funding for NCLB, specifically Title VII.

NIEA supports the strengthening of NCLB, ensuring that Title VII cannot be supplanted to meet the shortfalls in tribal titles of NCLB. NIEA supports the strengthening of NCLB through the inclusion of language that protects the limited resources of Title VII. NIEA proposes in its amendment a moderate increase from the current authorizing level of $96.4 million to $130 million for Title VII Part A and subpart 1, which is an amount equal to the increase of five percent each year beginning in fiscal year 2003.

NIEA has also recommended an increase in the reauthorization of subparts 2 and 3 to $34 million, which is the amount equal to an increase of five percent each year beginning in fiscal year '03.

Thank you very much for giving me this opportunity.

[The statement of Dr. Gilbert follows:]

Prepared Statement of Dr. Willard S. Gilbert, President-Elect, National Indian Education Association

On behalf of the National Indian Education Association (NIEA), the oldest and largest Native education organization representing American Indians, Alaska Natives, and Native Hawaiian educators and students, thank you for the opportunity to submit testimony to the House Education and Labor Committee on the recommendations from Indian Country on the reauthorization of No Child Left Behind.

Founded in 1969, NIEA is the largest organization in the nation dedicated to Native education advocacy issues and embraces a membership of over 3,000 American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, parents, and students. NIEA works with all tribes to advocate for the unique educational and culturally-related academic needs of Native students and to ensure that the federal government upholds its responsibility for the education of American Indians. The trust relationship of the United States includes the responsibility to ensure educational quality and access.

NIEA's top legislative priority is to strengthen the education of American Indians, Alaska Natives, and Native Hawaiians through effective and meaningful education programs and approaches in the reauthorization of the No Child Left Behind Act (NCLB). NIEA is committed to strengthening NCLB for Indian Country through provisions that provide for meaningful tribal involvement in setting the educational priorities for Indian students and of the inclusion of Native language and cultural instruction.

NIEA has actively prepared for the reauthorization of NCLB by conducting 11 field hearings with over 120 witnesses in Native communities across the country. NIEA has also conducted numerous listening sessions and meetings with Native students, educators, school administrators, Native parents, and tribal leaders to learn about the challenges Native people face under NCLB. Based upon this extensive dialogue, NIEA prepared its Preliminary Report on NCLB in Indian Country and its NCLB Policy Recommendations. At the end of last month, NIEA submitted comprehensive draft legislative amendments to this Committee and to the Senate Health, Education, Labor and Pensions Committee for consideration for inclusion in the bill that will reauthorize NCLB.

As an organization of Native educators, NIEA supports high achievement standards for all children and holding public schools accountable for results. Further, NIEA lauds the goal of Title VII of NCLB to meet the unique cultural and educational needs of Native children. Title VII affirms the Federal Government's support for culturally based education approaches as a strategy for positively impacting Native student achievement. NIEA wants to strengthen NCLB to better serve the needs of Native communities, particularly those who live in remote, isolated and economically disadvantaged environments. NIEA's amendments to NCLB focus on several key as set forth below.

Improving and Expanding Title VII to Address the Unique Cultural and Educational Needs of Native Children

Title VII of NCLB recognizes that Native children have unique educational needs due to their cultures and backgrounds. The purpose of Title VII [1] 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. Part A of Title VII deals specifically with the education of American Indian and Alaska Native students, and NIEA

has proposed amendments to focus the purpose of this part to include both academic achievement through culturally based education and to increase the cultural and traditional knowledge base of Indian students.

Part A of Title VII contains provisions for American Indian Education and provides supplemental grants to local educational agencies, tribes, Native organizations, educational organizations, and others to provide programs and activities to meet academic, cultural, and language needs of Native children. Native learning is strengthened through instruction that integrates basic skills with traditional cultural practices and embraces the knowledge of the environment, Native fine arts and crafts, leadership, character education and citizenship.

Last year, the Department of Education advised Indian education programs receiving Title VII funding to shift their focus from the teaching of culture to math and reading. In fact, the Department of Education wrote a letter to the Superintendent of St. Paul schools in Minnesota directing that there be a "gradual shift of focus from history and culture to reading and math."[2] This shift in purposes under Title VII causes a great deal of concern for NIEA and our members. By law, Native children should have access to culturally relevant and appropriate curriculum that support their academic achievement so that they may meet the standards that all children are supposed to meet.

At each of the 11 hearings that NIEA held on NCLB, concern was highly focused on the significant narrowing of the curriculum and the decrease in the use of culturally appropriate teaching approaches known to be effective for Native students given the increased focus on testing and direct standardized instructional approaches. NIEA is witnessing a broad-based reduction and diminishment of culturally based education in schools which provide an effective and meaningful education for Native students. In classrooms across Indian Country, Native languages and cultures are being used less and less in teaching Native students math, science, or reading because Indian children are drilled all day long on the materials contained on standardized tests. These teaching methods do not work when teaching Indian children. Generally speaking, our children see and order their world very differently from most other children due to their culture and ways of life, and, as a result, learn in different ways.

NIEA strongly believes 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, and cultural arts can be taught in curriculum steeped in Native traditional and cultural concepts. Innovative programs that have proven academic success in Indian Country incorporate language and culture.

The Yukon Title VII/Indian Education Program in Yukon, Oklahoma uses funding from Title VII to purchase materials for arts and crafts lessons that incorporate reading and math. Additionally, the Title VII program has helped each school (11 in all) update their libraries with close to 900 books with Native American content. The Anchorage School District located in Anchorage, Alaska has developed a culturally responsive six year instructional plan to chart a course for closing the achievement gap while concurrently increasing achievement for all students through implementation of a culturally responsive continuum. The plan is based on a survey where responses indicated that culturally related solutions (more Native culture, more Native language, more Native teachers) were most commonly the reasons for improving schools for Alaska Natives.

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 enrichments programs that supplement other NCLB programs and will result in academic achievement of Indian students. In FY 2006, Title VII served over 469,000 Indian students and 1,196 local education agencies.

Strengthening NCLB to Provide Support for Instruction in Native American Languages

Titles III, Subparts A and B, as well as Title VII currently allow for Native language instruction; however, these provisions should be strengthened so that schools can successfully achieve their educational goals and meet academic standards. NIEA's proposed amendments to support Native languages provide additional support for language immersion schools and restoration programs in addition to language activities inside the classroom. Research shows that Native children perform

better academically when they are taught in a manner that is consistent with their traditions, languages, and cultures. Native language immersion programs, which have been proven to dramatically improve Native student achievement in English and in Native languages, highlight the reasons to strengthen Title VII.

Specifically, 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 exhibited stagnant educational achievement (and have the poorest achievement of all American ethnic groups), Native language immersion has demonstrated remarkable promise in educational achievement.[3] 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 the areas of arts and languages. 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 lives and identities.

Solid data from the immersion school experience indicates that language immersion students experience greater success in school measured by consistent improvement on local and national measures of achievement.[4]

For example, students in the Lower Kuskokwim School District in Alaska receive instruction in their Native languages and achieving Adequate Yearly Progress (AYP). In a Navajo immersion school, both the third and fifth graders are performing at higher levels than their mainstream counterparts in the state reading, writing, and math assessments. Native students attending language immersion schools are learning state content standards of math, reading, writing, science, and social studies in addition to Native language and culture standards. Native language immersion students are meeting and exceeding the state standards in English and academic standards nationally and are making the academic benchmarks for AYP under NCLB.

While data specific to Native American language immersions schools is continuing to be compiled, national studies from both the public and private sectors emphasize the positive impact of language studies on educational achievement.[5] Language revitalization and maintenance programs must be incorporated into NCLB so that the implementation of education provisions does not hinder or preclude the offering of Native American languages efforts, including immersion for Native Americans as a part of their educational experience. NCLB must recognize and support Native language revitalization and maintenance efforts of Native American communities.

Improving Cooperation Among Tribes, States, and the Federal Government

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. NIEA's proposed amendments provide for the inclusion of tribal input on the development of the various state, local educational agency, and school plans. 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.

NIEA supports the strengthening of NCLB assessments that considers the cultural and educational needs of Native students. 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. 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. Local educational agencies should also be required to consult and seek the input of tribes located in the areas they serve when developing their district plans.

Throughout NIEA's extensive consultation with Indian Country, we have learned that when a school is placed on school improvement for failing to make AYP, they are often advised to focus their activities on reading and math programs. This redirected and ill- advised focus results in the exclusion of language and cultural programs to the detriment of increasing achievement for Native students. NIEA has proposed that school improvement plans include the input of tribal representatives and promotion of culturally based education as a proven method of increasing academic achievement.

Improving Support for Teachers of Native Students

Many Native communities are located in rural areas where the number of highly qualified teachers is in short supply. NIEA seeks to strengthen NCLB by including programs to build capacity within Native communities for increasing the pool of teachers. This initiative to provide for improved professional development through pre-service and in-service training for teachers and administrators would also prepare Native peoples to become highly qualified teachers who are also cultural practitioners and can continue upon a career ladder as School Administrators, Board of Education members, and community educators.

The definition of "highly qualified teacher" in NCLB for teachers who educate Native students enhances school accountability through the achievement of AYP. When teachers are able to understand and apply culture and language skills and abilities of Native students in their classes, the students flourish. This definition of highly qualified should include opportunities for Native language and cultural experts in the curricular programs of schools.

Improving Opportunities for Parents, Families, and Tribes and other Native Communities to Participate in the Education of Native Children

The schools that are successful are the schools where the parents, families, tribes, and the local communities are actively involved and engaged in the school's programs and activities. NCLB should be strengthened to allow increased opportunities for parents, families, and tribes and other Native communities to become more involved in their children's schools and in the development of their educational programs. NIEA advocates for increased parental involvement by improving their knowledge, skills and understanding of standards-based education and school accountability. NIEA supports NCLB in the promotion of standards-based education as a family responsibility that helps children to achieve.

Improving the Measurement System for Adequate Yearly Progress

The current accountability system needs to be strengthened to allow for broader measures of academic achievement over a period of time within the 2014 goal. Instead of focusing on state-wide standardized tests in only math and reading, NCLB could be strengthened to include success on multi-disciplinary and multi-level curriculum and instruction as additional measures of achievement.

Many factors in Native communities affect student and school achievement, such as poverty, transportation, poor health care, and poor housing. NIEA supports the encouragement of best practices that increase Native student academic achievement but also seeks flexibility in achievement measures to accommodate these extenuating factors. Further, flexibility in the measurements for accountability could accommodate Native language immersion programs, which have been proven to significantly increase Native student academic achievement over time. To further explain, Native language immersion schools have reported to NIEA that they struggle in the early elementary schools grades to meet AYP because the testing is in English. However, over time, these same students in the latter elementary school grades dramatically outperform their peers academically on tests in English and that these immersion schools are meeting AYP.

Requiring the Collection of Data and Research on the Education of Native Children

NIEA supports the strengthening of NCLB by providing resources to conduct culturally based research. Support for best practices research to educate Native students and use of indigenous research criteria for federally assisted education programs benefits Native student achievement and improves academic measures of school success. NIEA supports the strengthening of NCLB to build capacity of Native education systems to develop, implement, collect and analyze systematic data on the educational status and needs of Native students. NIEA supports the strengthening of NCLB to assist Native education systems to use data to inform and improve student academic achievement. NIEA supports the strengthening of NCLB through partnerships with Native education school systems and the Departments of Education and Interior. This research initiative could provide for partnerships to support efforts in Native communities that improve education program services and program accountability.

Increasing Funding for NCLB, especially Title VII

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

that would support pre-service and in-service training for teachers, resources that support national research activities, fellowships for Native students, programs for gifted and talented Native students, grants to tribes for education administrative planning and development, educational services programs for Native students, and educational opportunity programs for Native students. Only by funding these critical programs on a sustained basis can we ensure that No Child is Left Behind.

NIEA also supports the strengthening of NCLB by providing resources that adequately fund Title I programs. NIEA supports the strengthening of NCLB by ensuring that Title VII resources cannot be supplanted to meet the shortfalls in other Titles of NCLB. NIEA supports the strengthening of NCLB through the inclusion of language that protects the limited resources of Title VII.

NIEA continues to be concerned with the inadequate funding in the Department of Education and the Department of Interior, Bureau of Indian Affairs, for Indian education programs and activities. Due to the tight federal budget, NIEA proposes in its amendments a moderate increase from the current authorizing level of $96.4 million to $130 million for Title VII, Part A, Subpart 1, which is an amount equal to an increase of 5% each year beginning in fiscal year 2003. NIEA has also increased the authorization for Subparts 2 and 3 to $34 million, which is an amount equal to an increase of 5% each year beginning in fiscal year 2003.

Bureau of Indian Affairs Schools

There are only two education systems for which Federal government has direct responsibility: the Department of Defense Schools and Federally and Tribally operated schools that serve American Indian students through the Bureau of Indian Affairs (BIA) within the Department of the Interior. 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 BIA schools while the remaining 90% attend public schools supported through the Department of Education.

Only one third of the BIA funded schools are achieving AYP. NIEA is concerned about the applicability of state standards to Native children attending BIA schools. More often than not, states develop the standards without consultation and inclusion of the tribal communities. Tribal communities are in the best position to determine the needs and the appropriate assessment methods for Native students. NIEA's amendments provide for the ability of a consortium of tribes, BIA funded schools, or school boards to apply for a waiver of the definition of AYP. Currently, a single tribe, school board or BIA 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. NIEA strongly supports the possibility of developing and applying alternative tribal standards to measure AYP for students attending BIA schools.

Conclusion

NIEA is committed to accountability, high standards and rigorous education of our children; however, the implementation of NCLB by the federal government does not enable Native students to meet their academic potentials given the lack of consideration of their cultures, languages, backgrounds, and identities. Cultural identity and rigorous educational standards are compatible and complementary. We believe with good faith collaboration that we can provide our children with an education that honors who they are as Indian children while preparing them for successful futures as they define it.

As part of its efforts on reauthorization, NIEA will continue to perform as much outreach as possible so that the Congress can better understand the needs of Native students, thereby allowing student needs to be addressed during reauthorization of NCLB. We are extremely appreciative of Chairman Dale Kildee's unparalleled support for Indian education and for his tireless and steadfast commitment to Indian Country. Indian Country has no better friend than Chairman Kildee. We are also appreciative of Chairman George Miller's and Representative Stephanie Herseth Sandlin's tour of school conditions and meetings with students, teachers, and tribal leaders at the Pine Ridge and Rosebud Reservations in South Dakota on March 22, 2006. We thank this Committee for making Indian education a top priority and for holding this important hearing today. We hope that there can continue to be more Congressional outreach to Indian Country, including additional field hearings in other regions of Indian Country, so that the challenges and issues impacting Native students can be better understood.

ENDNOTES

[1] Title VII of the No Child Left Behind Act incorporates the Indian Education Act of 1972.

[2] Correspondence from Bernard Garcia, Group Leader, Office of Indian Education, U.S. Department of Education, to Patricia Harvey, Superintendent, St. Paul Public Schools, received on November 4, 2005.

[3] Pease—Pretty on Top, Janine. Native American Language Immersion: Innovative Native Education for Children & Families. American Indian College Fund: Denver, Colorado. 2003.

