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(ANCCSB)
WINDOW ROCK, NAVAJO NATION, ARIZONA
PRESENTED TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING
S. 211, THE NATIVE AMERICAN EDUCATION IMPROVEMENT ACT OF 2001
MARCH 14 2001

Chairman Campbell and Members of the Committee,

I am very grateful for this opportunity to appear before you on behalf of the Association of Navajo Community Controlled School Boards (ANCCSB) to discuss our views on S. 211, the Native American Education Improvement Act of 2001. As an association of 16 contract and grant schools located on the Navajo Reservation, ANCCSB brings to this process the unique perspective of local school boards that are responsible for providing all elementary and secondary educational services to Indian children on the largest reservation in the country. BIA-funded schools are a vital part of the education system on the Navajo Reservation – 65 of the 185 schools in the BIA-funded school system are at Navajo. 36 of these schools are locally operated grant schools and 29 are BIA operated.

As the boards charged with operating BIA contract and grant schools, we are the ones who see the day-to-day impacts of national legislative choices on our children's direct quality of education. We are the ones who must make the difficult, dollar-by-dollar choices to cut into education program funding when our transportation dollars are inadequate to keep our school buses fueled and running, or our administrative dollars are insufficient to support required fiscal controls. We are the ones who – despite these difficulties – gladly give our time and energy to serve on tribally operated school boards because we believe in our kids, we believe in our tribe, and we believe strongly that local control of school programs is a critical opportunity to ensure the well being of both.

We are very grateful for the support we receive from this Committee in our efforts to maintain effective tribally controlled education programs for our kids. We look forward to working with you to ensure that what works well within the BIA-funded school system is supported and expanded in this reauthorization process, and that what is not working in this system is addressed thoughtfully and thoroughly in the best interests of Indian children.

1. Codifying the education trust responsibility

One of the key characteristics of the BIA school system is that it gives Indian tribes the opportunity to have direct, hands-on involvement in the education of their children. The Indian Self-Determination Act, passed in 1975, and the Tribally Controlled Schools Act, passed in 1988, have made this possible. Today, approximately two-thirds of all BIA-funded schools are operated by tribal school boards through contracts and grants.

But Public Law 95-561, enacted in 1978 to set out directives to the BIA regarding school operations, has never had a statement of congressional findings or purposes. S. 211 would cure this omission. We strongly support the bill language that recognizes "the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people includes the education of Indian children" and states the legislation's goal of meeting "the unique 'educational and cultural needs of these children."

2. Authorizing language regarding funding issues

In considering what our member school boards need most in order to provide the kind of creative, comprehensive education necessary to ensure that our kids flourish, we come back time and again to the issue of funding. *All of us in this room understand that even the most fool-proof curriculum is of little value if you cannot afford to pay qualified teachers to present it, and even the most creative and inspiring teachers are helpless to impact a child who cannot get to class because the school bus is not running.*

While we recognize that the annual funding decisions that directly impact our schools are made by appropriations committees, we believe that your Committee can play a key role in stabilizing school funding through language in authorizing measures such as S. 211, as well as by making it your practice to urge greater attention for BIA education programs in the annual appropriations process. Our schools have nowhere else to turn for this funding but to Congress. Ours is a FEDERAL school system. Perhaps you are tired of hearing us repeat our funding requests year after year. Certainly we wish we did not have to continually ask for your help. S. 211 presents an opportunity for us all to work together to cure some of the system's chronic problems. To this end we offer the following comments:

GAO Study on Adequacy of Funds and Formulas (See. 1121(k)). We are very pleased that S. 211 would require the General Accounting Office to study the adequacy of funds supplied to BIA-funded schools, requiring that circumstances such as "isolation, limited English proficiency of Indian students, the costs of educating disabled Indian students in isolated settings, and other factors that may disproportionately increase per-pupil costs" be taken into account. There has never been an easy "apples to apples" way to compare BIA funding with school funding in public schools and the Department of Defense school system, as these systems are all funded in different ways and function under very different circumstances. We hope that this study will give Congress the information they need to do right by BIA-funded schools in the annual appropriations process.

