



**Testimony of the National Indian Education Association  
Submitted to the United States Senate Committee on Indian Affairs**

**Regarding the May 17, 2017 Oversight Hearing:  
“High Risk, No Reward: GAO’s High Risk List for Indian Programs”**

**Introduction.** Thank you for this opportunity to submit testimony regarding the Committee’s May 17, 2017 hearing on the Government Accounting Office High Risk Report (GAO-17-317 High Risk Series). Founded in 1969, the National Indian Education Association (NIEA) represents Native students, educators, families, communities, and tribes, advocating for improved educational opportunities that enable Native students to thrive in the classroom and beyond.

**The Problems Did Not Develop—and Cannot Be Fixed—Overnight.** First and foremost, we all must acknowledge that the problems identified in the Government Accounting Office High Risk Report (Report) and discussed at the hearing were not created overnight and they will not be solved overnight. Generations of neglect have resulted in Bureau of Indian (BIE) school systems that exist today. The systems for construction and maintenance of BIE schools, operations, and staffing are just a few of the ongoing areas that need significant improvement.

A number of the areas that the GAO identified as needing reform are areas that involve the BIE responsibilities, operations, and staff.<sup>1</sup> Some BIE schools have never been adequately built. Others have often not received the maintenance funding they need, and have become dilapidated as a result. BIE schools also face enormous challenges regarding staffing and operations.<sup>2</sup> Employees are often not placed in positions for which they have the necessary skills. BIE lacks staff with the expertise required to oversee school expenditures.<sup>3</sup> Other challenges for paying expenses and operations can be attributed to the fact that BIE must coordinate with the Bureau of Indian Affairs, which operates on a different fiscal year and with different reporting systems for audits, for example.

Solutions to address the problems created from long standing neglect will not be found in quick fixes. Long term tribal engagement will be necessary. Sustained, meaningful community

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<sup>1</sup> See GAO, High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others, GAO-17-317 (Feb. 2017)

<sup>2</sup> See GAO, Indian Affairs: Better Management and Accountability Needed to Improve Indian Education, GAO-13-744 (Sept. 2013).

<sup>3</sup> See, e.g., GAO, Bureau of Indian Education Needs to Improve Oversight of School Spending, GAO-15-121 (Nov. 2014).

engagement will be necessary for Native communities to trust schools that have previously excluded Native caregivers from engaging with BIE schools. The Reform that is currently underway represents this – developed from direct tribal input, the current reorganization is an effort to address the long-term problems in a systemic way. These efforts must be supported and continued through to completion.

**The Trust Responsibility for Native Education as it Relates to BIE Reform.** 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. The federal government’s trust responsibility in the field of Native education is a shared responsibility between the Administration and Congress for federally recognized Indian tribes.

With respect to BIE Reform, the trust responsibility requires schools that enable Native students to succeed. That means no leaking roofs, open floors, air and heating systems that do not work. It means that Reform must be completed and it must be supported by Congress to make sure BIE serves Native students well.

**The Status of Reform and the Resources Necessary.** Over the last five years, the GAO has found numerous challenges to the administration of BIE, staffing, and school construction. The BIE Reform was undertaken in 2014 to address these problems. Today, BIE is still struggling with numerous issues. Staffing continues to be a problem. Numerous vacancies in the BIE have been delayed, leading to vacancy rates of up to 9% in 2017. NIEA is concerned that the BIE must have the authority and resources to fill vacancies.

In addition to staffing, school construction continues to be a challenge for the BIE. Over 60 BIE schools are still currently rated in “poor” condition, and construction issues continue to put Native students at an educational disadvantage. With respect to the specific discussions at the May 17<sup>th</sup> Senate Committee on Indian Affairs hearing, we agree with the urgent need for a long-term school replacement plan that would set out priorities for school construction and replacement over the next 40-60 years and that would include a plan for adequate maintenance funding. We would note, however, that Congress must partner with BIE and the tribes to get the plan done, and then to implement it.

**Accountability.** NIEA also knows that accountability, in addition to funding, is required to ensure that BIE’s funding is used to effectively and efficiently improve the educational opportunities of Native students. We respectfully would like to urge that increased oversight over BIE by Congress is a necessary part of shared accountability. The accountability that the GAO reports and this Senate Committee on Indian Affairs brought has helped reveal problems and spurred BIE forward. NIEA asks the Committee to continue that critical, active oversight role.