[4] McCarty, Teresa L. and Dick, Galena Sells. "Mother Tongue Literacy and Language Renewal: The Case of the Navajo." Proceedings of the 1996 World Conference on Literacy. University of Arizona: Tucson, AZ. 1996.

[5] Sugarmen, Julie and Howard, Liz. "Two Way Immersion Shows Promising Results: Findings of a New Study." Center for Applied Linguistics, ERIC/CLL Language Link. ERIC Clearinghouse on Language and Linguistics: Washington, DC. September 2001, p. 2-3.

Chairman KILDEE. Thank you. Thank you very much for your testimony.

And Dr. Bordeaux?

STATEMENT OF DR. ROGER BORDEAUX, DIRECTOR, ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS

Dr. BORDEAUX. Thank you, Mr. Chairman, and Members of the Committee for allowing us to spend a few minutes with you just to talk about the impacts of NCLB on Indian education in the different areas.

I want to especially thank you for the nearly 30 years of helping Indian children and Indian tribes and Indian communities, specifically with education. When you decided to take over Indian education for the Committee on Ed and Labor in 1979, that was a real wise decision on your behalf and it has helped us greatly.

One of the examples is our own school itself at Tiospa Zina. In 1984 you specifically worked with the Administration to make sure that we were able to get a 638 contract because of some moratorium language there. And just to make sure that you understand that we are grateful for what you did.

Our school started in 1982 with 12 kids. And this year we are servicing over 600 children. And it is something that you had a great impact on in establishing. And those are the kind of success that exist in Indian communities and tribal schools in a lot of other places. It is not all about making adequately yearly progress, it is not all about making sure 100 percent of our children are proficient, even though that is a very good goal to have. I mean, there are a lot of other successes that exist in Indian communities that need to be recognized instead of saying you make it or do not make it AYP and you are up the creek. So, I think, you got to make sure that people understand that education is not only about making adequate yearly progress. And we have some suggestions for possible changes in doing that.

You also heard from a number of other people about the problem with the resources that we have. For tribal schools 100 percent of our funding is federal funding. The only other money we get is we have to go out and solicit money from our tribes or possibly in a few cases are able to get some state funds. But all of our funds are federally funded. So we have to go to Congress and advocate for what we need.

Tom said there is a $1500 shortfall in basic support in tribal schools, shortfall in Johnson O'Malley, the unfunded stuff; everything that happens with NCLB is a direct result of what the Administration recommends to Congress and what Congress is able to pass. So that is something that is really important to us is in work-

ing with the Federal Government to try to get those resources that we need.

There is a lot of schools that are on reservations that are in the poorest counties of the United States. I think I said that in our testimony, that the top 15 poorest counties in the United States, seven of them are in North and South Dakota. And the poorest county, their average per pupil—I mean their average income in a household is a little over $5,000 a year. So if you have a family of four and you tried to live on $5,000 a year, it is very difficult.

In making a decision, even if your student happens to be late in the morning for five or ten minutes, making a decision to feed your family for the $5 that you have or buying a gallon and a half of gas to take your child to school and back is a real tough decision to make. I mean, people got to realize that a lot of communities, and especially Indian communities, are in the poorest counties of the United States and they need some specific help in trying to help themselves to become better. And the best way for that to do is through education.

I had also provided three or four different illustrations to talk specifically about what I consider deficit model for academic improvement. A lot of the schools that are struggling right now with making adequate yearly progress I would almost venture to guess that nearly 100 percent of them are proud of their school and they are making academic success. But because they started out when No Child Left Behind started, because they started out below the state's average on making adequately progress, they have to make the 20 or 30 percent deficit up in one or two years or three years to try to make it—to make adequately yearly progress, even if you try to use Safe Harbor or two year averaging. If the school's population starts at 30 percent and the state starts at 50 or 52 percent, there is a deficit right there, but the law expected them the very next year to be up where adequate yearly progress is. And if you are not able to make it, you can increase from 30 to 35 to 38 to 40 and stuff like that. You may not make it through—you will not make it through the normal way. It will be real difficult to make it through Safe Harbor or using the 2 or 3 year averaging process. But there has to be a way of recognizing academic progress and still not making adequate yearly progress. So we have a lot of written recommendations for you, and hopefully you will take a look at the recommendations that we have.

Thank you.

[Statement of Dr. Bordeaux follows:]

Prepared Statement of Dr. Roger Bordeaux, Director, Association of Community Tribal Schools

My name is Dr. Roger Bordeaux; I am a Sicangu Lakota serving as the superintendent of Tiospa Zina Tribal School on the Sisseton Wahpeton Oyate reservation, the Executive Director of the Association of Community Tribal Schools Inc. (ACTS) and a board member of Oceti Sakowin Education Consortium. I have been the Superintendent for 17 years and the Executive Director for 22 years.

Chairman Kildee and members of the Sub-Committee on Early Childhood, Elementary and Secondary Education I would like to thank you for holding this field hearing on the NCLB impact on Indian Education. Mr. Chairman since you took over responsibility to oversee Indian Education issues for Committee on Education and Labor in 1979, you have been our staunchest advocate for American Indian Tribes and their desire for self determination. You have fought to remind America of the many treaties the federal government has with the Indian people. I remember

the fights you helped us with, including keeping BIA Education out of the new Department of Education in the 1970's, arbitrary and unilateral school closure attempts of the 1980's, helping with the passage of the Tribally Controlled Schools Act of 1988, advocating for positive change to the Elementary and Secondary Education Act, through specific Indian Education amendments, in the 1990's and helping with specific Indian Education language in the No Child Left Behind Act of 2002. The Chairman of the Education and Labor Committee, Mr. George Miller, is also a strong advocate for Indian Education and showed his advocacy by visiting the Pine Ridge and Rosebud Reservation in the fall of 2006. We are blessed that at this critical time of decisions regarding Indian students, local control and the future of Self-Determination, we have our greatest advocate for Indian Education in a position to assist us.

Mr. Chairman, I'd like to remind you that you have a very close relationship with our school, Tiospa Zina. Despite the Self-Determination Act of 1975 and the Education Amendments of 1978, in 1981, Assistant Secretary Smith had the BIA place an effective "moratorium" on new schools. Sine there was no authority for such an act, the BIA made this effective by slowing down the processing of applications, in our instance losing the paperwork at least once. In 1984, you were directly responsible for cutting through this red-tape at the BIA and making sure we were offered our first contract under self-determination. This is in keeping with your long history of advocacy for Indian Tribes, Indian people, Indian children and Indian schools and we remember it. Tiospa Zina started in the spring of 1982 with 12 students as an alternative to a public schools system which showed little interest in its Indian students. Now, in excellent facilities, serves over 600 students each year. Prior to the start of Tiospa Zina the local public school drop out rate of tribal members was 75%. The drop out rate for Tiospa Zina is about 40% and we have graduated over 375 tribal students since we started.

Tribal schools

The tribal school movement started in 1966 with Rough Rock Demonstration School (which ironically was an Office of Economic Opportunity grant). Tribal schools were started for one primary reason—dissatisfaction with the education content and quality provided to Indian students in public and BIA operated schools. When the Education and Labor Committee jerked the BIA into the 20th Century with its sweeping changes to Indian education law in 1978, the BIA ran more than 230 schools, of which only 5 were accredited by any organization. Drop outs were expected, and going to college was a dream for many and a reality for few. Indian tribes, educators and, most of all, parents knew there had to be a better way.

In the early 1970's, Tribes and communities began to take action under many funding mechanisms. The Indian Education Act of 1972 allowed alternative schools to get started. Tribes devoted other funds and whole communities gave time and money. Originally, there were fewer than 15 tribal schools, now there are over 125 Tribal elementary and secondary education programs, serving more than 28,000 students. Many, though not all, of these schools were created by Tribal take-overs of BIA programs.

The tribal schools provided a new educational philosophy for Indian communities. We came to our task, not as outsiders, but as Members of communities who cared about, and for, our future. Expectations rose and children and parents began to see education as a means to an end—success in Life, as defined by our Indian Community, not some other segment of society. We taught that one can be successful in the World, in America, in our States, and in our Tribal communities through recognizing who we are and making that our goal. Curricula were invented and refined—teachers became long term parts of the Children's lives. Community school boards met and took meaningful action. Our counterparts in public schools realized our children were well educated and could do well, which made relationships between schools possible. The new relationship with the schools are decreasing drop out rates. The schools have articulation agreements with local tribal colleges. Graduation rates increased and so did college participation. As more Tribal Members went to college, we had more resources, folks with degrees and expertise which they willingly brought back to their reservations and homes. They became role models for other children, and the future has become brighter.

The challenge

We are becoming more and more successful despite the challenges we face in many Tribal communities. Mr. Chairman, I know you realize the conditions on many Indian reservations which make our success more difficult and more rewarding. You know that when we talk of poverty and lack of educational, social and learning resources, we are not just "looking for excuses to fail" or "restating past

situations". These are ongoing facts. Substandard and poor housing is a fact, and it cripples many of the abilities generally considered critical to success. Unemployment and its attended curses of alcoholism and what is recognized as an epidemic of methamphetamine abuse make it hard sometimes for children to see the way to a successful future.

We need to be sure you can communicate to Congress and the other Members, on our behalf, the reality of these situations and the fact they do make a substantial difference in our ability to meet the model of measuring success set forth in No Child Left Behind. We know that other schools have similar problems and their own concerns. However, in no other school system do we find such a conjunction of problems, which have been of such long-standing, and a history of local control which goes back less than 20 years.

The current model of a deficit school improvement program as found in NCLB is simply not applicable, especially in rural, poor, Indian reservation areas. Many of the schools funded by the BIA that are in school improvement, corrective action, and restructuring are in the poorest counties of the United States. For instance, six of the 15 poorest counties in the United States are in South Dakota and 1 of them is in North Dakota. These counties are within the Crow Creek Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, and Standing Rock Sioux Tribe reservation boundaries. The lowest per capita income was $ 5,213. (Statistics derived from U.S. Census Bureau data; U.S. Department of Commerce, Bureau of Economic Analysis, Survey of Current Business; and DataQuick Information Systems, a public records database company located in La Jolla, San Diego, CA.)

NCLB—problems

We know many in Congress who support NCLB. We support its concept—for Indian Tribal people, no person should be left behind. We support mastery of education topics for all our students, and we do not seek special consideration unless it is justified. However, reality must drive the program as it relates to BIA funded schools or failure is a foregone conclusion. These are the realities for us in NCLB:

1) We still face inadequate resources. I KNOW TALKING FUNDING IS UNPOLITIC WITH SOME AND MAY LEAD TO DEAF EARS BEING TURNED IN OUR DIRECTION. However, I also know you understand our plight. The BIA budget request is not computed based on any measure of real need to run the program. In fact, BIA regulation state clearly:

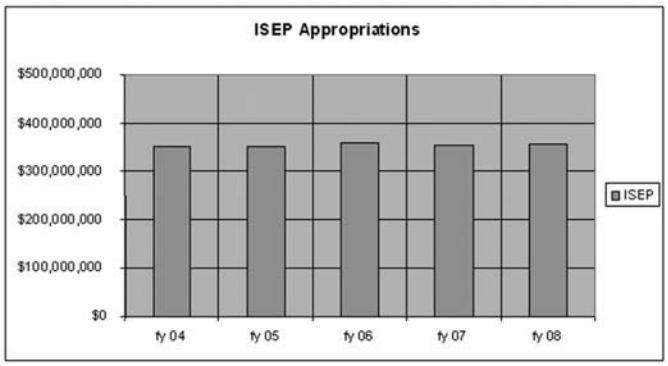
"25 CFR 39.101 Does ISEF assess the actual cost of school operations?

No. ISEF does not attempt to assess the actual cost of school operations either at the local level or in the aggregate at the national level. ISEF provides a method of distribution of funds appropriated by Congress for all schools. "If this isn't clear enough, it is restated in essentially the same language at 25 Fed. Reg 39.201. This is on spite of a BIA's own policy statement (25 Fed. Reg. 32.4(aa)) that it will "[A]gressively seek adequate appropriations * * *". I submit to you that if any state entity or local school board said its budget to "fund" its schools was not based on what needed for the program, the public would not stand for it.

2) However, this does not mean the BIA does not have a method for computing such a need based sum. That is also found in regulations, which involve a computation for academic costs and home-living/residential costs. If these computations were made and then the budget was submitted based upon the total, much more progress in Indian Education would be possible.

However, despite the presence of these regulations, the BIA simply does not make the computations and does not submit this information to Congress. Why does Congress not require such a submission?

3) As the following chart illustrates, the amount for the Indian Student Equalization Fund, which funds all of our academic and residential facilities, is actually going down when inflation is included to the total amount.



4) Unlike any other school district in the Country, our schools are wholly reliant on federal funding. Federal funds do not make up 8—10% of our funding. They are the whole package. Title I of NCLB does not fund a small part of our program—it funds over 18%, with IDEA funds essentially covering the majoriy costs for children with disabilities. We have nowhere else to go for money—not the State, not the local jurisdictions, nowhere.

5) As was noted above, this inadequacy of funding is exacerbated by the serious conditions of poverty and lack of resources in our communities in general. These problems, from housing, to unemployment, to inadequate health care, to meth are also partially caused by no funding in those problems. All of these factors bring their combined misery to the school door.

6) We do not ask for special treatment, and we do not say progress for the schools and the children is not possible. It is and we stand behind our proud record of achievement in the last two decades. We want to be a part of the greatest school system on Earth, the schools of the United States of America, and whatever happens, we will remain committed to our children, our communities, our Tribes, and our Nation.

We are, however, concerned that those who govern our future through the consideration of NCLB and any amendments to it, may make decisions not based on correct information. We do not want to have the good we have done undone when we have not been allowed an adequate chance for success. That is what we see in the actions of some States and in the "recent consultation" of the BIA and the Department of Education.

States are eligible for many programs in NCLB and other Federal laws to which the Tribes have no access. In order to get access, they tell us our schools must alter our programs, standards and process to conform with State restrictions. In some instances, we believe the States are making these demands to accommodate Federal agency pressure to have all programs receiving a benefit fit one pattern. In some States, it is simply a matter of Administrative actions. In any event, such pressure means less local control. After over 100 years of schools being controlled by non-local, non-Indian entities, we ask that some provision be made in the reauthorization to accommodate Tribally operated schools within these programs.

Of primary concern, however, is potential action by the BIA, the Department of Education, and the Administration to use failure to meet AYP as an excuse to force Tribal schools to either 1) radically change their programs and make-up, thus re-establishing a Federal, BIA run/operated system, close or 2) have these children attend public schools, public schools which are ill prepared and over crowded in most of our communities.

Our Concern is real. Mr. Kildee, you, more than any other Member, must remember the past fights to establish and maintain local control and self-determination. You were the author and sponsor of the Tribally Controlled Schools Act, the direct response to the BIA closures and threats of unilateral action of the 1980s. You stood on the floor to fight the closure of the Phoenix Indian School and the InterMountain Tribal School, because you knew that was wrong. You sponsored the language prohibiting unilateral action by the Secretary of Interior for any closure:

"SEC. 127. Section 1121(d) of the Education Amendments of 1978 (25 U.S.C. 2001(d)) is amended by striking paragraph (7) and inserting the following:

'(7) APPROVAL OF INDIAN TRIBES—The Secretary shall not terminate, close, consolidate, contract, transfer to another authority, or take any other action relating to an elementary school or secondary school (or any program of such a school) of

an Indian tribe without the approval of the governing body of any Indian tribe that would be affected by such an action.'"