Administrative Cost Grants (See. 1127). Tribally-operated BIA schools are facing a crisis in their administrative budgets, operating at *less than 80%* of the funding necessary for prudent management of a school. These schools receive their administrative funding through Administrative Cost Grants, a formula-based method created by Congress to calculate the amount of funds that should be provided for the administrative and indirect cost expenses incurred in the operation of BIA school programs – similar to "contract support" costs provided to non-school contractors. The Administrative Cost Grant formula was designed as a compromise, a minimum calculation of the administrative costs necessary for prudent management of tribally operated schools. When 100 percent of these costs are

not funded, our schools are set up for failure.

The impacts of these shortfalls are far from abstract. Insufficient AC Grant funding jeopardizes the ability of tribally-operated schools to maintain the internal controls needed for prudent fiscal management. If this trend continues, we fear that there will be a sharp increase in fiscal failure among tribally-operated schools, with many having no choice but to revert back to federal control. This undermines the fundamental principle of tribal self-determination in an area where we can least afford to give up local control.

Our member schools have been forced to make reductions-in-force that cost them vital, well-trained administrative staff, forcing the schools to carry out 100% of their administrative tasks with far less than 100% of the personnel and resources needed to perform them. Not surprisingly, many schools have been unable to find experienced staff willing to come to work in their remote locations at reduced salaries. Some schools have had to convert their administrative staff to a 10-month employment year, leaving them ill-prepared to close out the administrative work of the previous school year and to prepare for the coming school year and annual audit.

To defuse this mounting crisis, we propose two changes to the authorizing statute in order to assure that congressional intent is met with regard to administrative cost funding:

1) Stabilize funding for Administrative Cost Grants by deleting the "Subject to the availability of appropriated-funds" language that lines 24-25 of page 63 of S. 211, and by persuading the appropriations committees to remove the language that for the last several years has "capped" AC Grant funding at less than 100% of the formula-directed amount.

2) Add language to create a separate BIA budget category to fund the first year of AC Grants for schools who newly convert to tribal operation, and direct that the AC Grant funds for these new conversions automatically roll into "regular" AC Grant appropriation in the following year. For the past several years AC Grant funding has been frozen at or very near the same inadequate level. Thus when new schools convert, their AC Grant funding eligibility effectively reduces the funding available to the existing tribal schools.

Technical clarification in TCSA regarding administrative costs of Grant Schools. We ask you to make a technical correction in the TCSA portion of the bill regarding the amount which a Grant school may spend for administrative costs. Our requested clarification is intended to specify that the amount produced by the formula in Sec. 1127 is the amount a Grant school may spend for its administrative costs. Suggested language follows:

"Funds made available through any grant provided under this part may not be expended for administrative costs. (as defined in section 1127(a) of the Education Amendments of 1978) in excess of the amount generated for such costs under **the formula established** in section 1127 of such Act."

Operations and Maintenance (O&M) Funding Distributions. Adequate formula funding for everyday upkeep of schools is a critical element in assuring that schools will last longer and remain safe for students. Yet for the past decade, Facilities Operations and Maintenance funding has been so insufficient that most of our funds go toward paying basic utility bills, leaving us little or no funds for basic maintenance. We support the following aspects of S. 211 that seek to mitigate the impacts of these shortfalls.

Forward Funding of O&M. We strongly support language included in S. 211 that would "forward fund" the school Operations and Maintenance accounts. We note, however, that in adding this language, the bill drafters have inadvertently deleted language in the existing law that authorizes forward funding of other school operations accounts. We believe the deletion of existing law was a mistake. *We ask you to restore the existing statutory language, with a revision to expressly authorize forward funding of facilities O&M money.*

BIA "Skimming:" Prohibition. We applaud language contained in S. 211 that would stop the BIA practice of "skimming" scarce facilities O&M funds and diverting them to bureaucratic administrative or other costs that should be covered by other parts of the BIA budget. The S. 211 provision would require BIA to distribute to the schools all the funds Congress appropriates for facilities O&M unless a school expressly authorizes any part of its allotment of O&M funds to be withheld by BIA. *We also ask that your committee add a provision to generally prohibit BIA from imposing any pre-condition on a contract or grant school before the school's O&M funds will be released.*

Facilities Improvement and Repair (FI&R) and Construction Survey. We are pleased that the Committee bill directs a survey of all school facilities in the BIA system as a first step toward considering alternative methods for distributing funds appropriated for school replacement construction and school improvement and repair projects. This is a very timely directive that will go hand in hand with the new Administration IS efforts to increase funding to address the dismal condition of many BIA-funded schools.