Accountability also extends to fairness with respect to Native schools receiving the resources that Department of Defense schools receive. There are only two educational systems for which the federal government is directly responsible: Department of Defense (DOD) schools and federally operated and federally funded tribal schools. BIE schools, however, lag far behind DOD schools in funding, school construction, and student achievement. While DOD schools are

being renovated and remodeled, schools within the BIE system are woefully outdated and, in some cases, dangerous for students and staff. As America's most vulnerable population, Native students should have equal access to resources and opportunities. Congress should fulfill its responsibility to Native students by remedying the disparities between these two federally operated school systems.

**Next Steps to Achieve Results.** NIEA continues to be generally supportive of BIE Reform. We agree with the GAO's insights and support Director Tony Dearman's testimony at the hearing. We see incremental progress and believe the Committee should recognize progress as well.

At the same time, we urge transparency in the design and execution of the Reform in order to include tribal participation, facilitate congressional oversight, and ensure that reform fulfills the federal government's trust responsibility regarding delivery of trust- and treaty-based educational rights. See NIEA Resolution # 2016-E02 and #2014-11 attached.

We have three recommendations regarding how Reform can be undertaken in a way that honors the federal government's responsibilities, respects the government-to-government relationship between tribes and the United States, and achieves much-needed progress regarding our Native students' education.

**Keep the BIE within the Department of Interior.** Although reform is needed, it continues to be essential that Native education remain the purview of the BIE and that BIE remains housed within the Department of Interior, which has extensive experience carrying out the United States' trust responsibility. Tribal leaders have repeatedly stated that the BIE should stay within the Department of Interior. NIEA joins tribes in strongly opposing any effort to move Native education to the Department of Education. However, we look forward to follow-up hearings to determine what the BIE and the Department of Education are doing to work together to address the needs of Native students.

**Follow-up with Hearings with Both BIA and BIE Officials.** As stated, over 60 BIE schools currently rated in "poor" condition. Native children are learning in buildings that are crumbling around them. We appreciate the attention that has been paid to the dilapidated Bug-O-Nay-Ge-Shig school. This school is, unfortunately, representative of the significant problems facing schools that linger on the BIE's school construction list. Additional funds for facilities and maintenance are desperately needed so that the BIE can reduce the construction and repair backlog, addressing schools in the order they appear on the BIE construction list so that schools that have long awaited facilities funding will not continue to be neglected. We also urge the completion of the long-term school replacement plan and increased oversight over school construction funds to ensure the effective administration of federal funds.

**Continue Oversight of Reform.** As NIEA has previously stated, and has expressed in Resolution # 2014-11 and more recently in #2016-E02, continued congressional oversight over the BIE reform process is necessary. As the reform moves forward to completion, details of the reform should continue to be made public, tribal input should be prioritized, and congressional oversight should continue.

**Conclusion.** We thank the Committee for holding this oversight hearing. It is precisely hearings and oversight like this that has and will help address the concerns included in this. We urge Congress and the Administration to use this opportunity to work closely with tribes, who must be central to better serving students attending BIE schools. Finally, we firmly believe that self-governance in education is the answer to the current crisis in the Native education system: Tribes have demonstrated time and time again that we are better equipped to address the needs of our own peoples.

Working together, with mutual commitment and bipartisan support from Congress, we continue to believe that the best way forward is to both hold BIE accountable and invest resources to further tribal self-determination in education and deliver Native students the education they need to succeed.

**For additional information, please contact NIEA Executive Director Ahniwake Rose at [arose@niea.org](mailto:arose@niea.org) or 202-847-0033.**



## NATIONAL INDIAN EDUCATION ASSOCIATION

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### NIEA Resolution 2016- E-02

#### **Relating to Legal and Policy Issues Concerning the Reorganization of the Bureau of Indian Education (BIE) to Portions of its Implementation**

**WHEREAS**, the National Indian Education Association (NIEA) was established in 1970 for the purpose of advocating, planning, and promoting the unique and special educational needs of American Indians, Alaska Natives, and Native Hawaiians, and provides a forum to discuss and act upon issues affecting the education of Indian and Native people; and

**WHEREAS**, the BIE is currently in the process of reorganizing its structure in such a way that violates various provisions of the governing statute, namely the organizational and operational provisions of PL 95-561; and

**WHEREAS**, in spite of numerous efforts from members of this organization directly involved with BIE education programs at the local and tribal level, the BIE is going forward with its reorganization without responding to the concerns of the tribal entities in violation of the consultation requirements of 25 USC 2011; and

**WHEREAS**, the organization changes proposed by the BIE undermines the role of local and agency school boards and confuses the lines of authority within BIE, and BIE ignores specific GAO reports that have made specific recommendations concerning the organizational deficiencies of BIE, such recommendations have been endorsed by the Congressional appropriations committees; and

**WHEREAS**, the instructional improvement oriented policies embedded in the reorganization could have easily been implemented with a major restructuring that does not violate the law.