How crucial this language is was shown when it was deleted by accident in the original NCLB. The Administration, through the BIA, actually began to plan forcible modification to Tribal programs, with the reason that the provision barring such unilateral action was gone. It had to be hurriedly replaced in 2004.

We are concerned the failure to reach AYP in some BIA funded programs will lead to the argument that the schools are not meeting the needs of their students, they are "bad" schools, and that resumption of the school by the Federal government or another authority should somehow be undertaken. At the least, we are concerned that BIA or Department of Education will be allowed to force unilateral changes in programs without regard for the true factors causing problems and without allowing Tribal control.

Now we ask that you hear our voice and continue your proactive support of Indian Education as well as insure that any reauthorization does not diminish the local control of Indian Education.

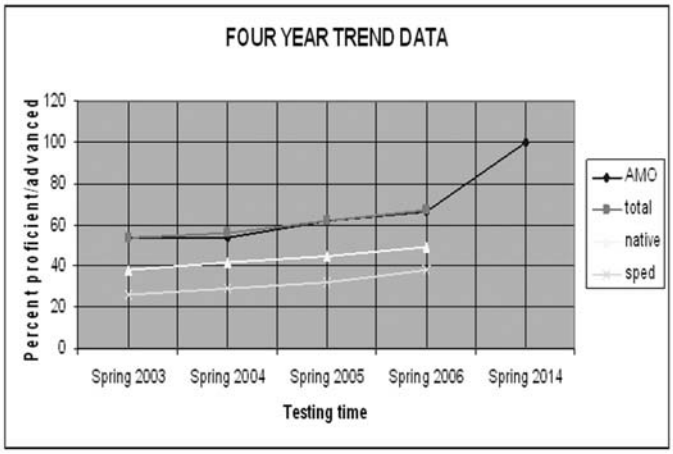
NCLB and solutions

1. The current Deficit Model of Academic Success in Title I of NCLB is flawed and can be fixed by recognizing school success even when a school does not reach the annual measured objective (AMO) and specifically target poor areas with a 150% allocation

The current Title I model of school improvement provides penalties for schools that do not reach annual measured objective established by states. The state's AMO is directly related to state content standards and are based on the total population of the state. There was little or no participation from tribal governments and tribal schools in the development of the state content standards and state assessments. We are treated as second class citizens and are now being blamed for schools not making adequately yearly progress. This is even worse for the students with disabilities not to mention tribal students who have disabilities.

The law requires all states to disaggregate data based on types of students. The disaggregated groups include low income, minorities, and students with disabilities. Many of the disaggregated groups started far below the state average targets but were expected to make more progress than the rest of the population. If any of the disaggregated groups did not make annual measured objectives (AMO), then the school did not make adequate yearly progress (AYP). Even if a school and the disaggregated group makes annual academic progress but never reach's the AMO they are classified as a bad school. The following chart illustrates the deficit model.

Illustration 1.



The above illustration shows that even when the school and the disaggregated groups made academic progress, they do not make AYP. Schools and disaggregated groups that do not make AYP are considered non-performing, almost "bad" schools and end up in corrective action or restructuring. These "bad schools" will also lose financial resources and students because NCLB allows students and parents to use Supplemental Educational Services.

The following chart show academic progress at Tiospa Zina Tribal School over a number of years but the school has been in and out school improvement primarily because of disaggregated groups (SPED). The school made adequately yearly progress this past year because of the use of safe harbor. Over 50% of the students at TZTS have been at the school for less than 4 years. The majority of the students came from public schools.

Illustration 2.

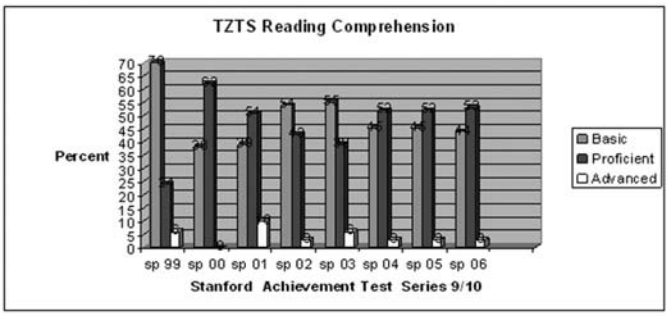


Illustration 3.

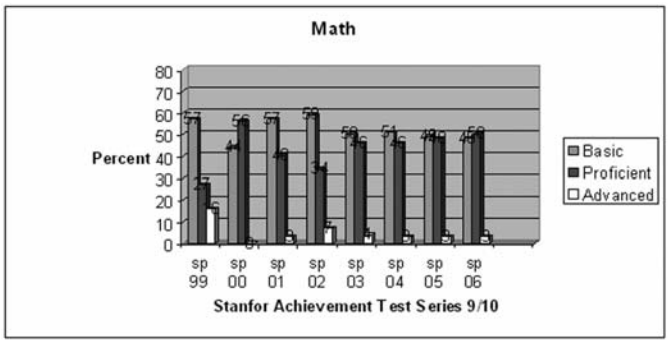


Illustration 4 shows the effects of SPED disaggregated populations. The TZTS Spring 2005 achievement results are shown with and without SPED student data.

Illustration 4.

READING COMPREHENSION

	All Students		Without SPED students	
	Number	Percentile	Number	Percentile
Basic	103	(45%)	59	(36%)
Proficient	117	(52%)	101	(60%)
Advanced	7	(3%)	7	(4%)

MATH PROBLEM SOLVING

	All Students		Without SPED students	
	Number	Percentile	Number	Percentile
Basic	113	(50%)	69	(41%)
Proficient	108	(48%)	92	(55%)
Advanced	6	(2%)	6	(4%)

LANGUAGE ARTS

	All Students		Without SPED students	
	Number	Percentile	Number	Percentile
Basic	111	(49%)	73	(44%)
Proficient	107	(47%)	87	(52%)
Advanced	8	(4%)	6	(4%)

SCIENCE

	All Students		Without SPED students	
	Number	Percentile	Number	Percentile
Basic	88	(39%)	56	(34%)
Proficient	129	(57%)	104	(63%)
Advanced	9	(4%)	6	(3%)

SOCIAL SCIENCE

	All Students		Without SPED students	
	Number	Percentile	Number	Percentile
Basic	65	(29%)	42	(26%)
Proficient	146	(63%)	110	(68%)
Advanced	11	(4%)	10	(6%)

The solution is to use growth models that recognize schools and disaggregated groups who make academic progress but do not make Annual Measured Objectives.

One possibility is to allow those schools to stay in school improvement and not force them into corrective action and restructuring. Those schools that are in high poverty areas and need additional financial resources. One possibility is to fund the high poverty schools at 150% of the state allocation.

2. Lack of respect from state and federal government.

Allow tribal schools access to all NCLB programs and assure that states do not attempt to impose state statutes on tribal governments or tribal schools.

3. Amendments in Attachment A are a collaborative effort with members of the Association of Community Tribal Schools Inc. and the National Indian School Board Association. These organizations sponsored 4 meetings on the reauthorization of No Child Left Behind Act. The meetings were conducted over the last 2½ years. The changes focus on BIE funded schools.

4) We are also attaching amendments which would delete from title 25 of the United States Code provisions which are clearly out of date. The continuing presence of provisions to allow agency superintendents to withhold rations for failure to attend schools or select specific Indian girls to act as unpaid matrons, illustrate this point.

Mr. Chairman, I submit this testimony on behalf of the Tribal schools in the states of Maine, Florida, North Carolina, Mississippi, Louisiana, South Dakota, Minnesota, North Dakota, Michigan, Iowa, Wisconsin, Kansas, Wyoming, Oklahoma, Montana, California, Washington, Idaho, Nevada, Arizona, and New Mexico.

Mr. Chairman and Members of the Subcommittee, thank you for your support in the past and thank you for your continuing support in the future. If there is any way on which we may help you in your endeavors, please let our schools know.

Footnote

There are at least 20 programs that are authorized by the No Child Left Behind Act that tribal schools are not eligible for but public schools can access these programs. Many states do not recognize tribal schools as equals to their own public schools. The state of South Dakota has required tribal schools to be state accredited if they want to apply for any federal flow through funds including 21st Century After School Grants.

Attachment A.

Tribally Controlled Schools Act of 1988

1) Section 2502(a)(3) (Use of Funds) is amended by adding a new subparagraph:

"(C) Amendments to grants

(1) At any time during the academic year for which funds are provided under this Act, the school board of the tribally controlled school which receives a grant under this Act may request an amendment or amendments of the grant by submitting such amendments or amendments in writing to the Secretary or appropriately designated representative.

(2) If the Secretary fails to make a final decision on any amendment or amendments submitted under this provision, within 180 days after the filing of the request, the Secretary shall llll

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

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

(B) Rights

A tribally controlled school board tribe or organization described in subparagraph (A) may enforce its rights under subsection (a)(2) of this section and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 2507(e) of this title."

2) To move up the date of the last payment. Note—a similar change is required for BIA operated schools, in section 2010 of the BIA related amendments, see note 11.

Section 2506(a)(1)B) is amended by striking the term "December" and substituting the term "October".

3) Section 2507(a)—this is where deletions from existing chapter 25 language should be made——

Legislation administered by the Department of the Interior relating to Indian education which needs to be considered for amendment or repeal.

1) P.L. 93-638—Title II, Part A, section 203—requests a study of the interrelationship of all programs providing supplemental services to Indian students and a report if there is a need for redistribution of funds or further services. Now obsolete.

Part B—authorizes the Secretary of the Interior to help public schools with substantial Indian student populations to fund construction. I don't think this has ever been used, but just having it on the books is a problem. If there is any money for construction, it should be used for tribal or B.I.A. schools, and no conversation. This should be repealed.

2) 25 USC 48—says that where the Secretary determines that tribes are competent to direct the activities of "their blacksmiths, mechanics, teachers, farmers or other persons engaged for them", the Secretary may give authority over those persons to the tribal officials. At least with respect to teachers and education personnel, no longer needed. May want to amend or repeal. Enacted in 1834.

3) 25 USC 104—authorizes the Secretary of the Interior to purchase (when advantageous) for use in the Indian service products produced by Indian manual and training schools. No longer applicable. Enacted in 1880.

4) 25 USC 231—authorizes the Secretary of the Interior to allow State officials to enter any reservation for the purpose of inspecting schools or enforcing compulsory attendance State laws (doesn't apply to IRA tribes unless they allow it). However, is on the books and a dangerous precedent (I shudder to think what A.S. Swimmer could have done with this). Should be repealed. Enacted in 1929.

5) 25 USC 278a—prohibits funds from being used for education of Indian students in sectarian programs, except where the student chooses such a program for postsecondary education. Enacted in 1968.

6) 25 USC 307 and 308—transfers the Bushnell General Hospital to the BIA, to become the Intermountain vocational school. Since Intermountain is closed and the property transferred (part is now a golf course) , this is obsolete, and should be repealed.

7) 25 USC 471—authorizes no more than $250,000, annually, for loans to Indians for vocational and trade schools, providing not more than $50,000 may be used for high school or college and the funds must be repaid. There are other programs which cover this, and I am not aware it is even being used. Should be repealed. Enacted 1934

8) 25 USC 66—allows the Commissioner of Indian Affairs to assign the duties of an Indian agency superintendent to an education officer or superintendent of an Indian school whenever he determines such officer can conduct the duties, provided the pay of such officer may then be increased by no more than $300.00 per annum. This was overridden by section 1126 of P.L. 95-561 and should be repealed. Enacted in 1972.

9) 25 USC 101—payment for transshipment of goods by wagon from a central point to a school shall be paid for from funds appropriated for that school. Probably doesn't fit anymore and should be repealed. Enacted in 1913.

10) 25 USC 102—costs for inspection, storage, transportation and so forth for coal for schools shall be paid for from a support fund of the school or agency for which the coal was purchased. I am not aware that this is still a problem or that if coal is used, it is not being paid for from some other fund. Anyway, I suggest it is not needed, and should be repealed. Enacted 1920.

11) 25 USC 155—All miscellaneous revenues produced "from Indian reservations, agencies and schools" (except for 'Five Civilized tribes') shall go to the Treasury, into an account called "Indian monies, proceeds of labor" and may be available for the Secretary to use for the benefit of Indians. This runs counter to the idea that money produced by the actions of the school stays with the school, and could complicate the student products part, the investment part, the tuition staying at the school section and others. I suggest its repeal. Enacted in 1883, updated in 1928. This would seem to be a relic of the old Indian industrial and agricultural school era.

12) 25 USC 271—The President, in each case where he deems it shall improve 'the habits and conditions' of the Indians, and where the tribe agrees, may employ 'persons of good moral character" to instruct the Indians in agriculture and their children in reading, writing and arithmetic, under such rules and regulations as he shall provide. Of great historic interest, but of no purpose today. I suggest its repeal. Enacted in 1819.

13) 25 USC 272—the President shall appoint, by and with the advice and consent of the Senate, a person with knowledge and experience in the "management, training and practical education of children" to be "Superintendent of Indian Schools" and to visit any school operated by the government or funded with Federal funds and report to the Commissioner of Indian Affairs on deficiencies and remedies, with reports also made to Congress. This does not sound like a staff position to the Commissioner. It sounds more like a school inspector, who would be separate from the Indian Service. As such, while this provision may be out of date and is no longer used, it is an idea which may merit some consideration. However, with respect to the provision itself, it is obsolete and I recommend repeal. Enacted in 1889.

14) 25 USC 273—the Secretary of the Army may detail officers, not above the rank of captain, to special duty in Indian education. I really don't think we need this anymore, and I suggest repeal. Enacted in 1879.

15) 25 USC 274—the Commissioner of Indian Affairs may hire Indian girls as assistant matrons and Indian boys as farmers and industrial arts teachers in all Indian schools, where practicable. Repeal. Enacted in 1897.

16) 25 USC 275 Teachers in schools may be allowed, in addition to annual leave, educational leave in every alternate year, provided they receive no additional pay, for attendance at educational gatherings, conventions, institutions and training schools, where it would be in the interest of the government. I believe this provision has been overtaken by other regulations and laws and that it is no longer necessary. Repeal. Enacted in 1912, updated as late as 1957.

17) 25 USC 276—the Secretary of the Army is authorized to set-aside vacant posts and barracks for normal and industrial schools 'for the youth from the nomadic tribes' and to detail Army officers to aid in the education. With the next round of base closures under consideration, lets not be hasty. Anyway, I think this can be repealed. Enacted in 1882.

18) 25 USC 277—the former Fort Apache military post is to be turned into the Theodore Roosevelt Indian school, providing the land remains with the Army and is under the control of the Secretary of the Interior only so long as used as a school. I foresee problems with this. Maybe we should change, so the land was transferred and becomes tribal if no longer needed as a school. In any case, should be reworded. Enacted in 1923.