We note one needed change to this provision, however. Both the GAO and Negotiated Rulemaking parts of the provision are directed at cataloguing the condition of existing facilities and renovation/replacement needs, only. The provision does not include surveying to identify fundamental educational program functional spaces that do not exist at many schools but are needed for a complete educational program, such as a library, gymnasium, etc. This survey objective should be added to both the GAO and Negotiated Rulemaking parts of Section 1124(a).

Reconcile two provisions which direct the percentage of funds supplied to BIA-operated schools and tribally-operated schools. S. 211 would continue to allow BIA to make an 85% first payment to BIA-operated schools each year (Sec. 1129 of the P.L. 95-561 provisions of the bill), but would allow tribally-operated schools to receive only an 80% first payment (Sec. 5208 of Tribally Controlled Schools Act provisions). There is no justification for this disparity. *We ask that the first payment to Grant schools be changed to 85 percent of the school's pervious year*

funding to match the percentage supplied to the BIA's own schools.

Applicability of Prompt Payment Act to TCSA Grant Payments. In 1994, Congress made the Prompt Payment Act applicable to payments to tribes under the Indian Self-Determination Act and to the annual payments to Grant schools under the TCSA. This was needed to help abate the "slow pay" habits of the BIA and IHS which caused great cash flow problems for tribes and tribal organizations. We ask that the TCSA be revised to assure that the PPA applies to all payments to be made under a TCSA grant, including construction grant payments (as is the case with ISDA contracts). To accomplish this, revise as follows:

"The provisions of chapter 39 of title 31, United States Code, shall apply to the payments required to be made under ~~paragraphs (1), (2), and (3)~~ a grant issued pursuant to this part."

3. Other Improvements to the BIA Education System

Negotiated Rulemaking. We strongly support language in S. 211 that would require that BIA elementary and secondary education regulations be prepared by a Negotiated Rulemaking Committee comprised of BIA, tribal, and tribal school board officials using a consensus-based process. The S. 211 provision is modeled on a similar provision crafted by this Committee in 1994 for development of Indian Self-Determination Act regulations. The product produced by the ISDA Negotiated Rulemaking Committee has been a stunning success.

The bill's Negotiated Rulemaking provision allows only 18 months for completion of the regulations. This provides inadequate time to complete all the steps required by the provision, and is inconsistent with Sec. 1121 which allows the BIA 24 months to revise its academic standards regulations. *We recommend increasing the time frame for negotiated rulemaking to 24 months to ensure consistent, realistic timelines within the bill.*

School Boundaries. We support Sec. 1123 of S. 211 that endorses a tribe's right to establish school attendance boundaries for its own reservation. We also support the language that would prohibit the BIA from denying funding to any school for an eligible Indian student who may live outside of that school's attendance area.

Contracting of Area/Agency Education positions. We support the S. 211 provision that would expressly allow ISDA contracting of Area or Agency education functions "unless determined by the Secretary to be inherently Federal functions." The measure includes a definition of "inherently federal functions." We urge you to expressly reference this definition of "inherently federal functions" in the contracting provision.

School Board Training. We support the bill sponsors' decision to delete the current law's cumbersome language regarding distribution of school board training funds. The approach of S. 211 is to provide training funds to the school boards and allow them to select the training most appropriate for

their members, especially new members, who under this provision would be required to obtain 40 hours of training within the first year after assuming a board seat. This approach will give school boards the flexibility to tailor the training sessions to fit their needs, and to form consortia for the economical purchase of training services.

Delete "Facilities Management" From Expanded OIEP Director Duties. The amendments the bill would make to P.L. 95-561 would expand the responsibilities of the Director of the Office of Indian Education Programs in Sec. 1125(b) (1) to include "facilities management, contracting, procurement, and finance personnel". *We recommend dropping the reference to "facilities management" personnel to ensure that the Office of Facilities Management and Construction (OFMC) is not transferred to OIEP.*

OFMC, staffed by architects, engineers, construction managers, safety inspectors, etc., either directly performs construction projects for the entire Bureau, or works with tribes who perform these projects under contract or grant. Their work is not limited to school facilities projects.

The job of OFMC is to identify and cure building health and safety problems and to repair and construct facilities, a job that should be done by architects, engineers and personnel specially trained in construction disciplines. Education program personnel do not possess expertise in architecture or civil engineering, and are not trained to supervise personnel in those disciplines. OFMC is a centralized source for construction expertise for the whole BIA – for both education and non-education construction. It does not make sense nor would it be cost-effective or efficient to move part of this Office to OIEP (which, frankly, has its hands full with education program matters).

