



**Testimony of the President, Patricia Whitefoot  
on behalf of the National Indian Education Association  
Submitted to the United States Senate Committee on Indian Affairs**

**Legislative Hearing on Senate Bills 2468, 2580, 2711, 2304**

**April 6, 2016**

**INTRODUCTION**

Good morning Chairman and distinguished committee members. It is an honor to be invited to provide testimony before the Senate Committee on Indian Affairs. I would like to begin by thanking the Committee for its continued efforts to improve the education services delivered to American Indian and Alaska Natives students. I also want to acknowledge Chairman Barrasso, Vice Chairman Tester, and Senator McCain for introducing legislation specific to improving the educational outcomes of Native students. We are encouraged by the bi-partisan efforts and the dedication to our Native children.

Founded in 1969, The National Indian Education Association (NIEA) represents Native students, educators, families, communities, and tribes. NIEA's mission is to advance comprehensive, culture-based educational opportunities for American Indians, Alaska Natives, and Native Hawaiians. As the premiere organization advocating for Native students, NIEA works to achieve education equity and excellence, to ensure all students are provided a high-quality academic and culture-based education.

As a member driven organization, NIEA looks to our constituents for resolutions which are vital forms of organizational policy guiding NIEA at the federal level. Although NIEA membership has not brought forth resolutions focused on specific new legislation, NIEA is prepared to offer recommendations supported by evidence-based data. Comments and recommendations below provide essential strategies helping education systems evolve and meet the unique needs of Native students.

**FEDERAL RESPONSIBILITY TO NATIVE EDUCATION**

Since its inception, NIEA's work has centered on reversing negative trends within Native education, a feat that is possible only if the federal government upholds its trust responsibility to tribes. Established through treaties, federal law, and U.S. Supreme Court decisions, this

relationship includes a fiduciary obligation to provide parity in access and equal resources to all American Indian and Alaska Native students, regardless of where they attend school. Under the federal government's trust corpus in the field of Indian education, it is important to state that the obligation is a shared trust among the Administration and Congress for federally-recognized Indian tribes.

To the extent that measurable trust standards in Indian education can be evaluated, NIEA suggests this Committee refer to the government's own studies encompassing Native test scores, treaty-based appropriation decreases, and Government Accountability Office (GAO) Reports, among other reports, which illustrate the continued inability of the federal government to uphold the trust responsibility and effectively serve our students.

Education is the only way to break the cycle of poverty within our reservation and urban communities. NIEA urges Congress to fulfill its trust responsibility to America's most vulnerable children by ensuring they have access to educational resources they deserve.

### **THE STATE OF NATIVE EDUCATION**

The Elementary and Secondary Education Act of 1965 (ESEA) is the largest civil rights education law supporting low-income schools with the funding necessary to provide high-need students with access to an excellent education. With the recent reauthorization, the newly renamed Every Student Succeeds Act (ESSA) marks a new era of state and local innovation to best support our students and has received a tremendous amount of bipartisan support for Native education specifically. We commend Congress particularly the members of this Committee for ensuring that tribal priorities were a focus of the reauthorization.

As we celebrate the signing of the ESSA law, we must continue to shed light on the fact that Native education continues to be in a state of emergency. As Interior Secretary Sally Jewell has stated, "Indian education is an embarrassment to you and to us. We know that self-determination and self-governance is going to play an important role in bringing the kind of academically rigorous and culturally appropriate education that children need."<sup>1</sup> Students attending BIE funded schools experience some of the worst educational disparities across the country, even though the BIE is one of two education systems for which the federal government has direct responsibility.

While this Committee is cognizant of the educational disparities Native youth experience, NIEA highlights a few overwhelming statistics:

- Research has shown that by age 2, American Indian students begin to fall behind national scores in tests of specific cognitive skills in vocabulary, listening comprehension, matching and counting.
- By age 4, smaller percentages of American Indian children demonstrate age-appropriate language, literacy, mathematics, and color-identification skills, compared to the total population of children.
- In 2012, 17% of Native students age 25 and older held at least a bachelor's degree in comparison to 33% of White students.

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<sup>1</sup> Hearing before the Committee on Indian Affairs, S. Hrg. 113-92 (May 15, 2013).

- In 2015, the national high school graduation rate reached an all-time high at 82%, while American Indian and Alaska Native students experienced a stagnant rate of 69.6%. Unfortunately, Native students, attending BIE funded and operated schools experienced even lower graduation rates at 53%, nearly 30% below the national average.<sup>2</sup>
- A recent GAO report released in March 2016 highlighted the lack of national information on safety and health deficiencies at BIE facilities, which is highly problematic considering the dire safety hazards at certain schools with the potential to seriously harm students and teachers at these facilities.<sup>3</sup>

Despite the small federal legislative successes, these statistics and historical background demonstrate the critical need to transform Native education systems through innovative legislation discussed today.