19) 25 USC 279—Mission schools on reservation serving Indian students are to receive the same rations of food and clothing which such children would receive if living at home. This is a stumper. Do these still exist? If so, is this a backdoor way of getting them some help? Do we want to do so? Enacted in 1906

20) 25 USC 280—grants patents of up to 160 acres to mission schools functioning as of Sept. 21, 1922, with reversion of land to Indians if the school ceases to function. Are there any of these around? Enacted in 1922.

21) 25 USC 280a—essentially grants patents for lands for missionary or private schools serving Indians in Alaska (uses term "Indian"). Do any of these still exist? Enacted in 1900.

22) 25 USC 281—says that any children of any Indian who has taken land in "severalty" (that is, in fee) is still eligible for Federal educational services. Hasn't this been overrun by time and practice. Maybe, should be left, just to be sure. Oth-

erwise, I would suggest making it plain in our rewrite of P.L. 95-561. Enacted in 1894.

23) 25 USC 282—authorizes the Secretary to promulgate and enforce mandatory school attendance reg.s Enacted in 1920.

24) 25 USC 283—authorizes the Commissioner of Indian Affairs to withhold food, clothing, annuities, and other rations from parents of children who do not attend school, provided that adequate schools are available and that notice of this is given to parents. The schools covered are obviously boarding schools. Should be repealed . Enacted in 1893.

25) 25 USC 285—specifically authorizes the withholding of rations from Osage parents if their children do not attend school. No reason given why they were singled out. Suggest repeal. Also obviously applies to boarding schools. Enacted 1913.

26) 25 USC 286—no child may be sent out of State to a boarding school unless with the consent of the parents or next of kin, and the Indian agent may not withhold rations or take any other steps to coerce such consent. Sounds like a good idea to me, and maybe one we should incorporate into the rewrite of P.L. 95-561. However, this particular provision should probably be repealed (though seems to do no real harm) Enacted in 1894.

27) 25 USC 287—Once a child is in school, the child may not be taken to a school in another State without parental consent. See comment above. Enacted in 1896.

28) 25 USC 290—prohibits the transportation "at government expense" of any child under the age of 14 out of State to attend an Indian school. What does this mean for some Navajo and off-reservation boarding schools. I think it is being ignored, but needs to be considered. Enacted in 1909.

29) 25 USC 291—Where there is any property at an Indian school not necessary to that school, the Secretary is authorized to move it to another Indian school, where it is needed. Enacted in 1907.

30) 25 USC 292—the Commissioner of Indian Affairs may suspend or discontinue any education program at his discretion and dispose of the property and furnishings, with the money to be used for the benefit of other schools (remember Phoenix Indian School) as the Secretary of Interior directs. This is directly contrary to the current language in P.L. 95-561 and should be repealed, though the idea that if any closure takes place, all the proceeds should be used for Indian education is an idea to be considered for incorporation into P.L. 95-561 (remember Intermountain and Phoenix [where some land swapped for everglades swamp for alligators]—could be overridden by Appropriations but gives something to argue). Enacted in 1904.

31) 25 USC 293—Another sale provision. Authorizes the Secretary of the Interior to sell any property brought by the U.S. for use as a school no longer needed for a school and put the money into the Treasury, unless the property originally brought with tribal funds, in which case it should be put into the tribal funds. See discussion on preceding section. Should be repealed and substituted with language that proceeds must be used for education, with tribes having first option (I think they may have this under GSA language). Enacted in 1917

32) 25 USC 293a—the Secretary is authorized to transfer to State or local governmental entities any land and improvements used for an Indian school and no longer needed for such purpose, retaining a right of reverter if the land is not used for a school "or other public purposes" and retaining mineral and prospecting rights. If land held in trust, requires tribal permission. No longer necessary—should be repealed. Enacted 1953, updated as late as 1962.

33) 25 USC 294 The Secretary of the Interior is authorized to sell , at no less than appraised value (remember Phoenix) "any abandoned day or boarding school plant or abandoned agency building", with the proceeds to be credited to the Indians "to whom said lands belong" (What does this mean?) Suggest covered now under GSA language and is no longer necessary. If want the idea, than move to rewrite of P.L. 95-561, with money to be used for education. Enacted 1920.

34) 25 USC 295—All expenditure of funds for education shall "be at all times under the supervision and direction of the Commissioner", and shall be spent " in conformity with such conditions, rules, and regulations" as he shall prescribe. He is also to control the "conduct and methods of instruction". Runs contrary to 93-638, 95-561 and 100-297 and should be repealed. Covered by other statutes. Enacted 1908.

35) 25 USC 302—From schools being operated, the Secretary is to designate one as "an Indian Reform School" and make "all needful rules and regulations for its conduct". Permission of parents or next of kin shall not be required for placement here. I think we have outgrown this, though it is a concept discussed as recently as 1976. Repeal. Enacted 1906.

36) 25 USC 304—In South Dakota, the course of study taught at any Bureau school shall, upon a majority vote of the parents of the school, be the course of study taught in South Dakota schools. No longer necessary—Repeal. Enacted 1949.

37) 25 USC 304a—the Secretary is to carry out a study of education of Indian students in the continental U.S. and Alaska and report to Congress. To be done by 1958 (never heard of it—doubt it was done). Obsolete and should be repealed. Enacted 1956.

38) 25 USC 304b—there may be student funds and student activity associations established and funds maintained for these purposes, under Bureau regulations. Should be incorporated in a rewrite of 561. Enacted 1959.

Below are amendments to Title XI of 95-561 (as amended)

4) Caveat on new or expanded schools below (new subsection (e)(7)), but until we get the appropriations language lifted, this is moot——

Section 2001(e)(1)(A(i)) is amended by deleting "The Secretary" and substituting "Subject to the limitations of paragraph (7) of this subsection, the Secretary.". Clause (i) is amended by deleting "Bureau funded school;" and substituting the term "Bureau funded school as of the date of enactment of llll (whatever this new bill is called;"

Section 2001(e) is amended by adding at the end thereof the following new paragraph:

"(7) Limitation

The Secretary shall not commence funding for any new school or extension or any program changes submitted by application subject to the provisions of this subsection which would otherwise commence funding under paragraph (5) of this subsection in any Fiscal Year in which appropriations for programs funded under section 1127 of this Title are not more than the funding for such programs (adjusted for llll whatever they are using) in the Fiscal Year preceding the Fiscal Year in which the application change would otherwise become effective, provided that the new school or change for any approved applications will be commenced, in the order in which such applications were approved, beginning in any Fiscal Year in which appropriations referred to exceed the limitation amount, and shall continue in each succeeding Fiscal Year."

For reference

Finally, Section 2001 (d)(7): for reference, I know Leg. Counsel will have the latest for mark-up, but those working off the web will miss the change in (d)(7) which was included in an appropriations bill. Don't let anyone mess with this provision without a lot of thought.

Source: H.R.2361 which was included in the Consolidated Appropriations Act PL 108-447, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Enrolled as Agreed to or Passed by Both House and Senate).

SEC. 127. Section 1121(d) of the Education Amendments of 1978 (25 U.S.C. 2001(d)) is amended by striking paragraph (7) and inserting the following:

'(7) APPROVAL OF INDIAN TRIBES—The Secretary shall not terminate, close, consolidate, contract, transfer to another authority, or take any other action relating to an elementary school or secondary school (or any program of such a school) of an Indian tribe without the approval of the governing body of any Indian tribe that would be affected by such an action.'.

Also, for reference, here is the moratorium language:

Source: any final Interior approps bill since FY 1996

Under: General Provisions, Department of the Interior

Appropriations made available in this or any other Act for schools funded by the Bureau shall be available only to the schools in the Bureau school system as of September 1, 1996. No funds available to the Bureau shall be used to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau school system as of October 1, 1995. Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school (as that term is defined in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026)), except that a charter school that is in existence on the date of the enactment of this Act and that has operated at a Bureau-funded school before September 1, 1999, may continue to operate during that period, but only if the charter school pays to the Bureau a pro rata share of funds to reimburse the Bureau for the use of the real and personal property (including buses and vans), the funds of the charter school are kept separate and apart from Bureau funds, and the Bureau does not assume any obligation for charter school programs of the State in which the school is located if the charter school loses such funding. Employees of Bureau-funded schools sharing a campus with a charter school and performing functions related to the charter school's operation and

employees of a charter school shall not be treated as Federal employees for purposes of chapter 171 of title 28, United States Code.

Finally delete Subsection 1001(h), which was the GAO study on funds. They never really did anything, and this is obsolete.

5) Section 2002(a)(1) is amended by inserting the term "facilities requirements" between the terms "space," and "and". At the end of the paragraph, add the following new language:

"All the factors set forth in this paragraph shall be set subject to the procedures and requirements of section 2017 of this Title."

6) This is the problem: the BIA is requiring tribal resolutions for each child for each year, which increases paperwork, who attends a non-reservation boarding or school site. The hammer they are using is cutting off travel funds for the student. That was never the intent.

Section 2004(f) is amended by adding the following new paragraph:

"(3) Construction

The provisions of subsection (d)(2) of this section shall be construed to require only one tribal authorization for each student for the duration of attendance at an off-reservation home living school or dormitory, provided that each tribal council may determine to cover more than one student."

7) They are for studies and plans, which were never done——

Section 2005 (a) and (b) are deleted and the Subsections re-designated accordingly.

Also, education control of facilities management for schools (un-numbered as of yet) Direction and supervision of certain personnel and operations of the office of facilities management and Construction

(1) In general

Any other provision of law notwithstanding, not later than 180 days after date of enactment , the Director of the Office shall direct and supervise of all aspects of the operations of all personnel directly and substantially involved in the provision of services to schools operated by or funded under Section 1127 of this Act provided prior to such date by the Office of Facilities Management and Construction, or other entities within the Bureau or Department, relating to operations and maintenance, major or minor improvement and repair, and any facilities information system relating to facilities which are primarily involved with the provision of education services.

(2) Transfers

The Secretary of the Interior and the Assistant Secretary for Indian Affairs shall, not later than llll , coordinate the transfer of functions relating to this provision to the Director.

8) Section 2007—As for clarification of travel——

Section 2007(a)(1)((B)(ii) is amended by inserting after the term "transportation" the following "including but not limited to transportation related to necessary student academic or home living related activities".

9) Section 2008—To be sure the recipient and not the BIA defines what these funds will be used for, subparagraph 2008(a)(1)(B) is amended by deleting "may include" and substituting "may, at the determination of the recipient of a grant made pursuant to this section, include". if the Study provisions no longer needed (and I doubt they are) then:

Section 2008 is amended by deleting subsection (i) and redesignating all remaining subsections.

10) Section 2009—Delete entire section—this is just embarrassing. This means renumbering the sections, which everybody has to get used to a new nomenclature for the rest of the bill, and everything written before now is obsolete. Anyone got a totally new, meaningless (or even meaningful) section to stick in here to help?

11) Section 2010 currently (see above -probably renumbered the sections).

The language from the TCSA is much better and rather than cut and bite, I suggest the following:

Section 1010(a) is amended by deleting subsection (a) and substituting the following:

"(a) Payments

(1) In general

Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this chapter in two payments, of which——

(A) the first payment shall be made not later than July 1 of each year in an amount equal to 80 percent of the amount which the grantee was entitled to receive during the preceding academic year; and

(B) the second payment, consisting of the remainder to which the grantee is entitled for the academic year, shall be made not later than October 1. "

Section 2010(a)(3)(A) is amended by deleting the term ($50,000" and substituting the term "$100,000"/Clause (2010(a)(3))(A)(i) is amended by deleting the term "$15,000" and substituting the term "$25,000".

Furthermore, I suggest we delete the sequestration language (or at least figure out if still applicable):

Section 1010(a), as amended above, is amended by deleting (4).

12) Section 2015 deals with an annual report and audit—to my knowledge, this isn't done, but I am looking for leverage here—if we amend this to include a new provision regarding a computation of the amount to conform to the regulation dealing with ISEF and a minimum amount (see below) then we can at least get that amount before Congress. It won't work u8nless people (mainly on the Hill) hold the BIA to actually doing it, but the first step is to get something in statute which can then be enforced. Also, putting it here and relying on something already in the regulations makes it harder to argue against the provision. Finally, I tied it to a date, because if the BIA is smart, they will delete the reg.

Section 2015 is amended by redesignating the current provision "(b) Budget request" as (b)(1) Budget request" and adding the following new paragraph immediately following that provision:

"(2) The annual budget request for the education programs of the Bureau, as submitted as part of the President's next annual budget request under section 1105 of title 31 shall include a computation of the factors included in 25 CFR Part 39.804 et seq, as in effect on llll , based on each preceding academic year's information relating to student counts and other information."

Information—you referenced the minimums in the regulations already—how does this mesh? They are not in 25 CFR Part 32 (which is Education policies) but they are in 25 CFR 39 (39.804 et seq.) The reason I point out they are not in policies is that within 39, which deals with funding, there are two clear provisions 39.201 and 39.101 which clearly state the ISEP has nothing to do with what the program actually cost (they are a stitch and should be referred to the Committees time and time again—I have never seen the like). If they were in the policies, we would be in a stronger position to use them.

13) Section 2018—dealing with regulations and negotiated rule making—I think if you include/re-state the definition of regulation already in the Act in Section 2003(b, there can't be too much debate. If they say it is already in there, then say you want a reference, for clarity. This will get you further than trying to put in manuals, etc., per se.)

Section 2018 is amended by adding the following new subsection:

"(d) Definition of regulation

In this section, the term "regulation" means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by any officer or employee of the executive branch."

Attachment B.

25 CFR 39.100 What is the Indian School Equalization Formula?

The Indian School Equalization Formula (ISEF) was established to allocate Indian School Equalization Program (ISEP) funds. OIEP applies ISEF to determine funding allocation for Bureau-funded schools as described in §§ 39.204 through 39.206.

25 CFR 39.101 Does ISEF assess the actual cost of school operations?

No. ISEF does not attempt to assess the actual cost of school operations either at the local level or in the aggregate at the national level. ISEF provides a method of distribution of funds appropriated by Congress for all schools.

25 CFR Subpart H-Determining the Amount Necessary To Sustain an Academic or Residential Program

39.801 What is the formula to determine the amount necessary to sustain a school's academic or residential program?

(a) The Secretary's formula to determine the minimum annual amount necessary to sustain a Bureau-funded school's academic or residential program is as follows:

Student Unit Value x Weighted Student Unit = Annual Minimum Amount per student.

(b) Sections 39.802 through 39.807 explain the derivation of the formula in paragraph (a) of this section.

(c) If the annual minimum amount calculated under this section and §§ 39.802 through 39.807 is not fully funded, OIEP will pro rate funds distributed to schools using the Indian School Equalization Formula.

39.802 What is the student unit value in the formula?

The student unit value is the dollar value applied to each student in an academic or residential program. There are two types of student unit values: the student unit instructional value (SUIV) and the student unit residential value (SURV).

(a) The student unit instructional value (SUIV) applies to a student enrolled in an instructional program. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical non-residential program.

(b) The student unit residential value (SURV) applies to a residential student. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical residential program.

39.803 What is a weighted student unit in the formula?

A weighted student unit is an adjusted ratio using factors in the Indian School Equalization Formula to establish educational priorities and to provide for the unique needs of specific students, such as:

(a) Students in grades kindergarten through 3 or grades 7 through 12;

(b) Special education students;

(c) Gifted and talented students;

(d) Distance education students;

(e) Vocational and industrial education students;

(f) Native Language Instruction students;

(g) Small schools;

(h) Personnel costs;

(i) Alternative schooling; and

(j) Early Childhood Education programs.

