



## **Testimony of the National Indian Education Association for the Department of Education Tribal Consultation**

**May 9, 2018**

### **INTRODUCTION**

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 and to ensure all students are provided a high-quality academic and culture-based education. We provide the following testimony for the Department of Education's tribal consultation on federal programs administered by the Bureau of Indian Education (BIE).

Established through treaties, federal law, and U.S. Supreme Court decisions, the Department of Education (the Department) has a federal trust responsibility to provide excellent education options for Native students. The federal trust responsibility includes a fiduciary obligation to provide parity in access to all American Indian and Alaska Native students, regardless of where they attend school. As the lead agency for education within the public school system, the Department has unique responsibility to ensure that the 644,000 Native students in schools across the country have access to culturally-relevant education options that prepare them for success.

NIEA would like to thank the Department for finally consulting with tribes on critical issues that impact Native students. For the last year and a half, NIEA has been advocating for the Administration to adhere to the core principles of the Department's tribal consultation policy, which state that "ED should respect tribal sovereignty and self-determination in the development and implementation of departmental policies and programs that have tribal implications."

Since the current Administration was seated early last year, the Department has failed to uphold its own tribal consultation policy by introducing and adjusting a number of policies and regulations that disproportionately impact Native students. In particular, the Department has introduced two budget proposals that slashed funding for Title VI Indian Education Formula Grants, Tribal Colleges and Universities, Alaska Native programs, Native Hawaiian programs, Impact Aid, and Title I.

In addition, the Department has rescinded or issued new guidance on the following regulations without input from tribal nations:

- Department-wide regulatory reform,
- Federal student aid,
- School Discipline for students with disabilities, and
- Title IX regulations on sexual assault and misconduct on college campuses.

While we thank the Department for finally engaging with tribes, we strongly encourage the Department to further consult with tribal leaders and communities on critical proposals, programs, and policies that impact the 92% of Native students in the public school system.

### **NEED FOR COORDINATION**

NIEA has long supported reforms to improve the BIE. We will continue to do so. Reforming the BIE does not mean, however, that action should be taken about BIE schools without BIE present and participating. Implementing reform without the schools, school leadership, and individuals who will actually work with Native students will not be effective. In fact, consultation without meaningful dialogue continues a pattern and a story that Native communities have seen for over a century. BIE schools should not suffer as a result of the disagreements between the Department and the BIE.

As the lead agency responsible for the federal trust responsibility in Indian education, the BIE has a treaty responsibility for all Native students, for which the Department administers federal funding programs. The exclusion of BIE in the bulk of the discussions leading to this consultation is not acceptable. It does not make sense to talk about the delivery of services in BIE schools without full representation from the BIE. Any conversation regarding students in BIE schools must include representatives from the agency responsible for educating those students.

NIEA wishes to raise several other issues regarding this consultation:

- Better planning and communication is needed to increase participation. The consultation was not published in the Federal Register, only one location for the consultation was announced, and the lack of early communication regarding submission of written comments has limited the opportunity for many tribes and tribal schools to participate in this consultation. In addition, the announcement made at the in-person consultation of the extended comment period and the promised virtual consultation has not, to our knowledge, been publicized.
- A lack of a negotiated rulemaking committee. BIE moved forward with a negotiated rulemaking committee list but that list sat at the Department of Interior. NIEA believes that BIE should not be punished because of the Department of Interior's inaction. That reason was addressed via a Federal Register Notice published on April 17.
- The consultation also duplicates much of the consultation that occurred around the BIE Strategic Plan.

- Finally, the subject of the consultation is unclear—BIE schools and the Individuals with Disabilities Education Act, BIE monitoring and data, or choice. Choice in particular is a topic that we maintain should be the subject of a separate consultation.

## RESPONSES TO CONSULTATION QUESTIONS

The supporting materials for this consultation include six questions. NIEA's final response to the questions are below. We believe our thinking on these questions is a good faith step toward the larger dialogue and consultations needed to improve schools that serve Native students—both in the BIE and through Native serving public schools.

