

**STATEMENT OF THE
NATIONAL INDIAN EDUCATION ASSOCIATION
SUBMITTED TO
THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON THE REAUTHORIZATION OF INDIAN SECTIONS
OF THE ELEMENTARY AND SECONDARY EDUCATION ACT**

April 26, 2000

**Submitted by:
John W. Cheek (*Muscogee Creek*)
Executive Director**

The National Indian Education Association (NIEA), the oldest national organization representing the education concerns of over 3,000 American Indian, Alaska Native and Native Hawaiian educators, tribal leaders, school administrators, teachers, parents, and students is submitting this statement on legislation currently impacting Indian education. On behalf of our president, Dr. Gloria E. Sly and Board of Directors we thank you for the opportunity to present testimony today. We would also like to thank Chairman Campbell, Vice-Chairman Inouye and members of the committee for holding this important hearing.

Funding for Indian education and Department of Defense schools is the sole responsibility of the Federal Government while public education is a combination of state and federal resources. Local Education Agencies (LEAs) and their surrounding communities have the ability to pass bond initiatives in order to build or repair local school facilities. Tribal and Bureau of Indian Affairs (BIA) schools, on the other hand, must rely on the federal government to ensure their academic and construction needs are being met. The extent to which the federal government has assumed this responsibility can be exemplified in the backlog of construction and repair/renovation needs which exceeds \$800 million. The area of school construction and repair remains problematic as recent annual appropriations have historically targeted less than ten percent of the total need requirement. The budget request this year, however, shows promise as it illustrates the possibilities when policy, programs, and funding work in tandem to correct long standing deficiencies in educating the Indian community.

In terms of academic success, American Indian students continue to rank at, or near, the bottom of every educational indicator. This seemingly negative situation is actually an improvement when you consider that just 50 years ago the federal government was actively involved in the

termination of Indian tribes. While many BIA/Indian tribal schools have the option of developing their own assessment criteria, many opt to follow the guidelines of the state in which they are located.

Reauthorization of the Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA) of 1965 is due for reauthorization this session of Congress. NIEA has developed recommendations for consideration by the authorizing committee(s), the Department of Education and Indian Country. Several tribes, including the Affiliated Tribes of Northwest Indians and the National Congress of American Indians (NCAI) have endorsed NIEA's recommendations as they apply to the current ESEA, as amended by the Improving America's Schools Act (IASA). The issuance of Executive Order 13096 by President Clinton in August of 1998 on American Indian and Alaska Native Education and the reauthorization of the ESEA in 2000 will both play major roles in determining the future of education in general, and Indian education in particular.

To date, there have been five proposals introduced for the reauthorization of ESEA. These include: S.1180 and H.R.1960, the 'Educational Excellence for All Children Act of 1999' (Administration's proposals); H.R.2, the 'Student Results Act of 1999' (House-passed version, which includes Title I and other authorizations including Indian education); H.R.4141 'Education Opportunities To Protect and Invest In Our Nation's Students (Education OPTIONS) Act' which reauthorizes the remaining sections not covered under H.R.2; and S.2, the 'Educational Opportunities Act'. The only version which NIEA supports in relation to Indian education programs within the Department of Education, is S.2. S.2 maintains all authorizations under the Office of Indian Education while the other three legislative versions eliminate authorizations for Gifted and Talented, Adult Education, Indian Fellowships, and Tribal Education Departments. NIEA strongly opposes the elimination of these programs and further requests that these programs be funded at the levels we recommended before the Indian Affairs Committee on February 23, 2000. NIEA appreciates the committee's support of our position for keeping in these authorizations and for maintaining the integrity of Indian education programs within the current Title IX law.

While we support S.2, we are concerned about amendments to two laws that govern how Bureau of Indian Affairs (BIA) schools are administered. These include Public law 95-561 and Public Law 100-297 which authorize education programs for BIA, tribal grant and contract schools. Both of these laws are complex and NIEA has utilized the expertise of today's invited speakers to formulate our position on amendments to these laws. The following is a brief summary of these laws:

Public Law 95-561: The Education Amendments of 1978, Public Law 95-561, as amended. Provides broad statutory guidance to schools that are operated or funded by the Bureau of Indian Affairs. Provides for Indian school boards in BIA operated schools. Requires the BIA to actively consult with tribes in all matters that relate to Bureau schools. Allows the Secretary of the Interior to implement cooperative agreements

between tribes, school boards of Bureau schools, and state public school districts. Establishes formula-based funding for all BIA operated schools and BIA funded tribal schools. Requires that such schools be accredited or meet standards that are equal to or exceed those accreditation requirements. Allows tribes to set academic standards for BIA operated or funded schools that take into account the specific needs of Indian children.

