



NATIONAL INDIAN EDUCATION ASSOCIATION
Advancing Excellence for All Native Students

March 30, 2018

General Counsel/Public Comments
U.S. Commission on Civil Rights
1331 Pennsylvania Av. NW, Suite 1150
Washington, DC 20425

Re: Comment Request: Briefing on “The School-to-Prison Pipeline: Intersections of Students of Color with Disabilities”

To Whom It Concern:

Introduction

Thank you for the opportunity to provide comments regarding the impact of school discipline on educational opportunities for American Indian, Alaska Native, and Native Hawaiian students with disabilities, as you prepare for a study following the US Commission on Civil Rights (Commission) December 8 briefing titled “The School-to-Prison Pipeline: Intersections of Students of Color with Disabilities.” The National Indian Education Association (NIEA) represents Native students, educators, families, communities, and tribes. Our mission is to ensure that all Native students receive a high-quality academic and cultural education.

The Federal Trust Relationship

The Department of Education, Bureau of Indian Education, and the federal government have a federal trust responsibility for the education of Native students. Established through treaties, federal law, and U.S. Supreme Court decisions, the federal government’s trust responsibility to tribes includes the obligation to provide parity in access and equal resources to all American Indian and Alaska Native students, regardless of where they attend school. Current disparities in school discipline for Native students with disabilities in states with high Native student populations represent a rupture in the federal trust responsibility, an obligation shared between the Administration and Congress for federally-recognized tribes.

School Discipline and Native Students with Disabilities

Across the country, American Indian, Alaska Native, and Native Hawaiian students are overrepresented in special education programs.¹ American Indian and Alaska Native students are more likely to be labeled as special needs than their peers; over 16% of American Indian and Alaska Native students have been identified for special needs programs, in comparison to the

¹ U.S. Department of Education, Civil Rights Data Collection, 2013-2014 State and National Estimations. 2014.

12% nationwide average.² This over-representation means that American Indian and Alaska Native boys are more 1.5 times more likely than their peers to be identified for special education services.

In states with high Native student populations, Native students with disabilities regularly face discriminatory disciplinary action from school officials that interferes with future academic success. According to a 2011 study by the Council of State Governors Justice Center and the Public Policy Research Institute, only 3% of school disciplinary actions are for conduct mandated by state law.³ Teacher shortages, special education certification issues, and inconsistencies between special education program management when transferring between public, tribally-controlled, and Bureau of Indian Education schools exacerbate existing challenges for Native students with disabilities.

Concentrated in rural and remote areas with limited special education resources and funding, American Indian and Alaska Native students represent 9% of the overall student population in North Dakota. In contrast, Native students make up over 25% of students with disabilities in in-school-suspension and 30% of students given out-of-school suspension with or without educational services.⁴ About 1 in 4 students in Alaska are American Indian or Alaska Native, while nearly 70% of students with disabilities referred to law enforcement are Native and 60% of students who are subjected to school-related arrests are Native.⁵

Due to the high rates of over-identification for special education programs in states with high Native student populations, Native students with disabilities are disproportionately impacted by high rates of school discipline. Disciplinary measures that remove Native students with disabilities from the classroom have long-term effects on their future success. Research has shown that suspensions are correlated with reduced classroom engagement, academic achievement, and future success. Of students who are repeatedly suspended or expelled middle and high school, 10% drop out of school, 31% repeat a grade level, and 59% do not graduate within three years of their peers.⁶ In addition, nearly half of these students become involved in the juvenile justice system during their school years.⁷

NIEA's Recommendations and Next Steps

As the Commission seeks to compile data and recommendations for an upcoming study on school discipline for students of color with disabilities, federal officials must consult with tribes and actively engage with Native organizations in communities across the country. By working with the communities that know Native students best, the Commission can learn more about the challenges facing Native children and youth with disabilities and promote resources that expand opportunities to thrive in the classroom and beyond.

² U.S. Department of Education, Civil Rights Data Collection, 2013-2014 State and National Estimations. 2014.

³ Tony Fabelo, et al, "Breaking School Rules: A Statewide Study of How School Discipline Relates to Student Success and Juvenile Justice Involvement," The Council of State Governors Justice Center & Public Policy Research Institute, July 2011.

⁴ U.S. Department of Education.

⁵ Tony Fabelo, et al.

⁶ Ibid.

⁷ Ibid.

In order to create effective academic programs and services for Native students with disabilities, tribes, legislators, and national advocates must have access to data that accurately reflects the current national landscape. NIEA recommends that the Commission oversample Native students in states with high Native populations in order to produce reliable and accurate data. Native students must have parity in access to excellent educational services and resources that provide them their best chance at success and fulfill the federal trust responsibility.

Conclusion

With these concerns and through these recommendations on the impact of school discipline on Native students for the Commission's study, NIEA looks forward to improving and driving federal resources to the only students that the federal government has a direct responsibility to educate – Native students. If you have any questions, please contact Ahniwake Rose, NIEA Executive Director, at arose@niea.org.

Sincerely,

A handwritten signature in black ink that reads "Jolene Bowman". The signature is written in a cursive style with a large initial "J".

Jolene Bowman
President

CC: Tony Dearman, Director, Bureau of Indian Education
Tara Ramsey, Acting Director, Office of Indian Education