39.804 How is the SUIV calculated?

The SUIV is calculated by the following 5-step process:

(a) Step 1. Use the adjusted national average current expenditures (ANACE) of public and private schools determined by data from the U.S. Department of Education-National Center of Education Statistics (NCES) for the last school year for which data is available.

(b) Step 2. Subtract the average specific Federal share per student (title I part A and IDEA part B) of the total revenue for Bureau-funded elementary and secondary schools for the last school year for which data is available as reported by NCES (15%).

(c) Step 3. Subtract the administrative cost grant/agency area technical services revenue per student as a percentage of the total revenue (current expenditures) of Bureau-funded schools from the last year data is available.

(d) Step 4. Subtract the day transportation revenue per student as a percentage of the total revenue (current revenue) Bureau-funded schools for the last school year for which data is available.

(e) Step 5. Add Johnson O'Malley funding. (See the table, in § 39.805)

39.805 What was the student unit for instruction value (SUIV) for the school year 1999—2000?

The process described in § 39.804 is illustrated in the table below, using figures for the 1999—2000 school year:

Step 1—$8,030 ANACE.

Step 2—$1,205 Average specific Federal share of total revenue for Bureau-funded schools.

Step 3—$993 Cost grant/technical services revenue as a percentage total revenue.

Step 4—$658 Transportation revenue as a percentage of the total revenue.

Step 5—$85 Johnson O'Malley funding.

Total: $5,259 SUIV.

39.806 How is the SURV calculated?

(a) The SURV is the adjusted national average current expenditures for residential schools (ANACER) of public and private residential schools. This average is determined using data from the Association of Boarding Schools.

(b) Applying the procedure in paragraph (a) of this section, the SURV for school year 1999—2000 was $11,000.

39.807 How will the Student Unit Value be adjusted annually?

(a) The student unit instructional value (SUIV) and the student unit residential value (SURV) will be adjusted annually to derive the current year Student Unit Value (SUV) by dividing the calculated SUIV and the SURV into two parts and adjusting each one as shown in this section. (1) The first part consists of 85 percent of the calculated SUIV and the SURV. OIEP will adjust this portion using the personnel cost of living increase of the Department of Defense schools for each year. (2) The second part consists of 15 percent the calculated SUIV and the SURV. OIEP will adjust this portion using the Consumer Price Index-Urban of the Department of Labor.

(b) If the student unit value amount is not fully funded, the schools will receive their pro rata share using the Indian School Equalization Formula.

Chairman KILDEE. Thank you very much, Dr. Bordeaux. And thank all of you for your excellent testimony. It certainly indicates the importance of this Committee coming out and talking to people who are literally in the field and know the needs of—the unique needs of education in Indian Country.

There are various types of Indian schools. There are the BIA schools or the contract schools. And thank you for your comment on what I did back in 1979. And there are tribal schools. The contract, the BIA and public schools.

Governor Rhodes, in your sovereign nation do you have a mixture or are your schools state public schools or BIA schools or contract schools or a mixture of those three?

Governor RHODES. Yes, Mr. Chairman. We do have a mixture of parochial and public school. Yes.

Chairman KILDEE. Again, Governor.

Governor RHODES. My answer was that there are a mixture of schools here in Gila River.

Chairman KILDEE. Okay. So you have contract schools and BIA schools and some state public schools?

Governor RHODES. Yes.

Chairman KILDEE. So Johnson O'Malley money would flow to those public schools then?

Governor RHODES. Yes. I am going to let Dr. Girard respond to the Johnson O'Malley.

Chairman KILDEE. Sure. Dr. Girard?

Dr. GIRARD. Yes. Good morning.

The Community is comprised of every kind of school you can list. We have got private, we have Catholic, Seventh Day Adventist Christian, charter schools, BIA grant schools and public schools. And we have got every kind. And we are working to unify those schools.

Our Johnson O'Malley funding is not used like most tribes use the funds where they just issue certain amounts to the public schools that are in their communities serving their students. Rather Gila River employs actual staff. We call them Johnson O'Malley Student Advisors. And right now in our program we have eight advisors to cover the two ends of the Community, the east end and the west end.

The funds we receive right now do not cover operational costs, and they cover maybe two staff salaries with all the benefits. So the tribe is supplementing those funds by at least 80 percent.

Chairman KILDEE. Thank you very much. That clarifies that for me and very concisely.

Chairman Nosie, you discussed the need to improve teacher recruitment training and retention. What specific resources do teachers in the Fort Thomas and San Carlos School Districts need to improve their ability to help their students and what could we do to help you retain those teachers?

Chairman NOSIE. Well, Chairman Kildee, what we see in our teaching work is that we really need to have more funding going into the programs that have more. And I think it's going to take a visit to every school—to every unique Indian tribe. And it's going to take a visit or that information to be provided to show that there are some programs that have been working already in the schools,

but more funding to reach out for the teachers, professional training as far as how they can interact with the students. Because being an isolated area, it brings a lot of different problems and so we really need a program design that's going to have the students and the teachers interact together.

Retaining, it falls back on the same thing. Being an isolated area all the problems that we have interact together; the housing, supporting housing funds, economic development. So I think those are the key things that we really need to look at, especially in an isolated area how we could bring that together so that we look at retaining teachers on the reservation. But funding going to how teachers can interact with students and having parent involvement will be very important.

So as we release more of our resources, funding would be good channeled into our schools.

Chairman KILDEE. Thank you very much.

Mr. Miller, on your schools at Sault Ste. Marie

do you have a variety of schools also? Do you have BIA schools and state schools and contract schools?

Mr. MILLER. Yes. We're pretty much like Gila River. It's public, charter, BIA grant schools.

Chairman KILDEE.

You know, it's interesting that you talk about the $1500 less per student in the BIA schools. That's even harder for you then because Michigan itself in 2006 is underfunded. The President has his budget submitted to Congress. Michigan was shortchanged just in one year $331 million for Title I. So you lost money there for your public school services and you lost money through the BIA shortfall also.

Mr. MILLER. Yes. There is nothing like taking it across the board. That is what we are doing right now.

Chairman KILDEE. You know, really it is a shame. Education should be one of our top priorities. The one hopeful thing is that the budget that was passed just about a month ago, the budget before we do the appropriations, increased two areas in this nation's priorities; health and education. One of the big problems, of course, is that about five years ago, not with my vote, they cut taxes $2 trillion. Not with Congressman Grijalva's vote either, they cut taxes $2 trillion. You need revenue for expenditures. And really you've been a victim of that.

Mr. MILLER. Right. In the State of Michigan the public school systems that handle a number of the Native students have recently just taken a $125 cut at the end of the normal school year. So they are being stressed even further from their operating budgets. And indication is it is something that is not going away. That is something that the state government and the Federal Government has to address. This is not going to be a one time fix. That is something that will be here 100 years from now, we will be having the same concerns that education be funded adequately. And, hopefully, some day both the State and Federal Governments realize that fund it adequately so we are not having our meetings here to discuss how to make education, or how to treat things to do with less money. Hopefully, we will have an over abundance of money, which would be a nice problem for a change.

Chairman KILDEE. And I will yield to Congressman Grijalva. What has emerged here is that when we look at both the authorization of No Child Left Behind or any of the education bills and at the appropriation, we should put our glasses on to look at how this will especially adversely effect Indian students. Because you are hit with a double or triple whammo, are you not, as in Gila River?

Mr. MILLER. Yes. We take the domino effect all the time.

Chairman KILDEE. Thank you very much.

And now I yield to the Gentleman from Arizona, Congressman Grijalva.

Mr. GRIJALVA. Thank you. Thank you, Mr. Chairman.

And I am struck by obvious fact, and I believe this is why this hearing is important and why the reauthorization as it relates to Native American communities is so important, that in most tribal nations the population between 13 and 21 represents almost half of the population of those nations. So what we are talking about here is about the future. That is not counting the babies under 13 at this point. That is the future that is going to be responsible for the communities that they live in and are a part of.

Dr. Bordeaux, if I may, I have a couple of questions for you.

I have heard from my constituents in relationship to ISEP that your rolling average has posed significant funding problems. You mentioned in your testimony that it is not the best way to calculate need.

And at this point, Mr. Chairman, I would like to ask to take this opportunity to submit to the record a letter from the Department of Interior's Secretary Weiner requesting $1 million to address the shortfall caused by ISEP calculation. And I found it interesting. In his letter he admits that this regulation has posed problems to schools who have seen their enrollments number increase year-to-year, and let me read the one point in that letter.

"The rulemaking did not make provisions for the two year transition period before the three year rolling average is fully implemented, the reprogramming funds that provides supplemental funding to those schools whose enrollment increased in recognition that the schools have not fully transitioned. This is a short term issue."

I would like to state that I have made an inquiry to BIA as to how they consider the problem to be short term since it is my understanding that these schools will always being playing catch-up due to the misreporting of the student numbers at the outset of No Child Left Behind. And I have also followed Mr. Kildee's lead and have asked GAO for a report to continue to shed light on this.

As it stands now, ISEP does not exist in statute. And my question to you, Dr. Bordeaux, how would you propose a remedy? Does Congress create a statute particular to this issue or do we leave it through this regulation process?

Dr. BORDEAUX. It would certainly hold more weight if it was in statute. There is current regulation right now that requires the Bureau to identify the need of what it costs to educate an Indian child and what it costs to provide a residential program for an Indian child. It is in regulation. And it uses the national per pupil expenditure average from the most recent number from three or four

years ago that is hard data, and adds and subtracts the revenue that schools get that would relate to that national per pupil expenditure average, including transportation, operation, maintenance, and that kind of stuff.

So I think in my testimony the sample that we used was from like maybe eight years ago, but it actually comes out to somewhere between $1500 and $1800 less just for ISEP. It does not include anything else. There would be a need of $1500 more for rated student unit, and that is to educate a child in grades four through six and does not count anything else.

The three year averaging stuff, and you got to remember ISEP, Indian School Equalization Program, is a distribution of appropriations and nothing more. It does not tell you what the need is, it does not do anything else. It just distributes whatever Congress appropriates.

So when they did the three year averaging, if you went from 100 to 150 to 200 over three years, your three year average was 150 students and did not recognize those 50 you got until three years down the road. So it is always going to be an up and down thing. So in order to get any additional revenue, you have to increase enrollment every year because the Administration never requests the amount that is needed that is based in those regulations.

Mr. GRIJALVA. And so, as I understand it from what you are saying, the power of statute would be the corrective step or the remedy at that point?

Dr. BORDEAUX. Yes.

Mr. GRIJALVA. Thank you.

And I have two questions and then I would like yourself and Mr. Gilbert to try to give us your perspective on.

Let me start with one that we just finished in one of the hearings. In light of the Reading First scandal that we have been dealing with in your experience, both of you gentlemen, have the contractors at BIA schools had the expertise in culturally and linguistically appropriate approaches in reading and language arts or quite frankly, have the contractors been predominately non-Native American businesses with a supplemental service side?

Dr. BORDEAUX. Non-Native. They are all non-Native because the Reading First legislation and the way it is implemented by the Administration really restricts what you can use. So there might only be seven or eight companies out there that you can use.

Dr. GILBERT. Thank you.

In my experience coming from the university environment providing assistance to tribes, culturally based instruction, it has been very successful and very positive for our Native students. Let me give you an example, if I may.

Mr. GRIJALVA. But my question is particular to this, Dr. Gilbert. And I realize that.

And the question is as we have narrowed the contracting options for public schools and I am assuming that it extends as well to Nations as to the contractor that has those appropriate skills that you represent in the cultural linguistic competency and content. And my question is are the contractors that are being relied upon to supplement and support students, Native American students, do they have that competency that you were going to speak to?

Dr. GILBERT. In most case they're are not a Native. They are usually the external contractors that come in and mostly do that.

Mr. GRIJALVA. Thank you.

Dr. GILBERT. Provide that service.

Mr. GRIJALVA. Last question for both gentlemen and then my time has run out, but if you would extend one courtesy. Thank you.

When we consider the growth models what special concerns should we as a Committee in this process include for tracking the individual progress of Native American students as we go through the growth model discussion, through the measurement discussion to the testing discussion? If you can provide us with a short response or——

Dr. GILBERT. Yes. My experience, once again, is working with school districts is that if you look at how the Native American children are assessed by AYP, there is a grave concern there because AYP does not assess students individually, they assess students across the board or by school. And in my opinion I feel that we should take a look at assessing students individually. Because each and every student is different.

One example that I use is that I use the portfolio assessment technique, which basically tracks the child from the time the student enters our educational system all the way through to the time they graduate. That is a more productive and more reliable type of assessment.

Mr. GRIJALVA. Thank you, Doctor.

Dr. Bordeaux?

Dr. BORDEAUX. I think there can be a process designed very easily to track individual student progress and even progress of disaggregated groups so that if you want to look at Native populations or look at students with handicapping conditions or low income children or, whatever it is you should take those children where they are at when they enter that year and track their progress through the end of that year and see how they are doing and see if they are making progress. If they are making progress, then you should recognize that progress and do not say well you did not make the standard that is much higher right now. You should always reach for that standard and try to always make 100 percent of your children proficient, but the reality of life is it takes time and it takes each individual child to make that progress, not everybody at the same time.

Mr. GRIJALVA. Thank you. And thank you for the extra time, Mr. Chairman.

Chairman KILDEE. You are very welcome. It is your District.

Chairman Nosie, on your sovereign land, do you have a mixture of schools; public, BIA and contract schools also?

Chairman NOSIE. Chairman, we do have public schools and parochial and the one charter school that we have at San Carlos.

Chairman KILDEE. Do you have any BIA schools or contract schools?

Chairman NOSIE. Not on the reservation, but we do have them attending.

Chairman KILDEE. Thank you very much. Thank you.

And if I may address a question to Governor Rhodes and if you wish you may refer to Dr. Girard.

We have the AYP, adequate yearly progress and then there is some talk about using some growth models. Growth models actually follow the child rather than the grade level, which is what we measure now.

There is some talk of doing more pilot work in using some growth models. And in a Nation as yours with a variety of schools, do you think that that might be a place to perhaps use some growth models to see how they work vis-a-vis the AYP?

Dr. GIRARD. I think that is very feasible with the schools that we have in our community. And the public schools are already demonstrating consistent growth. And so at the end of every school year we have a form that we have each school report to the tribe. And they use the same forms so that we can measure the data to assess growth or weaknesses.

So, yes, that can happen.

Chairman KILDEE. That might be a place where we could compare how one may work.

Dr. GIRARD. Absolutely.

Chairman KILDEE. With growth models you would have to keep data on individual students. Because this AYP you say what third grade did this year and what third grade did the next year, but they are different people, are they not? While with growth models you actually measure the specific individuals, how they are growing?