Overall, NIEA remains concerned by the lack of understanding regarding tribal sovereignty and the current administration of BIE schools demonstrated by the proposed consultation questions. The questions posed assume that the BIE is in charge of Native education systems. However, tribes across the country manage and operate their own schools, exercising tribal sovereignty in the education of Native students.

As the Department considers comments from tribal leaders, NIEA reiterates tribal requests for a consultation report containing the Department's responses to individual comments and concerns expressed during the tribal consultation.

*Question 1: How can BIE better support your schools in carrying out the requirements of federal education programs, specifically Title I and IDEA Part B?*

The Department should support the BIE and provide technical assistance to implement the BIE Strategic Plan. The BIE has not provided schools with a system for reporting on Title I funding for many years. Currently, the BIE is developing a strategic plan based on input and comment received during multiple consultations with tribal leaders, educators, students, and communities. The Department should adhere to guidance that tribal leaders and communities have already provided to the BIE regarding the implementation and delivery of federal education programs for Native students. Following the conclusion of tribal consultations in December 2017, tribes and schools continue to await a final version of the Strategic Plan for implementation.

*Question 2: What suggestions do you have for strengthening BIE's monitoring and technical assistance with regard to ESEA programs, including Title I, Part A?*

Both the Department and the BIE should build tribal capacity through implementation of the BIE Strategic Plan. Tribes know best the unique academic and cultural needs of Native students, and are critical to success in the classroom and beyond. As developed through consultation with tribal leaders, a core component of the draft Strategic Plan supports tribal sovereignty in education by building capacity for tribal education departments and agencies to oversee and support tribal schools. Strategies 5.1 and 5.2 provide a blueprint for working with tribes to identify and address challenges and needs of students in Bureau-funded schools. The Department must adhere recent comments provided by tribes and allow adequate time for the BIE to implement measures that support capacity-building for tribal education departments.

*Question 3: How well does BIE carry out its role with regard to data collection and reporting and are there ways in which this process could be improved?*

Like all State Education Agencies, BIE must improve data collection. The means for addressing the data collection challenges BIE schools face is focused investment in the data systems necessary, not undermining BIE by holding a consultation without including it. Instead, the Department and the BIE should work together to strengthen data collection, access, and transparency through negotiated rulemaking and implementation of the BIE Strategic Plan. By investing in stronger data systems within the Strategic Plan, the BIE provides support to ensure accountability and transparency of data in Bureau-funded schools.

Goal 6 of the draft Strategic Plan invests in effective data collection and transparency to improve educational opportunities for students in the BIE system. Through the negotiated rulemaking process for standards, assessment, and accountability systems under ESSA, the BIE will address specific components of data collection and transparency essential to tracking student progress and achievement. As the BIE strengthens data collection and reporting systems, the BIE must provide technical assistance for tribes to access and understand the school and student data critical for making effective decisions.

Though the Department is currently considering data collection in the BIE, the Department has yet to enforce data transparency and access for tribes to make effective decisions that support tribal students in the public school system. The Department must promote data transparency and access in all education systems and respect previous tribal comments regarding specific policies that impact equity and accountability for Native students.

*Question 4: What suggestions do you have for strengthening BIE's monitoring and technical assistance with respect to IDEA Part B? What suggestions do you have for how BIE can better support local schools in administering services for children with disabilities? What professional development has been offered for educators to meet the needs of children with disabilities? Is there adequate access to related service providers, i.e. speech therapists, occupational therapists, etc.? Are parents informed of their and their children's rights under IDEA? Are children with disabilities adequately prepared to meet post-secondary goals?*

The Department must invest in highly qualified SPED Educators and staff through implementation of the BIE Strategic Plan. NIEA has made recruitment of teachers a strategic priority through our Native Teacher Campaign. The Department should support the BIE in a campaign to recruit teachers. During consultation for the Strategic Plan, one of the most common issues surrounding special education in Native communities was limited access to special education teachers and staff. Severe teacher shortages continue to impact the delivery of critical services to students in Bureau-funded schools. BIE funded schools must have the resources to recruit qualified and culturally knowledgeable teachers for culturally appropriate support systems at the school, tribal, regional, and national levels. Through Strategy 3.1 of the draft Strategic Plan, the BIE invests in recruitment of high-quality leaders, teachers, and staff. Such efforts must align

with the BIE Reform to ensure that Native students are prepared for college, career, and community engagement.