## **RECOMMENDATIONS**

### Safe Academic Facilities and Environments for Tribal Youth Act (S.2468)

Research has shown that critical investments in BIE are needed in overlooked areas such as school construction and technology. Many Native students attempt to make academic gains in dilapidated, below-standards school facilities. Abandoning school construction funding, in particular, has been extremely detrimental to Native youth, as the GAO has reported that better school facilities are associated with better student outcomes.<sup>4</sup> As such, NIEA appreciates Senator Tester’s innovative proposal to support construction efforts for tribal schools through a demonstration program. By allowing tribes to receive grants directly for schools on the construction list, tribes may not be forced to wait decades for the BIE to handle construction.

NIEA membership has consistently stated their support for new school construction. NIEA Resolution 2011-18, which requested the BIE and federal government to appropriate full funding for the tribally controlled schools’ facilities program, remains a standing request of our organization, until all of our schools provide safe environments for Native students. As such, NIEA supports the SAFETY Act. We provide the following suggested amendments to strengthen the language.

#### Suggested Amendments:

1. Proposed Language

Section 545(a)(2)(D) is amended by adding “residing on tribal lands” in subsection D.

NIEA believes it is important to authorize funding for inadequate housing for tribal educators. We understand the eligibility requirement to be allocated to housing for full-time teachers and administrators at BIE-funded schools and public schools with at least

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<sup>2</sup> National Center for Education Statistics, Institute of Education Sciences, United States Department of Education. 2015. *The Condition of Education* (NCES 2015-144). [http://nces.ed.gov/programs-coe/indicator\\_coi.asp](http://nces.ed.gov/programs-coe/indicator_coi.asp)

<sup>3</sup> See GAO, Key Actions Needed to Ensure Safety and Health at Indian School Facilities, GAO-16-391T (Mar. 16, 2016).

<sup>4</sup> See GAO, School Facilities: Physical Conditions in School Districts Receiving Impact Aid for Students Residing on Indian Lands, GAO-10-32 (Oct. 29, 2009).

25 percent Indian students. However, given the disparate need on reservation and tribal lands, NIEA recommends prioritizing funding to these schools and then expanding this opportunity to schools residing on non-tribal lands.

2. Proposed Language

Section 3(5)(B) that the Indian tribe shall be required to contribute towards the cost of the construction a tribal share equal to at least 25 percent of the cost; is amended by deleting it entirely.

Not all tribes have the capacity or funding to invest in construction. Given the trust responsibility the U.S. government has with tribal nations, providing construction costs to repair facilities is an obligation that has yet to be fulfilled. As such, tribes should not be required to contribute 25 percent of these costs.

Lastly, since there is no source of funding identified for these grants, NIEA reiterates its FY 2017 budget request to Congress to fully appropriate construction costs. In addition, we request that the Committee urge the Department of Interior to release the school construction list immediately in order to move forward.

Tribal Early Childhood, Education, and Related Services Integration Act (S.2304)

Research supports that integrated, comprehensive, and culturally appropriate education, improves the lives and opportunities for Native youth overall. This kind of culture-based education is especially important at an early age. As such, NIEA appreciates Senator Tester's bill to provide for a new demonstration program which aims to coordinate different kinds of early childhood and education services provided to tribes and tribal communities. The emphasis on community engagement and "family-based" education programs is vital to supporting our children and our communities.

Several NIEA resolutions (2013-13, 2013-12, 2013-09) support incorporating language and culture into a student's education. As such, we support Senator Tester's bill to provide greater coordination amongst various early childhood programs and services. We provide the following suggestions to strengthen the language.

Suggested Revisions:

1. Consolidation of funds should not result in any decrease to other Indian Head Start programs. The few early learning services provided to Native children have limited resources. This piece of legislation has not allocated new funding for the demonstration program, as such, there is the potential that there may be a decrease in funding from existing Indian Head Start programs.
2. The importance of removing supplement and not supplant restriction is crucial for Native communities that would like to take advantage of the proposed program. Section 805A(c)(5)(B)(ii) prevents the Secretary from waiving "any specific statutory requirement for recipients of Federal funding related to ... the use of Federal funds to supplement, and not supplant, non-Federal funds." Indian Head Start programs often have difficulty meeting non-Federal share requirements due to the nature of tribal funding and

the types of contributions that can be counted toward the non-Federal share of funds. This restriction will make it difficult to ensure optimal success of any tribal early childhood demonstration program.

#### Reforming American Indian Standards of Education Act (S. 2580)

NIEA continues to urge for transparency in the design and execution of the BIE reorganization specifically as it relates to the explicit incorporation of tribal participation, including school leadership. We have submitted a letter in support of the BIE's reorganization with guidance accordingly. NIEA understands the RAISE Act as the next natural step in BIE's current reform. Our membership supports the BIE reorganization as long as sufficient congressional oversight is provided throughout the process as highlighted in Resolution 2014-11.