Dr. GIRARD. Either that or you would do—now I'm drawing a blank. But when you have this you follow the same group. You know, so third grade this year would be fourth grade the following year and fifth grade the year after that. And one or two of the schools is doing that also. But with the mobility, it is hard. It is tricky to track individual students. And that is why we are trying to unify our schools to discourage the mobility, say, so that if a student goes from one, say a BIA grant school to the Catholic school, they will find that there is no difference as far as the philosophy, the rules and the standards. And so eventually, theoretically, the kids will find that there is no real benefit to go bouncing from school to school and they will tend eventually to stay put. And then we can follow them that much more.

Chairman KILDEE. And the growth models, the record has to follow the child then?

Dr. GIRARD. Exactly.

Chairman KILDEE. And could you do that if we did have, say, some models out here, growth models, would you see that the record could follow the child?

Dr. GIRARD. That is what our tracking database is going to do. We are implementing one and we expect it to be up and running and functioning by August 1. And it will cover student attendance and academic progress. So, yes, it will follow as long as they stay within the community, yes, we will have their record from kindergarten on to the 12th grade.

Chairman KILDEE. Thank you very much.

Some time I think we will be visiting the schools. Because you do find a mix of various types of schools. I think it would be very helpful to me personally to go out and visit. I can do it up at Sault Ste. Marie also.

But let me ask another question of Dr. Gilbert. Can you discuss ways in which Title VII is helpful to students and how we might improve Title VII?

Dr. GILBERT. I think that as far as an educator kind of from the university setting, also a former teacher, Title VII has positive aspects to it. One of the things that I highly agree with is the assessment as far as providing database fine data, you know, where to improve our instruction and our techniques an our strategies to work with Native American children. Unfortunately for AYP our assessments are determined by the State Department of Education. But then again, I think that there are some highly qualified instructors out there that also provide that kind of needed assessment for Native students.

Chairman KILDEE. Thank you very much.

Again, I will yield to the Gentleman from Arizona such time as he may consume.

Mr. GRIJALVA. Very kind, Mr. Chairman. I will not abuse the privilege. I appreciate that.

Governor Rhodes, if I may ask you, much discussion has happened around No Child Left Behind dealing with the issue of truancy, high levels of truancy and high drop out rates. One of the questions is do you think that by narrowing the curriculum where we are studying those four content areas, that we can somehow for the purpose of taking the tests, that we somehow contributed to that truancy drop out rates that are increasing?

Governor RHODES. Unfortunately—Can you please repeat the question?

Mr. GRIJALVA. Okay. As we narrow the curriculum so that we are concentrating on core subjects that are for test taking purposes, so we are teaching to the test. And in the high schools there has been indications that one of the unintended consequences has been a higher drop out rate and a higher truancy rate. And I am asking in your experience has that been the case or it has not been the case?

Dr. GIRARD. I do not think that the AIMS testing and the teaching to the test, I do not think that that is a major issue in the truancy. I think it is just something that we all suffer as a society and our kids are learning—for our individual kids it is a huge cultural shock coming if they attend reservation schools and elementary school and they choose to attend a high school outside the Community. It is huge. It is very intimidating. Because they are coming from a school with 200 to 300 kids, and maybe in instances of less than 200 kids, to schools with populations of 3,000. And so it is intimidating and discouraging. And that is where our Johnson O'Malley staff come in.

When they come to those schools, we are there to help them to develop that self esteem and confidence they need to stay in.

But the truancy I think is related to a lack of self confidence and just a frustration of getting culturated, deculturated.

Mr. GRIJALVA. Thank you.

Anyone, there as a curious statistic—not curious, disturbing statistic we had at one of the hearings on drop outs and what was going on nationally with No Child Left Behind that over 50 percent of the drop outs in this country are coming from 15 percent of the

high schools in this country. And this begs the questions where should we be concentrating your resources, but that is another story.

If I may, Chairman Nosie, and I appreciate you made a comment about everything is interrelated; the issues of poverty, the issues of health are interrelated to the success or failure of many of our students. I think we sometimes narrow how we are doing our decisions and forget about the other factors that are impacting on a child in a family's life. And I appreciate those comments very much.

One of the factors as it effects your Nation, the issue of transportation and the ability to get children back and forth and the cost of the consequence. If we could just briefly comment on that.

Chairman NOSIE. Congressman, thank you again. I will have Ms. Steele answer.

Ms. STEELE. Would you repeat that question, please?

Mr. GRIJALVA. Transportation.

Ms. STEELE. Yes.

Mr. GRIJALVA. And the pressures and the costs and the impediment that that creates for your Nation and your children in terms of a successful school, et cetera. I mean what is the consequence of those transportation issues that in some Nations that I have heard of are severe issues that they have to cope with just getting the kids to and from their schools?

Ms. STEELE. Well, I think one of the other—I think people mentioned that there is problems with deciding whether, you know, they should buy gas or should they not with that last $5 bill that they have. And in our situation we also have those same problems. We have a couple of bus runs that are made on the reservation. And often times the children miss the bus. And they do not have an alarm clock because children of poverty often do not have that, that time element in there. So when they are late to school, they will walk there or parents will sometimes try to bring them, or they just miss school entirely. So transportation is a problem. We do not have any other public mode of transportation on the reservations except for the buses and if families have cars.

Mr. GRIJALVA. Thank you very much.

Thank you.

Mr. Miller, one question. This ongoing debate, discussion about the reorganization or we are or we are not going to reorganization in education if it were to happen, as we have talked about, what impact would it have on the children you serve or for that matter on Native children all over?

Mr. MILLER. The proposed reorganization that the Bureau was trying to implement in BIE would have left us in a state of chaos. There was little thought about the logistics of the regions as they tried to realign them. It was just a very, very poorly thought out plan.

I believe right now there are two law suits in—three law suits in—three that are in the process right now to stop this.

So as far as the reorganization, we hope it ends up being a dead deal and does not go any further than it has to this point.

Mr. GRIJALVA. Thank you very much.

Thank you, Mr. Chairman.

Chairman KILDEE. Thank you very much, Congressman Grijalva.

I understand that earlier this month the Departments of the Interior and the Department of Education met with the tribal leaders, the school board members and tribal community members to discuss formation of various laws including No Child Left Behind that impact Indian education. Were any of you involved with those meetings or do you have any comment on them?

Mr. MILLER. Last week I attended the consultation hearing in Rapid City, and the consultation item was there is a perception within the Administration that there is a conflict between No Child Left Behind, primarily Title I and some other pieces, and the Improving American Schools Act or the Indian Self Determination and Education Assistance Act, the on contract schools. And I think the conflict exists because over the last 10 or 15 years more and more the Federal Government has been requesting additional information from schools and from tribes and everybody else that has no bearing to those laws. They are asking for far too much data that deal with individual students, individual staff and stuff like that. And so the Department of Education has determined that they think that there is conflict between Title I and the Improving American Schools Act when in reality the Schools Act, which you Mr. Chairman, introduced in 1988, specifically gives tribal control of those schools to the local community as long as they comply with being accredited and do audits and some other things like that. And so there's a conflict up there.

And I talked to people that went to the one in Nashville. I talked to people, the one down here and also over in New Mexico. And there was not anybody from the field that saw a conflict at all. So it did not exist and they probably wasted $50,000 for all those meetings.

Chairman KILDEE. When they meet with you quite often the meeting are productive if the right attitude is brought. And I am not trying to form your answer for you, but do you feel that when the Federal Government meets with the various tribal leaders in matters like this that they recognize that this is sovereign talking to sovereign or do they not realize that?

Dr. BORDEAUX. The answer is no, most of the time they already have an idea of what they want to do. And sometimes—most of the time they will present it, but sometimes they will not. But by the time we start talking to them and trying to have a dialogue, their decision is already made and then they will try to force that upon tribal governments and tribal school.

Chairman KILDEE. So it's not really a give and take consultation, it's almost an informational meeting?

Dr. BORDEAUX. Yes. It is not in the true sense of consultation as written the No Child Left Behind or in the Executive Order.

Chairman KILDEE. And that is one thing very important to me, because I keep trying to remind them that they are talking sovereign to sovereign.

You know, many in the Federal Government have this idea of the trust responsibility that it is some kind of patronizing trust. The trust responsibility came into being to protect you from State government. Because very often State government would be intruding upon you, certainly when the Cherokee were forced from the east-

ern states to Oklahoma. But the trust responsibility is not demeaning or diminished in anyway, shape, manner or form by sovereign to sovereign relationship that is embedded in our Constitution.

And anytime that you feel that they are not recognizing that, that these are equals talking to equals and not just coming to a meeting to be told what is going to happen or to discuss what might happen, putting their ideas, your ideas together and seeing what consensus you can reach, please let us know. Because we have to change some attitudes when these so called consultation processes take place.

Dr. BORDEAUX. I think another thing before I sit down is that there has been at least two or three times where the Bureau of Indian Education have gone to the State departments and tried to negotiate some memorandum of agreement on behalf of tribal schools and tribal governments without us even being involved. There is a big caution out there that needs to go on tribal governments and the Federal Government needs to know more of what is going on.

Chairman KILDEE. Whenever you hear of any instance of that happening, if you could email me or call me. I would like to remind them that this is a sovereign to sovereign.

Yes?

Dr. GILBERT. Congressman Kildee, I would like to introduce Lillian Sparks, Executive Director of NIEA. And I think she can provide additional testimony on this issue.

Chairman KILDEE. Thank you very much.

Ms. SPARKS. Thank you, Mr. Kildee.

I would just go back on Dr. Bordeaux's comments with regards to the misperceived idea of what the conflict is between Department of Ed and Department of Interior.

And like Dr. Bordeaux was saying is that there is this idea that there is conflict between Schools Act and No Child Left Behind and tribally controlled schools being accountable under NCLB. And I would just like to say that our schools are already accountable. There are provisions provided under Title I. They are reporting the information. They are being accountable to Department of Education, Department of Interior. And it is not very clear in terms of exactly what the consultation issue is. And we think that those meetings could be better served to actually talk about how the two departments could meet, talk together and work out a plan and strategy to better serve the needs of Indian students under BIA so that there is collaboration among the departments instead of talking about who is accountable to whom under Tribally Controlled Schools Act and under NCLB. Because that is already very clear under the law.

Chairman KILDEE. Thank you very much.

I think we have got a basis of some of the things that we can emphasize to make sure that you have a greater say in educating your own people with the obligation of the Federal Government to continue to carry out either its treaty obligations, its Executive Order obligations or any historical or legal ties that are just between the sovereign tribes and sovereign United States.

I have been in Congress 30 years now and I have constantly tried to remind people in the Federal Government that they are dealing

with sovereign nations out there. And sovereignty is not determined by size.

In Michigan, you are probably one of the bigger tribes, Mr. Miller, tribes in Michigan. But we have some very small tribes, but it is not determined by size. Luxembourg is not a very big country, but it is sovereign. Out here in the west, of course, you find bigger tribes. But I think it is very important that you, and I know you have a great record out here of defending your sovereignty, not let someone come in and say we are from Washington and we are going to tell you what our results for our consultation is. But if you need some help from those of us in Congress, please let us know that.

I got involved in Indian matters 42 years ago. And I do read treaties. I do read Executive Orders. I do read these various things. And I happened to have read the Treaty of Detroit. And in the Treaty of Detroit the Indians of Michigan including your ancestors, Mr. Miller, gave up millions of acres of land. One thing they were promised in return was education in perpetuity. And I read that. And I and Jackie Vaughn, a member of the legislature, wrote a bill carrying out this treaty; that any Michigan Indian could go to a public college in Michigan and the State would pay the tuition. That is still the law in Michigan.

And justice demands that. And when you are going to be a seeker after justice, you have to be seekers after your own justice. And out here particularly in this area, I find that you have a strong feeling towards your sovereignty. And I am edified by that.

I know the Sioux Tribe has really fought hard to make sure that neither the State nor the Federal Government encroached upon your sovereignty. But there are little things that happen, sometimes irritating things but things that really effect you and your ability to carry out your responsibilities. We want to know that in Congress. Because I am like the Governor here, I am going to stay in Congress as long as God and the voters are willing. I want to really make sure that one of the things that I make a top priority is to protect on a daily basis sovereignty.

And never let them come—I am preaching now—but never let them come—they will never come probably and take a big hunk of your sovereignty away. They might come a little slice here, a little slice there and kind of make a little concession here. Just do not let them do it. And out here particularly you will find a strong feeling of sovereignty. But keep that going.

As a matter of fact, I always say, and you can do what you want because you are sovereign, you can do with your Nation what you want. But I always refer to them as citizens, as I mentioned to Governor Rhodes in my office last week.

You know Mr. Grijalva and I are citizens. We have two citizenships. I am a citizen of the State of Michigan, Mr. Grijalva is a citizen of the State of Arizona. I am a citizen of the United States, as is Mr. Grijalva. You are citizens of your respective States. You are citizens of the United States with all the rights and responsibilities of those citizenships. But you are also citizens of another real sovereignty. You are citizens of your own tribe, your own Nation. And I want to help you, I want to help you make sure that no one comes with a little slice and takes a tiny slice of your sovereignty

whether it be saying you are coming in for consultation and find out here is the result of the consultation. I want to work with you on that.

This has been a good hearing. It has been a good hearing on education. It has been a good hearing on sovereignty.

I was here ten years ago. I can come back and see you, but all you can really use that sovereignty, give it a chance to have some economic development. You are a really an example for indigenous people all around the world.

I met with people from Australia, or indigenous people of Australia. I believe that you have a certain common bond with indigenous people and how they are treated by the central government.

So I'm edified. I have learned about education. I learned a lot about how you govern yourself out here. I look forward to working with you. And I am going to at this point conclude thanking all of you. We are all better informed because of this.

The Members, as I mentioned before, will have seven calendar days to submit additional materials for the hearing record. And any Member that wishes to submit follow up questions in writing to the witnesses, you may get some questions in writing either from myself or some other members who are not here today. If you would coordinate with the Majority Staff within the requisite time.

The hearing is now formally adjourned.

[The prepared statement of the Navajo Nation follows:]

Impact of the "No Child Left Behind Act" (NCLB) on Bureau of Indian Education (BIE) Funded Schools and Students

Submitted by: THE NAVAJO NATION, *April 28, 2007*

Based on the reported experience of Navajo Nation schools and students,[1] as it has been implemented the NCLB has been a virtual disaster for elementary and secondary Navajo Tribal Education.

The NCLB was conceived out of a US State Public School System model and the experience of United States Department of Education (USDEd) officials with that model. Its provisions assume a number of characteristics of that State Public School Model that are generally inapplicable to the BIA funded Federal Indian School system. Several examples follow:

I. The Act assumes that public education in the United States is primarily the responsibility of "State Education Agencies" (SEAs) and "Local Education Agencies" (LEAs), all of which from the national perspective of the USDEd are "local" in nature. In the Public School Systems:

Control of public education is lodged primarily at the local State government level, as a residual "State's Right" never ceded to the Federal Government.

It is exercised by an SEA through more decentralized LEAs, on down to the local School level, where it is implemented by a local Principal, and subordinate "Department" administrators, who are in charge of actual instruction.

At each of these levels, "public" control of education is maintained, sometimes through public election of top officials, and almost universally by the roles of publicly elected Boards of Education and/or Parent Policy groups, with varying powers and authorities, to whom the top officials at each level report.