*Question 5: Should the Department direct the use of BIE's Title I administrative funds to assist with the negotiated rulemaking process in developing its standards, assessment, and accountability systems and/or to assist with its implementation of Title I? If yes, how should we direct the use of those funds? If not, what suggestions do you have for how to ensure the funds are best used to support low-performing and low-achieving schools?*

The Department should be focusing on helping State Education Agencies and Local Education Agencies become more responsive to tribal needs and desires of the students in public schools. The Department should provide stakeholders and the public with additional details regarding the original intended use of administrative funds. Due to lack of critical information regarding the original intended use of funds by the BIE, we are unable to provide an informed response to this question.

*Question 6: What forms of educational choice can students in Tribal communities currently access? What educational services could best supplement what is provided by a child's or a student's geographically assigned school or the institution in which he or she is currently enrolled, especially educational services that support Native identities, cultures, languages, and traditions? What public, private, or home-based educational programs or courses serve Native youth well? How could the Supplemental Priority for increasing access to educational choice best be used for Tribal communities?*

NIEA would like to clarify that tribal schools have always been schools of choice, since they began 52 years ago. We also recommend that the Department provide a separate consultation on opportunities for school choice that promote tribal sovereignty in Native education. For tribes across the country, the concept of choice is one that is consistent with tribal sovereignty.

Consultation that respects tribal sovereignty provides an opportunity for tribes to fully engage with Administration officials. Opportunities for school choice in Native communities must not be an afterthought in the current consultation, but a thorough conversation conducted through a series of separate consultations. Choice must be led by tribal communities, not “used for Tribal communities.”

Traditional options for school choice remove Native students from tribal communities, echoing policies of forced removal and assimilation during the boarding school era. Such schools and programs often fail to address intergenerational trauma and lack protections for Native students with disabilities. Tribes know best the unique academic and cultural needs of Native students in BIE and public schools across the country. From project-based education models that incorporate tribal culture into algebra lessons to Native language immersion schools, tribes are innovating to create excellent education systems that fully serve the cultural and academic needs of Native students.

Opportunities for choice in tribal communities must strengthen innovative education options that support sovereignty and self-determination in Native education systems. Tribal sovereignty must be respected and central to any discussions of choice opportunities in Native communities.

## **CONCLUSION**

NIEA is committed to the sustained, dedicated work that we must do on behalf of Native students attending all schools across the country. We look forward to continued engagement to ensure the success of Native students in the classroom and beyond.



DEPARTMENT OF EDUCATION  
TRIBAL CONSULTATION  
ISSUE BRIEF  
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## BACKGROUND

Prompted by a missed deadline in the negotiated rulemaking process for the Bureau of Indian Education's (BIE) standards, assessments, and accountability system under the Every Student Succeeds Act (ESSA), the Department of Education (Department) withheld \$1.6 million in Fiscal Year (FY) 2017 Title I funding from the BIE. Following a series of conversations between leadership at the Department and the Bureau of Indian Affairs, the Department issued an invitation to tribal leaders to engage in consultation on the "BIE's role in overseeing and managing federal education programs funded by the Department." According to the notice of consultation, the Department is seeking feedback from tribal leaders on the following issues regarding BIE implementation of federal programs:

- Due to a change in administration, the BIE has yet to complete the negotiated rulemaking process for a state plan under Section 8204(c) of ESSA;
- The BIE has been on a corrective action plan (CAP) since 2007 due to implementation of programs under Title I of the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA), Part B; and
- Data regarding low-performing schools remains unavailable within the BIE system.