The benefits of the proposed Indian Education Agency include the opportunity for the BIE to establish its own budget and work for appropriations towards that budget. Currently, BIE's budget requests must go through the Bureau of Indian Affairs – this process often dilutes education requests. BIE's autonomy to function within its own jurisdiction will enable the agency to better meet the needs of Native students attending BIE schools. NIEA's membership has voiced the need for this through Resolution 2014-17, which requests the establishment of a BIE Tribal Task Force comprised of tribal leaders and federal agency representatives to study the funding constraints BIE schools experience as well as investigate appropriate measures to be taken in order to address such concerns culminated into a final report.

As you all know, the BIE reorganization has been predominantly focused on administration in Washington, DC and not as much on the students who will be most affected. Identifying solutions to best support our students locally is a priority that NIEA has and is looking forward to working with this Committee to further develop solutions that serve them best. In the meantime, we also have the following questions regarding the RAISE Act:

1. How will tribal input, including school leadership be incorporated?
2. What funding levels will be needed to make this move? And will these requests be new monies?
3. How will the RAISE Act align with the current BIE reorganization?

Lastly, while the Committee is considering the RAISE Act, NIEA acknowledges that a progressive first step in this process is the elevation of the BIE Director position from a career to a political appointee. This legislation is an opportunity to take a step forward in this direction along with building from Congress' focus on Indian education. We look forward to hearing from tribes and tribal schools regarding this change.

#### Native American Education Opportunity Act (S. 2711)

NIEA thanks Senator McCain for putting forth legislation that would include students attending BIE schools to have an alternative educational option in Arizona. However, currently NIEA does not have a resolution specific for this proposition. As such, we would like to highlight some of our initial concerns and expect to continue this conversation about the implications of the Native American Education Opportunity Act with a focus on what is best for our students.

Under the Arizona-Empowerment Scholarship Accounts (ESA), parents receive a debit card for a variety of education expenses, including private school tuition, online school expenses, textbooks and tutoring from public school funding. The average annual base-funding amount per student ranges from \$4,600 to \$5,400 for students in 1<sup>st</sup> through 12<sup>th</sup> grades. This bill will repurpose funds appropriated to BIE schools as formula funding, and require those be put towards ESAs that can be used by eligible students' parents to pay for schooling elsewhere. In other words, up to 90% of the \$15,000 per pupil expenditure for students attending BIE-funded schools would leave the BIE system.

NIEA has three main concerns with this bill:

1. Protecting Self-Determination.

Both Congress and this Committee have shown tremendous bi-partisan support for increasing and promoting tribal sovereignty in Native education systems. Through the ongoing support of immersion programs, the newly authorized consultation requirements of state education agencies, and the commitment this Committee has shown in supporting tribally controlled schools, universities, and colleges, Congress and the Administration have taken critical steps to supporting tribal autonomy. This particular bill seems to take a step in the opposite direction. This bill will not only take funding away from BIE operated schools but from schools directly operated by the tribes. In addition, the schools that that will now be eligible to receive tribal education dollars, are not required to consult with tribes or ensure that Native students are receiving an education grounded in their culture or ways of knowing. Considering this Committee's support for a tribally driven education, this bill seems to work against a tribal school model that serves our students well.

2. Potential Negative Effects on BIE Infrastructure.

We are concerned this piece of legislation will not only affect the students who decide to take advantage of the ESA program, but it will also negatively affect the whole BIE infrastructure. There are several reasons as to why the cost of educating a student attending a BIE-funded school is much higher than the average per pupil expenditure of students attending public schools. The \$15,000 amount is not a direct educational service cost only; it encompasses a great deal including transportation, residential fees for students living in BIE dormitories year round, fire services, and so much more. If BIE students leave to attend non-BIE schools, then those who remain at BIE schools will experience exacerbated educational disparities.

3. Academic Performance.

Another concern NIEA has with this legislation is the academic comparison between students attending BIE-funded schools and those attending schools elsewhere. Research shows the school performance of Native students, particularly in Arizona and Nevada, has improved when they receive tribally driven education. With the increase of test scores and proficiency in an environment that is most natural to Native students, a continued investment in supporting community driven initiatives and schools is warranted.

## **CONCLUSION**

We thank the Committee for holding this hearing. By shining a much needed light on the issues facing Native education, you help us continue to raise awareness and garner support for critical issues in Indian Country on behalf of our students. All of the resolutions that were referenced in this testimony have also been submitted for the record. The attention that Native youth and education are receiving coupled with your innovative ideas for Indian education, has the potential to make a meaningful impact in the lives of Native students and their communities. Working together, we are confident that we can build the collaborative relationships necessary to strengthen tribal self-determination in education.

**For additional information, please contact NIEA Executive Director Ahniwake Rose at [arose@niea.org](mailto:arose@niea.org) or 202-544-7290.**