**THEREFORE BE IT RESOLVED**, that the National Indian Education Association passed resolution 2014-11 on BIE implementation in 2014 and seeks to make sure BIE is accountable and serves Native students optimally through its organizational structure; and

**BE IT FURTHER RESOLVED** that on behalf of its member constituents, NIEA renews our requests for a thorough legal and policy review of the BIE reorganization prior to any further implementation; and

**BE IT FURTHER RESOLVED** that within the next two weeks, NIEA take action to implement this resolution; and

**BE IT FINALLY RESOLVED** that this resolution shall be the policy of NIEA until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

I do hereby certify that the following resolution was dully considered and passed by the National Indian Education Association on October 7<sup>th</sup>, 2016 at which a quorum of the membership was present.



*Patricia L. Whitefoot*

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Patricia Whitefoot  
President



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### NIEA Resolution 2014-11

#### **TITLE: SUPPORT FOR CONGRESSIONAL OVERSIGHT CONCERNING THE BUREAU OF INDIAN EDUCATION RESTRUCTURING AND BLUE PRINT FOR REFORM**

WHEREAS, the National Indian Education Association (NIEA) was established in 1970 for the purpose of advocating, planning, and promoting the unique and special educational needs of American Indians, Alaska Natives, and Native Hawaiians; and

WHEREAS, NIEA, as the largest national Indian organization of American Indian, Alaska Native, and Native Hawaiian educators, administrators, parents, and students in the United States, provides a forum to discuss and act upon issues affecting the education of Indian and Native people; and

WHEREAS, through its unique relationship with Indian nations and tribes, the federal government has established programs and resources to meet the educational needs of American Indians, Alaska Natives, and Native Hawaiians, residing on and off their reserved or non-reserved homelands; and

WHEREAS, the Obama Administration has asserted broad executive authority in implementing the U.S. Department of the Interior Secretarial Order to Transform the Bureau of Indian Education (BIE) as based on recommendations of the American Indian Education Study Group's Blueprint for Reform; and

WHEREAS, there is broad based concern throughout Indian country, and with treaty tribes in particular, that the BIE realignment is creating statutory conflicts and being implemented without a congressional authorization and without congressional oversight; and

WHEREAS, The Secretary of the Interior Sally Jewell has not appeared before the Senate Committee on Indian Affairs to provide details concerning the BIE restructuring, nor has the Secretary provided congressional appropriations committees with a detailed budget request to pay for the restructuring; and

WHEREAS, Administration officials have erroneously testified to the Senate Committee on Indian Affairs that there is no opposition from Indian country concerning the Blueprint for Reform; and

WHEREAS, to meet the federal government's continuing trust responsibility and assess measurable trust standards in the field of Indian education including the entire trust corpus for treaty-based educational rights delivered through the BIE, it is essential that committees of

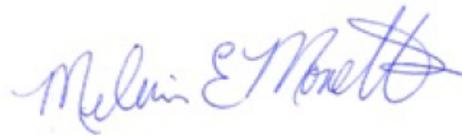
jurisdiction in both the U.S. House of Representatives and U. S. Senate provide congressional oversight on executive actions concerning the BIE;

NOW THEREFORE BE IT RESOLVED, that the National Indian Education Association directs the Board and Executive Director to request a congressional investigation into the Bureau of Indian Education restructuring and Blueprint for Reform to ascertain if the Secretarial Order creates a statutory conflict and to document Department of the Interior proposed offsets to pay for the restructuring; and

BE IT FURTHER RESOLVED, that the National Indian Education Association directs the Board and Executive Director to request oversight hearings by the Senate Committee on Indian Affairs and House Education and Workforce Committee and House Committee on Natural Resources and other appropriate congressional committees regarding the Bureau of Indian Education restructuring and Blueprint for Reform.

#### CERTIFICATION

I do hereby certify that the following resolution was dully considered and passed by the National Indian Education Association on October 18, 2014 at which a quorum of the membership was present.



Melvin Monette  
President