## CONCERNS REGARDING THE CONSULTATION PROCESS

The Department of Education does not have a history of strong engagement, consultation, or support for tribal sovereignty in education, despite a trust responsibility to American Indian and Native students. As the Department engages with tribal leaders and educators on implementation of federal programs operated by the BIE, NIEA and NCAI remain concerned regarding the following components of the consultation process.

### 1. Department Should Focus on Consulting on Native Students in Public Schools

Though over 92% of American Indian and Alaska Native students attend public schools, the Department has yet to engage in tribal consultation on delivery of federal services and programs, such as Title I and IDEA, Part B, to Native students in public schools. Due to lack of engagement and investment in Native education by the Department, Native students continue to lag behind their peers in public schools across the country. The Department adopted a tribal consultation policy to coordinate with tribal nations on November 5, 2015. Since that time, the agency engaged in a single tribal consultation on Native languages. Until the Department has addressed the multitude of challenges for Native students within the public school system, their focus should be on engaging with tribal leaders to strengthen college, career, and community success in Native communities.

*Our Ask: Consult with tribes to strengthen the delivery of federal services and programs for Native students within public schools in Native communities.*

### 2. BIE Excluded from Ongoing Conversations

As the experts on education within the Department of Interior, consultation on funding and programs within the BIE must include representatives from the BIE. Despite statements that the consultation is conducted in "coordination with the Bureau of Indian Education," the BIE received notification of the scheduled consultation via postal mail several days after invitations went out to tribal leaders and organizations. Representatives from the BIE must have an active role in any conversations and consultations regarding services for students in Bureau-funded schools. Lack of prior communication and planning with representatives from the BIE regarding this consultation contradict claims of coordination with the BIE.

*Our Ask: The Department must fully engage with BIE representatives at each step of the consultation process and ensure that BIE representatives are present at tribal consultations on programs managed by the BIE.*

- 3. Consultation Must Comply with the Department's Policy and Include Tribes Across the Country**  
Due to the lack of clarity regarding this consultation, many tribes were unable to send representatives to the scheduled consultation. As a result, many tribal communities and Native students are missing from this conversation. Timely and meaningful consultation gives effective notice to tribes, ensures public notification through the Federal Register, and provides details regarding multiple opportunities for engagement through engagement and consultation with the Department from the beginning.

*Our Ask: Notify tribes and relevant stakeholders of upcoming tribal consultations at least 30 days in advance of the event through multiple means of communication, including publication in the Federal Register. Upon the initial announcement, provide multiple opportunities for engagement and details regarding submission of written comments.*

**4. Opportunities for Choice is a Subject for a Separate Tribal Consultation**

The Department should seek to consult with tribes on a separate occasion regarding opportunities for school choice. In FY 2016 and FY 2017, Congress has maintained the separation of funding for Title I funding and school choice programs. Through this consultation, the Department seeks to link funding for Title I and school choice. Consultation to truly respect tribal sovereignty and allow for tribal choice in Native education should not be done in an improper or confused manner.

*Our Ask: Opportunities for school choice should be discussed during a separate tribal consultation.*

**SUGGESTED TALKING POINTS IN RESPONSE TO CONSULTATION QUESTIONS**

1. *How can BIE better support your schools in carrying out the requirements of federal education programs, specifically Title I and IDEA Part B?*

**Our Ask: Support and Provide Technical Assistance to Implement the BIE Strategic Plan**

Currently, the BIE is developing a strategic plan based on input and comment received during multiple consultations with tribal leaders, educators, students, and communities. The Department should adhere to guidance that tribal leaders and communities have already provided to the BIE regarding the implementation and delivery of federal education programs for Native students. Following the conclusion of tribal consultations in December 2017, tribes and schools continue to await a final version of the strategic plan for implementation.