Public Law 100-297: The Indian Education Act of 1988, Public Law 100-297, as amended. Allows tribes to operate BIA funded schools as grant schools rather than as contract schools. Grant school funding allows tribal schools to receive funding on a more timely basis, to invest those funds under certain restrictions, and to use the interest gained for further educational costs in their schools. This Act also authorizes federal funding for tribal early childhood programs and tribal departments of education. To date no money has been appropriated for tribal departments of education.

H.R.2 contains the house-passed version of these two laws, while their addition to S.2 is pending. NIEA has yet to take a formal position on the various versions of P.L.95-561 and P.L.100-297 because the entities instrumental in drafting changes to the bills have not come to an agreement on final bill language. As a national association, we would likely support the version that stands to benefit the most number of Indian students in the BIA education system.

H.R. 2 would revise the authorization of education programs provided through the BIA within the Department of the Interior and extend the authorizations for those that expired in 1999. The reauthorization of programs under H.R. 2 would provide for grants to state and local education agencies and tribal governments to assist target student populations to meet state performance standards. H.R. 2 would allow schools receiving funds both under Part A (under Title IX of the Improving America's Schools Act which authorizes programs under the Department of Education's Office of Indian Education) and through the BIA to consolidate such funds through an inter-agency transfer. Schools would be required to submit a plan demonstrating how programs funded by each agency would be integrated. The Department of the Interior would be the lead agency for contract schools and the Department of Education would oversee funding for BIA-operated schools.

The BIA currently operates 185 tribal schools as authorized under Title XI of the Education Amendments of 1978 (Public law 95-561). Several of these schools are home-living schools that serve students with exceptional needs. The Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638, authorized the BIA to transfer school management authority to tribal agencies via contracts. The majority of BIA funding supports the Indian School Equalization Program (ISEP) grants to BIA-operated and contract schools as well as providing administrative cost grants to assist in the operation of contract schools. The ISEP formula considers the unique needs and grades served by each school to determine the proportion of available funds that each school receives. In addition, BIA supports an Early Childhood Development Program and the establishment of Tribal Departments of Education as authorized under Title XI. Authorization for these last two programs expired in 1999 and General Education

Provisions Act (GEPA) extensions do not apply to programs under the Department of the Interior. All other BIA programs are permanently authorized under the Snyder Act of 1921 (Public Law 65-95).

The following are general comments we have regarding certain sections of the proposed amendments to P.L.95-561. This is not a complete listing and should be considered with comments from the other presenters.

- Indirect Cost Issue - In March, NIEA held its third annual Indian education Impact Week, here in Washington, DC. During a presentation by Assistant Secretary Indian Affairs, Kevin Gover, several people asked about a situation at their school(s) where Facilities Operations and Maintenance (O&M) funds were being reduced by 3 to 16%. Assistant Secretary Gover was unaware of the disparities in the amounts withheld and seemed to be unclear as to why there even needed to be a reduction, and if there was a need, why it was over 4%. Without knowing the full details of this issue, NIEA would recommend that if any reduction needs to be made that it be at the lowest level possible and administered equitably.
- Negotiated Rule Making - NIEA understands that Sec. 1137 provides for negotiated rulemaking with the BIA developing the initial proposed regulations. NIEA recommends that to the extent possible, the process of negotiated rulemaking be fairly conducted and that representatives from the associations represented here today and tribal representatives be included in the process. The process of “negotiations” indicates that two differing entities or opinions sit at the same table to work our differences. By having the draft regulations developed “in house” before being reviewed by stakeholders, an uneven playing field is established from the outset. Public Law 93-638 regulations were developed with a similar process involving tribes and federal officials and met with some success. We recommend a similar approach.
- Forward Funding - The current law provides a mechanism for forward funding of certain BIA education functions such as the Indian School Equalization Formula and transportation. The idea of moving all school related functions into a forward funded cycle would require a double appropriation to start the process for such areas as Facilities O&M. If the appropriation committees could be convinced such a tactic would relieve some of the funding issues with O&M dollars, NIEA would support the effort. Given that fact that we are in third year of increasing budget surpluses, now would be the perfect time to ask for the increased funding.

P.L. 100-297:

- First Grant Payment - Under P.L.100-297, the House version (H.R.2) recommends that the first grant payment be made on July 15 and that the amount be 85% of the school’s prior year allocation. The current Indian Affairs Committee draft recommends 80%. NIEA recommends that the percentage to be paid on the required July 15 date be 85%.