But this is simply not the case with BIA funded schools:

a) Federal Indian Schools were initially created as a fully centralized "top down" system, run from Washington DC through a hierarchy of appointed Federal officers and subordinate employees. It had no school boards, no parent policy groups, and no formal ties to any local governments.

b) The documented failures of this system were found by the Congress in 1969 Senate Report on Indian Education to be a "National Tragedy, a National Challenge". In consequence, a number of measures have been instituted since to establish local control of BIE schools analogous to that in the Public School systems. This is reflected in the resulting law (Title X, Part D §1131) that "It shall be the policy of the United States to facilitate Indian Control in all matters relating to Education."[2]

There is absolutely nothing in the BIA funded school system analogous to an SEA.

c) The BIE Central Office is in no sense " local", nor are any of its officials accountable to the Indian public at the polls as State officials are. It is a distant, unresponsive federal bureaucracy.

d) BIE is made up of Federal Civil Service employees; career bureaucrats with virtually ironclad job security, automatic pay increases and generous fringe benefits, irrespective of whether they serve any interests aside from promoting their own personal careers.

e) There is still no publicly elected "Board" or "Public Policy" group (other than the United States Congress itself) to whom BIE Washington bureaucrats are in any sense accountable. Further, the Indian citizens whose interests they are supposed to serve have no recourse other than costly lawsuit against the actions of these officials.

Neither is there anything genuinely analogous to an LEA in the BIE school system.

f) BIE Education Line Offices, previously termed Education Agency offices, headed by a Line Officer, are more analogous to the federal officer hierarchy of the failed fully Federal system prior to 1969 than to Public School Districts.

g) Because of the sparsity of BIE funded schools, the Line Officers oversee large geographical areas more analogous to States than to Counties or School Districts (LEAs). They are not readily accessible to most Indian families served by the schools they oversee, and are in no sense "accountable" to them. Further, BIE's current reorganization plans (now the subject of tribal lawsuits) would eliminate several existing Line Offices and make them even less "local" than in the past.

h) "Agency school boards" do exist, but the Line Officer is actually accountable to a remote federal supervisor in Washington, DC. These boards have no direct way to hold a Line Officer accountable for his/her actions or inactions, and further, BIE's recent reorganization plans would further reduce the authority of the agency school boards with regard to Line Office actions.

i) The Line Officer directly supervises the Principals of the BIA operated schools under his or her office, as federal employees. At the same time, because of the Indian control laws, he/she has virtually no authority over the tribally operated schools in the Agency.

The analogue to universal public control of public education in the State school systems, i.e. the legislated federal policy of "Indian control in all matters relating to education", has been subject to continual obstruction in practice by BIE bureaucrats whose authority over Indian people and programs it clearly diminishes.

j) Trying to implement local level Indian control of BIE services, and turning BIE into a "technical assistance" agency to facilitate that control, has been a generations-long pitched battle between Interior's federal employee hierarchy and Indian tribes and leaders seeking to implement Indian self-determination for the benefit of their citizens.

k) This battle has produced multiple laws all attempting to bring BIE's bureaucrats into compliance with this policy.

(1) One recent skirmish was BIE's focusing all its efforts, as a self-appointed "State Department of Education" for the schools whose funds flow through it, on developing a cadre of what might be called "accountability police to enforce NCLB" on the schools, especially with regard to "meeting AYP".

l) So the "Indian control" issue still appears to be in doubt, with the most recent BIA/USDEd consultation issue papers (cc attached FYI) projecting a "conflict" between:

(1) Indian self-determination legislation; and

(2) Bureaucratic authority to hold tribal school recipients of USDEd supplementary funding "accountable" for compliance with their regulations.

II The Act assumes that State and Local school systems have, or can generate, the resources to create and adopt system-wide instructional content standards and related standards-based test instruments that meet USDEd criteria for validity and reliability, to guide consistent system-wide public instruction.

This is in no way true for the BIE school system:

BIE totally rejected its SEA responsibility for instructional system development "on a regional or tribal basis", as mandated in the Act at §1116.(g)(A)(i), and has neither developed any such systems, nor given any of the resources allotted by USDEd for this purpose to Indian Tribes to do the job themselves.

m) Because of this failure, BIE funded schools have been subjected by default to State Public School content standard and testing systems designed for native English speaking middle class urban populations, with little or no Indian input.

(1) Despite the commonsense educational principle that if you are going to teach a person something, you have to begin with and build on what he or she already knows, State school curricula often start far beyond the entry level English lan-

guage skills and mainstream cultural background knowledge brought from home by deep reservation Indian students.

(2) Such curricula simply assume a shared student mainstream culture background at each grade level, and seek to build on it. This is a critical problem for many other "minority" populations, but unassimilated Indian students from isolated reservations have experienced it to a far greater degree than most others.

III The Act also assumes that the various School Systems generate, control, and, if necessary to meet federal standards, can increase their own revenue and resources to support appropriate basic public education at all levels in the system. Part of this assumption is that USDEd funding only "supplements" locally generated revenue, and can be made contingent on the "USDEd approved" use of local revenue as a condition of continued receipt of these federal funds.

This is totally untrue of the BIE. The entire BIE school system including tribal schools is 100% federally funded, in direct annual competition with the other Bureaus and Agencies in the Department of the Interior. At no place in the system is there any way to generate any other revenue!

Further, BIE's basic education funding has been systematically constrained by the Executive branch in budget requests over the years, as a low priority "domestic program".

n) As a result, many of the local schools have come to regard USDEd's funding as an "in no way supplemental" resource, critical to their survival as an institution. Any "threat" to this funding is seen as an institutional "death threat".[3]

IV The Act also assumes that the local School Systems generate sufficient market share to assure profitability for the commercial publication of curricula and teaching materials aligned with their State Department adopted, USDEd approved, content standards and test instruments.

Again, this is not true of the BIE school system:

o) Even if they were a homogenous group, which they are not, all the students now in BIE funded schools are not a big enough market to support commercial curriculum publication. And that's even if the schools had enough funds to purchase new curricula, which many do not.

Further, there are many tribes, including Navajo, whose students really need custom designed curricula built on the tested needs of that tribe's member students at different levels, to accommodate for the degree of cultural and linguistic assimilation of the students at various locations on their reservations.

V The Act also assumes that the various School Systems have the infrastructure and resources to train/retrain and accredit their own professional education personnel, and so can be required to upgrade the qualification requirements for such personnel as a condition of continued receipt of USDEd funds.

Again, this is simply not the case with BIE education.

p) The State systems have and operate colleges of education, to meet the requirements of their own systems. As a general rule, they train their teachers to "follow the teachers manual" in the published curricula endorsed by the State Department. Few if any train teachers to meet the unique needs of on-reservation Indian schools and students.[4]

q) BIE operates no ongoing professional educator training programs or institutions in support of its schools. Some few tribes have tribal community colleges, but nothing equivalent to the State University Colleges of Education.

VI And finally, the Act assumes that given systematic compliance with the educational approaches outlined in the NCLB and other federal education funding administered by the USDEd, all students will reach grade twelve "on grade level" by the end of a 12 year period, regardless of individual differences between them. This is sheer amateurish nonsense.[5]

What can be done about it?

IN GENERAL: In approaching reauthorization of NCLB, the Congress should openly recognize that with few exceptions the Act is not producing the results it envisioned for many of the "non-standard" students across all school systems. It has many good ideas in it about how to achieve results, but the "one size fits all" notion needs to be rejected outright, and a "continuous progress for every student from a measured beginning point" model should be adopted instead.

Perhaps a new title such as "No Child Abandoned" might be adopted to emphasize the difference.

Further, in Pub. L. 107-110, Title VII,§7135m 25USC, §2020, previously existing and reauthorized federal law already authorizes formation of and funding for Tribal Departments of Education, but BIE has consistently failed to ask for funds in its budget to support their formation and operations. This is a "last straw" in a long history of Interior Department abrogation of its trust.

Consequently any reauthorization of NCLB should recognize that the practice of allocating all USDEd funding for tribal schools through the BIA is simply an outmoded artifact of the days before Indian Self-Determination in Education became a reality. BIE has no authority over these schools any more, so why should it control pass through funding for them from another federal Department?

a) This cozy "stacked bureaucracy" relationship between federal agencies needs to be formally rejected in the Act for the health of the system, and a pro-rata percentage of BIE's USDEd administrative resources allocated directly to Tribal governments to defray the costs of their administering the USDEd programs in their own school systems.

The Act should, further

b) specifically apply the "Indian Control in all matters relating to education" policy to USDEd, not just BIE. It should also clarify that such Indian control is exercised only at the Tribal and local Indian community levels, not by any federal bureaucrat regardless of his or her ethnicity.

c) Mandate that BIE may only act as the SEA (and pass-through funding agent for USDEd supplementary program funds) for the schools it directly operates.

d) Authorize Tribal Departments of Education (and inter-Tribal Consortium Departments in the case of tribes with too few students or schools to warrant a single Tribe Department), with reasonable and appropriate standards and criteria to be met for federal recognition as such; and should

e) promote agreements between Tribal and State governments for tribal "SEA analogous" oversight of public schools on tribal lands; and

f) Provide specifically for funding of tribal credentialing of professional educators to work in tribal schools, as well as tribal accreditation of tribal schools independently of the States and regional accreditation associations.

g) Authorize and mandate adequate direct government to government funding of such Departments through the same fund from which USDEd now funds the State Departments of Education, without going through BIE.

The Act does provide for tribes to "waive" inappropriate standards and to propose alternate standards and test instruments in their place (Pub. L. 107-110, §1116 (1)(g)(B). However:

a) it only allows 60 days for the development and proposal of such alternates, and gives approval power to the non-Educator Secretary of the Interior; and.[6]

b) Further, some of the States required two or three years to develop their systems, not just 60 days, before achieving USDEd technical approval for what they had done.

Consequently the revised Act should also:

c) Provide for government to government grants by USDEd directly to such Tribal Departments of Education, in sufficient amounts and over sufficient lengths of time to finance the development of alternate definitions of AYP for all schools on lands under Tribal jurisdiction, under Tribal Department oversight and accountability management.

These should be approved by USDEd directly, with appropriate technical assistance through Regional Laboratories or Universities, and no deadlines or interference in any way by BIE.

d) Make the Tribal Departments of Education the pass-through funding agents for USDEd supplementary program funds on a government to government basis, with appropriate safeguards to assure that such funds actually reach the tribally operated schools.

e) Provide for government to government grants by USDEd directly to such Tribal Departments of Education, in sufficient amounts and over sufficient lengths of time to finance the development and publication of custom aligned curricula and teaching materials to implement tribally developed definitions of AYP.

Perhaps some of the above could be initiated with the Navajo Nation on a pilot project basis, once the panic rush deadlines in the current Act are eliminated, and reasonable research and development activity is allowed for. The Navajo Nation has already created and organized its own tribal Department of Education and could undertake such an effort quickly.

ENDNOTES

[1] Except for a few students whose families have already been almost totally assimilated into the off-reservation mainstream culture.

[2] It is worth noting that, despite the fact that many contemporary BIE officials are now ethnically Indian pursuant to "Indian preference" in employment requirements, their actions are taken as federal bureaucrats accountable only to higher level federal bureaucrats, and in fact constitute the exact opposite of the "Indian control of education" envisioned in the law. Any pre-

tense that because these bureaucrats are "Indian" they do constitute such "Indian control" is simply racism!

[3] NCLB's provisions making USDEd funds contingent upon "making AYP" simply recalls how, in the past, BIA's bureaucrats have used the "golden rule" (i.e. "He who hands out the gold, rules! ") to try and dictate how BIE funded tribal school programs are operated. The bitter battles over this past practice were the source of many of the constraints on BIE now in the law, as well as the legislated Uniform Direct Funding and tribal schools' Indirect Cost Formulas.

[4] Being required by accreditation mandates to use teachers and administrators trained to operate a wholly different Public School system makes about as much sense as requiring a diesel Semi-Truck repair garage to use mechanics trained to repair Toyota hybrid sedans.

[5] This "one size fits all" approach is not only out of touch with reality in the BIE funded schools, it is inapplicable everywhere else in the nation's Schools, except where they serve the highly motivated mainstream students that the State systems almost universally built their AYP definitions to benefit.

[6] In truth, it takes major resources to develop such systems, and the aligned curricula to implement them, that the tribes, with some of the poorest populations and land areas in the Nation, simply don't have. And Interior has never requested funding in its budgets to enable such tribal level development.

[The prepared statement of Delia M. Carlyle follows:]

Prepared Statement of Delia M. Carlyle, Chairman, Ak–Chin Indian Community

Members of the Committee, thank you for the opportunity to submit written testimony in response to the April 28, 2007 field hearing which addressed the impacts of the No Child Left Behind Act (NCLBA) in Indian Country. My name is Delia M. Carlyle, and I am Chairman of the Ak-Chin Indian Community ("Community"). I have been a member of the Community's Council for 20 of the past 25 years. I served as a board member of the Maricopa School District School Board for six years; most recently in 2006. I also worked at the Community Center for 20 years. The Center is where our Early Childhood Development Program is housed along with our Day Care.

Our Community is a small urban community comprised of approximately 800 members, 305 of which are 17 years of age or younger. We are located within Pinal County in the State of Arizona. Due to our small size, the Community does not have tribal or BIA schools; instead, all of our children attend public school in neighboring Maricopa City. According to our 2007 numbers, there are 225 Community members enrolled in kindergarten through the 12th grade. Though the Community does not directly provide our students' education, we have a vested interest in ensuring that these children succeed. Our children need to obtain good educations today so they can assume leadership roles in our Community in the future. The Community supports our students outside of traditional education programs by providing tutoring and Head Start Programs through the use of tribal and federal grants funds. Despite these contributions, our students are not obtaining Adequate Yearly Progress (AYP). My testimony explains some of the contributing factors to Native students' failure to obtain AYP, as currently defined by the NCLBA.

One of the Key Negative Impacts of the NCLBA is Use of a Standardized Assessment System that Does Not Truly Reflect Student Knowledge

Assessments are key for proper student placement; however an assessment must be appropriate for the student if that assessment is to yield accurate results. Assessments are used to identify students who have special needs and those who are appropriate for advance placement. Like any student, Native students of all ability levels are negatively impacted when the assessments do not properly measure student ability. Therefore it is important to designing an exam with the test taker in mind. Such considerations ensure that the test is appropriate. Unfortunately, most standardized exams were not designed with Native students in mind. Designing an exam with the test taker in mind does not give an edge to the test taker. For example, a school cannot accurately assess the knowledge and ability of a 12th grader using an exam designed for a 3rd grader. Similar inaccurate results are obtained when a Native student is given a test that was not designed with that Native student's in mind. The best way to ensure that an assessment is appropriate for the student is to incorporate the student's culture into the exam, thereby allowing students to relate to the questions asked. If Native students cannot relate to the exam, then, those students cannot convey their knowledge. If the standardized assessment does not enable Native students so share what they know, then those students will not be directed to the appropriate resources and services to help them continue succeeding.

The Standardized Assessments Administered to Native Students Do Not Incorporate Tribal Culture and Are Not Relevant to and Reflective of Native Students' Knowledge

In Arizona, tribes were not involved in developing the student assessment tool. In Arizona, the assessment tool is called the AIMS, which stands for Arizona Instrument to Measure Standard. There has been no evidence that any cultural considerations were made or incorporated into the AIMS. The AIMS's failure to incorporate student culture has a direct impact on student success and AYP rates. Students have higher AYP rates when what they learn, and are subsequently tested upon, is related to or applicable to the student's life. It is extremely difficult for students to convey their knowledge when they cannot relate to the questions asked in an assessment test.