2. *What suggestions do you have for strengthening BIE's monitoring and technical assistance with regard to ESEA programs, including Title I, Part A?*

**Our Ask: Build Tribal Capacity through Implementation of the BIE Strategic Plan**

Tribes know best the unique academic and cultural needs of Native students, and are critical to success in the classroom and beyond. As developed through consultation with tribal leaders, a core component of the strategic plan supports tribal sovereignty in education by building capacity for tribal education departments and agencies to oversee and support tribal schools. Strategies 5.1 and 5.2 provide a blueprint for working with tribes to identify and address challenges and needs of students in Bureau-funded schools. The Department must adhere recent comments provided by tribes and allow adequate time for the BIE to implement measures that support capacity-building for tribal education departments.

3. *How well does BIE carry out its role with regard to data collection and reporting and are there ways in which this process could be improved?*

**Our Ask: Strengthen Data Collection, Access, and Transparency through Negotiated Rulemaking and Implementation of the BIE Strategic Plan**

By investing in stronger data systems within the strategic plan, the BIE provides support to ensure accountability and transparency of data in Bureau-funded schools. Goal 6 of the draft strategic plan invests in effective data collection and transparency to improve educational opportunities for students in the BIE

system. Through the negotiated rulemaking process for standards, assessment, and accountability systems under ESSA, the BIE will address specific components of data collection and transparency essential to tracking student progress and achievement. Though the Department is currently considering data collection in the BIE, the Department has yet to enforce data transparency and access for tribes to make effective decisions that support tribal students in the public school system. The Department must promote data transparency and access in all education systems and respect previous tribal comments regarding specific policies that impact equity and accountability for Native students.

4. *What suggestions do you have for strengthening BIE's monitoring and technical assistance with respect to IDEA Part B? What suggestions do you have for how BIE can better support local schools in administering services for children with disabilities? What professional development has been offered for educators to meet the needs of children with disabilities? Is there adequate access to related service providers, i.e. speech therapists, occupational therapists, etc.? Are parents informed of their and their children's rights under IDEA? Are children with disabilities adequately prepared to meet post-secondary goals?*

**Our Ask: Invest in Highly Qualified SPED Educators and Staff through Implementation of the BIE Strategic Plan**

During consultation for the strategic plan, one of the most common issues surrounding special education in Native communities remains limited access to special education teachers and staff. Severe teacher shortages continue to impact the delivery of critical services to students in Bureau-funded schools. Through Strategy 3.1 of the strategic plan, the BIE invests in recruitment of high-quality leaders, teachers, and staff to ensure that Native students are prepared for college, career, and community engagement.

5. *Should the Department direct the use of BIE's Title I administrative funds to assist with the negotiated rulemaking process in developing its standards, assessment, and accountability systems and/or to assist with its implementation of Title I? If yes, how should we direct the use of those funds? If not, what suggestions do you have for how to ensure the funds are best used to support low-performing and low-achieving schools?*

**Our Ask: Provide Additional Details Regarding the Original Intended Use of Funds**

Due to lack of critical information regarding the original intended use of funds by the BIE, we are unable to provide an informed response to this question.

6. *What forms of educational choice can students in Tribal communities currently access? What educational services could best supplement what is provided by a child's or a student's geographically assigned school or the institution in which he or she is currently enrolled, especially educational services that support Native identities, cultures, languages, and traditions? What public, private, or home-based educational programs or courses serve Native youth well? How could the Supplemental Priority for increasing access to educational choice best be used for Tribal communities?*

**Our Ask: Provide Separate Consultation on Opportunities for School Choice that Promote Tribal Sovereignty in Native Education**

Consultation that respects tribal sovereignty provides an opportunity for tribes to fully engage with administration officials. Opportunities for school choice in Native communities must not be an afterthought in the current consultation, but a thorough conversation conducted through a separate consultation. Choice must be led by tribal communities, not "used for Tribal communities." Tribes know best the unique academic and cultural needs of Native students in BIE and public schools across the country. Opportunities for choice in tribal communities must strengthen innovative education options that support sovereignty and self-determination in Native education systems. Tribal sovereignty must be respected and central to any discussions of choice opportunities in Native communities.