Part of the issue may be due to the possible decrease in the number of students in the current year as compared with the previous year. In any case, we recommend that any overage to the school, simply be reimbursed as referred to further on in section 5208.

Tribal Education Departments

NIEA fully supports Tribal Departments of Education (TED), both within the Department of Education Indian education authorization and within the BIA education structure. Two separate provisions authorize tribal education department funding. The Improving America's Schools Act of 1994, Public Law 103-382 (20 U.S.C. § 7835), establishes authority for the Department of Education to fund tribal education departments. No appropriations have ever been made under this provision, which the Administration now proposes to eliminate. The School Improvement Amendments of 1988, Public Law 100-297 (codified at 25 U.S.C. § 2024), establish authority for the BIA to fund tribal education departments. No appropriations have ever been made under this provision, either.

This is a serious failure on the part of the federal government. At present, about one in six tribes (almost one hundred of the over 550 tribes) has an education department. These departments serve hundreds of thousands of tribal students. They administer scholarships, supervise programs, and develop curricula and teacher training programs. They provide leadership and advocacy for schools, educators, and parents. They foster working cooperative agreements among tribal, federal, and state agencies, schools, and programs. Most importantly, tribal education departments are successfully addressing core problems in Indian education such as disproportionately high absenteeism and low educational attainment levels. The Carnegie Corporation of New York recently funded the first external evaluation of a tribal education department. The evaluation found that in the last ten years the drop out rates for tribal secondary students on the Rosebud Sioux Indian Reservation in South Dakota have decreased by thirty per cent, and graduation rates have increased by fifty percent. The evaluation credits the Truancy Intervention Program administered by the Rosebud Sioux Tribal Education Department with this substantial progress. This progress is unprecedented; we know of no federal or state program that shows comparable results. The P.L.100-297 legislation also allows tribal education departments to be treated as local education agencies for the purpose of applying for bilingual education grants.

Indian education occurs in a complex environment of services provided by tribal, federal, and state governments. The tribal education departments are rapidly rising to the challenge of being in the best overall position to track and report on tribal students, to identify and coordinate resources, and to provide technical assistance and accountability. In short, tribal education departments are effectuating the many good recommendations about how to improve Indian education that have been made over the years but never implemented.

Administrative Cost Grants.

We have been made aware of possible amendments to H.R.4148, 'Tribal Contract Support Cost Technical Amendments of 2000' sponsored by Representatives Don Young and J.D. Hayworth.

The bill is intended to make contract support costs for Indian Self-Determination Act contracts and compacts a Federal entitlement. The amendments that are being proposed for H.R.4148 would make Administrative Cost Grants within the BIA education system a Federal entitlement as well. The purpose of Administrative Cost Grants is to pay the administrative and indirect costs incurred by tribally-operated schools without reducing direct program services, and to enable them to carry out the necessary support functions that would otherwise be provided by the BIA from resources other than direct program funds.

The Administrative Cost grant mechanism was created by Congress in 1988 to more precisely identify the amount of funding needed for indirect and administrative costs of tribes and tribal organizations who operate BIA-funded elementary and secondary schools for Indian children. Prior to the 1988 law, tribally-operated school programs received indirect costs through traditional Indian Self-Determination and Education Assistance Act (ISDEAA) method for supplying “contract support” funds to tribes either through a negotiated indirect cost rate or a negotiated lump sum payment.

Congress changed the system in 1988 by adding the Administrative Cost (AC) Grant provision to the basic education law. The amount of each tribally-operated schools AC Grant is calculated under a formula set out in the law, but funding for AC Grants is subject to appropriation. The addition of AC Grants within H.R.4148 would allow entitlement payments for the purpose of paying administrative costs associated with delivery of education services for Indian children. By not having this function dependent upon annual appropriations, instructional dollars would not be sacrificed when insufficient administrative costs are available. NIEA believes that education for American Indian and Alaska Native people is a federal responsibility and that any proposal that makes any portion of Indian education services an entitlement should be supported. We are not aware of any companion bill in the Senate and would encourage this committee’s support in facilitating this proposal.

In closing, the National Indian Education Association would like to commend the committee and staff for taking on such an enormous task this session by working with Indian organizations, tribes and communities in reauthorizing the various pieces of legislation affecting the education of Indian people. We also acknowledge the expertise of the organizations assembled here today and ask that the committee and the BIA work with these associations in the completion of final legislative language. Where applicable, we encourage a cooperative working arrangement between the various stakeholders in finalizing and eventual implementation of new authorizing language for BIA, grant and contract schools including the development of appropriate regulations. NIEA would be willing to recommend members of our association to assist in this effort as well. Thank you for the opportunity to present today.