The reported statewide AIMS test results of Native American students reveal that, across the board, a majority of Native students either fall far below or approach the AYP standards. Few students meet the standards. Even fewer exceed the standards. This strongly suggests that the AIMS is not asking questions in a way that the Native American test takers understand and can relate to. It is interesting to note that the AIMS report for the Maricopa schools, which most of our students attend, reveals that Native American students do consistently better in meeting the AYP goals for Writing than in Math and Reading. This suggests that Native students perform better when they are given the opportunity to convey their knowledge using their own words, instead of answering a multiple-choice question.

Native Students Are Disproportionately Affected by Factors That Negatively Impact Student Achievement Levels, As Reflected By Standardized Assessments

In addition to inability to relate to the test, Native students are disproportionately impacted by other factors that detract from their achievement and test taking ability. The levels of domestic violence in Indian Country far exceed that found outside of tribal reservations. Domestic violence impacts students by drawing their attention away from their education to other matters. Instances of domestic violence do not schedule themselves around students' educations. These situations may occur the night before test day or result in excessive absences while the family addresses the situation.

Truancy is also a factor that impacts student achievement. Students who have frequent absences (excused/unexcused) are already in a situation of falling behind on their academic program. If the student is not there, the student cannot be assessed and properly placed. As mentioned earlier, all of the Community's students attend school outside of the Community. Like most other students, the Community's students must be bussed in or be dropped off by parents. Unfortunately, due to the distance between the Community's homes and the schools, if one of the Community's students misses the bus, that student may have to miss an entire day of school. Often student's families do not have access to a vehicle. Even if a vehicle is available, due to the poverty levels of Native families, families must choose whether to spend $5 on food or gas to get the students to school.

In addition to increased truancy rates, the distance between students' homes and school also causes lower student achievement. Native students attending schools off-reservation must travel far distances to get to school. Generally speaking, Native students must get up earlier than their non-Native peers in order to catch the bus and get to school on time. There are studies that conclude that not only lack of adequate sleep but also waking adolescent children too early in the morning can result in lower test scores. For example, most teen's bodies begin producing sleep-inducing hormones at around 10:00 or 11:00 p.m. This production continues until approximately 8:00 a.m. the next morning. In other words, teens bodies tell them to rest until 8:00 a.m., and their minds and bodies are not awake and ready for education until about 9:00 a.m. or so. If Native students must travel farther to get to school, they must also rise earlier, thereby resulting in higher rates of sleep deprivation among Native students. These are just some of the factors that impact Native students' achievement, as reflected by standardized assessments; however, simply modifying the assessment tools will not address all issues raised by NCLBA in Indian country.

The "Highly Qualified Teacher" Characteristics, Under the NCLBA, Do Not Recognize the Importance of Understanding the Students' Culture, Including the Ability to Relate Education to Native Students

Recruiting and retaining highly qualified teachers to teach students prior to the assessment is crucial. The current definition of a "highly qualified teacher" under the NCLBA does not include all aspects that make a teacher highly qualified. Notably absent in the description of highly qualified teacher characteristics is any ref-

erence to a teacher's knowledge or willingness to learn and be sensitive to the cultures of the student populations the teacher serves.

The ethnic population of each school is unique and the size of ethnic groups varies form campus to campus. It is very advantageous for school districts to hire teachers who have previous experience working with students from similar cultures. In some instances, when dealing with some cultures, communication can be a barrier between teachers and students in terms of language and dialect. Hiring teachers, as well as support staff, who can understand students and their parents, including language and culture, has significant impact on the overall school system. Understandably, there will be a limited number of teachers and other staff who are knowledgeable in the cultural background of students from the beginning; however, resources should be made available to assist these teachers to learn about their students. Programs need to be implemented to give teachers the skills needed to incorporate the tradition and culture of all children, Native and otherwise.

The Focus of the NCLBA Needs to be Shifted from a Rigid, Penalty Focused System to a System that Recognizes and Measures Individual Progress

Assuming that assessments are made more appropriate and teacher qualifications reflect the need to incorporate the culture, the NCLBA poses other problems that any reauthorization should address. Overall, the NCLBA focuses on schools and students that do not obtain the AYP benchmarks. While it is important to identify when schools are failing to properly educate students, the progress that schools do make should also be acknowledged. NCLBA needs to be amended to create rewards for schools that are making progress. Further progress should not be exclusively defined to mean only those schools that make the AYP benchmarks. Rewards should be made to schools and teachers who make efforts to learn and incorporate student culture. Students' progress should be measured individually, not against rigid AYP benchmarks. The method of student assessment should be shifted from a system that uses a small number of tests to determine student progress to a more encompassing assessment system, such as a portfolio assessment system.

Additional Topics that Reauthorization of the NCLBA Should Address

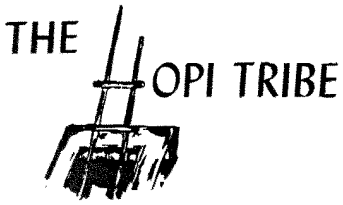
In addition to reexamining the student assessment systems used to meet and comply with the NCLBA, the NCLBA needs to be amended to address other factors critical to student success. School districts need to be directed to implement After-School Tutoring Programs to assist all students in Grades K—12. It is more advantageous for students to receive tutoring sponsored by the school districts, as students need to be prepared to pass the state assessment tests. Tutoring programs on campus allow the use of educational tools and support staff is familiar with the assessment tools and test instruments utilized by the school district. Schools also need to be directed, and given the necessary resources, to collaborate and communicate with their feeder schools. This is especially important for children at an early age.

Finally, whether it be fulfilling the original mandates of NCLBA, or addressing proposed amendments such as tutoring and school collaboration, schools must be supported with funding authorizations from Congress. If Congress is truly committed to ensuring that no child is left behind, then Congress needs to commit the resources necessary to follow through on this policy statement.

Conclusion

The Ak-Chin Indian Community supports the intent behind the NCLBA and believes that, with modifications to address the above discussed concerns, the NCLBA can help ensure that Native American students are taught by highly qualified teachers and properly assessed, thereby, be given an opportunity to receive the best education possible. Thank you for the opportunity to submit these written comments.

[Letter from Todd Honyaoma, Sr., follows:]



Chairman

Todd Honyaoma, Sr.
Vice Chairman

May 7, 2007

Chairman Dale Kildee
Subcommittee on Early Childhood,
Elementary and Second Education
United States House of Representatives
Washington, DC 20515

Congressman Raul Grijalva AZ-07
1440 Longworth HOB
Washington, DC 20515

Dear Chairman Kildee and Congressman Grijalva:

The Hopi Tribe, Department of Education, submit their position to the No Child Left Behind Act Reauthorization, and to the written testimony to the No Child Left Behind Act Field Hearing held in Sacaton on Saturday, April 28, 2007.

The Hopi Tribal Schooling system consists of five (5) grant schools (Moenkopi Day School, Hotevilla/Bacavi Community School, Hopi Day School, Second Mesa Day School, Hopi/Jr. Senior High School) and two (2) BIA schools (Keams Canyon and First Mesa Elementary School) – all are federally funded. One school is a private school; Hopi Mission School.

Currently it is being proposed ". . .that Education and Interior seek legislative language to clarify the Congressional goals for the funds provided to Bureau of Indian Education, hereinafter referred to as, BIE, by the Department of Education and to clarify the accountability requirements found in the Elementary and Secondary Education Act, hereinafter referred to as ESEA, Individuals with Disabilities Education Act hereinafter referred to as IDEA, and McKinney-Vento when those funds are put in Tribally Controlled Schools Act hereinafter referred to as, TCSA, grants or ISDEAA, herein after referred to as Indian Self Determination Education Assistance Act contracts. The

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legislation language would also clarify the BIE role, if any, in the oversight of the ESEA, IDEA, and McKinney-Vento Act statutory requirements."

The Tribally Controlled Schools Act of 1988, in which "Congress recognizes that the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of inherent authority of Indian nations, was and is a crucial positive step toward tribal and community control and that the United States has an obligation to assure maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities" applies directly to the Hopi Tribe as the majority of our schools are Tribally Controlled schools.

In view of this "inherent authority" of tribal and community control of P.L. 100-297 Schools (Tribally Controlled Schools), the Hopi Tribe takes the stand that this accountability and oversight of ESEA and IDEA, in particular, rests with the Tribe, and not the BIE. However, funding and technical support is sorely needed. As such, we recommend Congress generously appropriate funds to the Tribes' Department(s) of Education as authorized by statute, thereby, ensuring true self-determination. This will allow the Tribe to align the organization to meet all the statutory requirements of the ESEA, IDEA, and the McKinney Vento Act.

According to the P.L. 107-110 (The No Child Left Behind Act), requires that critical positions be "highly qualified." Following this same reasoning, Hopi demands that all top level management positions (including Education Line Officers) in the BIE be filled with "highly qualified" individuals who have had classroom experience. Further, all positions must impact the schools, not management. Emphasis should be at the school level rather than the top management. We recommend positions which can provide for technical assistance to the schools, i.e., Reading Specialists, Technology experts, Math/Science, Curriculum Specialists, etc. We need assistance at the local level; not top management. The Hopi Tribe does not support the use of educational funds for Bureau management positions except those that directly benefit schooling and school classrooms.

All the Hopi schools cooperate with the State of Arizona and administer the State AIMS assessment(s); a criterion referenced test. They also administer the Terra Nova; a norm referenced test. During the last couple of years, the AIMS assessment incorporated culturally inappropriate test questions which resulted in the Hopi Tribe mandating the State to eliminate these questions from the assessment. We have not been informed if this mandate resulted in the elimination of these test items, officially. In addition, we have requested an educator to serve on the task team responsible for the development of the test questions. As of this date, we have not heard from the State (Arizona) Department of Education on this request. Our State Director for Indian Education has informed the Hopi Tribe, Department of Education, they are not responsible for our students; only for "State" students; therefore, our Tribally Controlled Schools are not recognized as equals to the public schools, nor are we eligible for at least 20 programs as authorized by the No Child Left Behind Act, but public schools are.

Recommendations:

First we recommend the use of multiple measures and methods to gauge student achievement and school quality to determine school effectiveness. Second, we suggest creating accountability systems that not only require certain proficiency levels, but also measure student growth in student achievement over time. Therefore, the following recommendations are:

- To adjust the measurable objective(s); the goal of 100% of the students making AYP by 2014, is unrealistic;
- Educators need to be involved in the revision of these measures;
- Special needs students should be tested utilizing out-of-grade/out-of-level assessments which are at their level;
- To establish benchmarks at grade levels 3, 5, and 8;
- To continue "augmentation" at the senior high level for high school graduation. This includes attendance, credits earned, and grades earned to meet graduation requirements.
- To fund the Tribally Controlled schools adequately in order that native language/culture curricula could be developed, and for future development of our own Hopi Tribal Education Standards.
- To include Native educators to serve as "readers" and to serve on task teams in regard to the development of test questions to ensure cultural relevancy and to ensure questions are not "biased;"
- To involve Native educators from other than the state public schools to be involved in the improvement of the state assessment, such as Hopi educators.
- The Hopi Tribe, as the Grantee for the Tribally Controlled Schools, be authorized to participate in the development of the MOU with the BIE and the Arizona Department of Education, in regard to the administration of the Arizona State Assessments and the resources provided to this effort.

Currently, there are data available from the State on the performance of Public School Native American children; however, this data is not disaggregated to show only Hopi students, and is not shared with the Hopi Tribe. With the passage of new legislation A.R.S. 15-244, Office of Indian Education in Arizona, each school district within Tribal lands shall provide a district-wide Native American education status report to the Hopi Tribe and the Hopi Department of Education. We look forward to obtaining these reports in the future.

In light of the foregoing arguments, The Hopi Tribe also makes the following recommendations to you, our leaders, to better serve the needs of the affected tribal communities and students:

- Educators/Teachers are the lowest paid professionals. If these professionals are highly qualified they should be highly paid; and funding be made available as current appropriations are not sufficient to accomplish the objectives of the statute. As a result of insufficient funding, this has caused a reallocation of other resources within the schools, for example, our transportation dollars do not even come close to funding our needs for special activities, i.e., after school tutoring, parental nights, etc. in light of the cost of gasoline, and further, we recommend to fund our 100-297 Tribally Controlled schools at 100% of their administrative costs allowance.
- Teachers in schools who have made AYP should be awarded a reciprocal certification (state-to-state) and be given a lifetime teacher certification;
- Schools after having made AYP should be awarded an "incentive" for continuous improvement.
- Rather than focusing on year-to-year school results on standardized tests, focus on individual student continuous progress;
- To include the role and value of the tribal government and local control of education; and,
- To include the Tribes in the development of agreements between the Office of Indian Education Programs in the US Department of the Interior with State Governments affecting the education of American Indian students in BIE funded schools.

On the Hopi reservation, there is a severe lack of housing and is one variable contributing to the retention of highly qualified teachers. Although there are some housing available, our teachers cannot purchase their own homes on Hopi. The closest town is 90 miles Southwest (Flagstaff), and 70 miles South (Winslow).

In addition, two of our schools are well over 100 years or close to; however, have not been placed on the "priority" list for school construction. Both schools (Hopi Day School and Hotevilla/Bacavi Community School) have requested funding to build one school as a "one school concept." Another school (Moencopi Day School) is overcrowded and in dire need of a permanent facility, as well. The Hopi Tribe needs to build a Junior High School campus to accommodate the educational needs of its students in Grades 7 and 8. These students currently attend classes in the same facility as senior high students—grades 9-12. The existing facility, though in very good repair, is nevertheless too small to serve the educational needs of both junior and senior high students effectively. As a result, the overall educational program intended to serve the needs of both groups of students has been rendered inadequate. For example, there are not enough laboratory facilities to meet the needs of students studying the sciences. In addition, gymnasium facilities are entirely inadequate to serve the needs of both junior and senior students. Because of classroom overcrowding, the educational program suffers for all students. Moreover, there are other problems associated with having junior grade students attending school in the same facilities as senior students. The junior high students need a campus of their own where they can interact exclusively with their own peers in their own age groups.

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The lack of adequate facilities put our children at higher risk for not making AYP.

The Hopi Tribe wants what you want; an accountability system that is fair and accurate and with the full involvement of Hopi in all the recommendations listed above. The voices of the Hopi people must be respected and honored.

In spite of all our challenges, during the last three years 2004, 2005, and 2006, each of the Hopi BIA funded schools have successfully made AYP, and for that we recognize the Parents, School Boards, Staff, and Administration, and especially the students in our schooling systems on their success. However, we will continue to be challenged as the stakes go up even higher in the next year(s).

We thank you for listening to our position. ASKWALI!

Sincerely,

Noreen E. Sakiestewa, Ed.D.
Director
Department of Education
The Hopi Tribe
Kykotsmovi, AZ 86039

cc: Todd Honyaoma, Sr., Vice Chairman
Hopi Board of Education
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[Whereupon, the hearing was adjourned.]

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