School Closings. We support the provision contained in S. 211 which would allow a school whose facility is closed because of a health/safety hazard to continue to receive its regular program funding and authorize the use of that funding to abate the hazard. We also support the language requiring that a BIA health and safety officer and an individual designated by the tribe must find that an immediate health and safety hazard exists before shutting down a school.

Annual Audit Reports. *We recommend that Sec. 5207 of the Tribally Controlled Schools Act section of S. 211 be revised to require an annual (rather than biannual) financial audit.* This is the frequency required by the Single Audit Act to which all TCSA grant schools are subject.

We are also concerned about the part of Sec. 5707 that requires TCSA grant schools to conduct a "biannual audit of procurement of personal property". The meaning and intent of this provision is unclear as it gives no indication of what kind of report the grantee is expected to produce. Plus, its reach is far too broad. As written, it would require the so-called "procurement audit" to cover all purchases a school might make – including the purchase of pencils and paper. We suggest the Committee consult with the BIA officials who suggested this provision to explain its purpose. *If the provision cannot be made more descriptive and rational in scope, it should be dropped.*

4. Related Concerns Contained in the ESEA Reauthorization Measure

The Senate Committee on Health, Education, Labor and Pensions (HELP) is considering amendments to the non-BIA titles of the Elementary and Secondary Education Act. Many provisions of this larger bill provide significant funding sources to the BIA school system. Thus, we seek the SCIA's advocacy with your colleagues on the HELP Committee to assure that the Indian students in our school system are eligible for all programs authorized by that larger bill and for the funding appropriated pursuant to it.

We itemize below several specific requests:

- ***Title I allocation.*** Please ensure that the 1% allocation of ESEA Title I funds provided to the Secretary of the Interior is preserved.
- ***Education Technology.*** Establish an express allocation for Education Technology for the BIA school system. Under current law, the amount of Ed Tech funding provided to the BIA is so small that only about a dozen grants can be distributed in our school system each year. Unlike public schools, the BIA system schools receive no Ed Tech funding from the states; we must rely exclusively on federal funds for this purpose. Technology is no longer an option in schools; it is a necessity. We understand that four years ago, experts estimated that \$500-\$600 per student per year was needed to supply schools' ed tech needs for hardware, software, training, technology maintenance, and transmission costs.

Please advocate for an express Education Technology allocation at this funding level for the federal government's BIA school system.

- ***Testing for Accountability.*** President Bush has proposed that students be tested on a regular basis as part of his education accountability objective. Schools who do not measure up risk losing their ESEA funds. The HELP Committee is working on a testing provision for its bill, and is expected to authorize some \$400 million to help states cover the costs of test development, with testing to begin in 4 years.

If these accountability requirements will apply to the BIA-funded school system, we are fearful that our schools will risk losing their Title I funds if they are found not to "measure up". One of our chronic problems has been that standardized testing devices are not culturally-, socially- and linguistically- appropriate for Indian children from diverse tribal cultures. The challenge of developing testing devices for children from these diverse cultures is even greater than the significant challenges that states will face in addressing these testing requirements. Furthermore, the BIA system's schools are among the most underfunded schools in the United States, which of course makes it difficult for these schools to recruit and retain experienced educators.

We need your help to ensure that any accountability triggers applicable to the BIA school system DO NOT result in draconian outcomes such as losing Title I funding – especially where the testing devices used are not appropriate to the students being tested, and the funding at issue is so vital to our ability to hire qualified staff.

To the extent testing devices are to be created, those administered to BIA system students must be rational and relevant to the society in which they live so that learning is adequately and fairly tested. Please assure that a reasonable amount of funding is supplied to the Secretary of the Interior for development of appropriate evaluation devices for our Indian schools which serve over 70 distinct tribal cultures. In this area "one size does not fit all" children, and does not fit all Indian children. If we are to be held accountable for our educational performance, please assure that the method for evaluating our performance is fair and appropriate for the tribal children being tested, and does not further punish these children by drastically cutting their education dollars if progress does not meet the prescribed goals.

5. Conclusion

We applaud the Committee for your excellent efforts to address the needs of tribally operated schools in the scope of this bill. We hope you will consider our comments as you move forward in this process.

We want to commend your staff for the outreach efforts they have made to obtain input from tribal schools over the past two years to produce a constructive and workable BIA education amendments bill. At your staffs invitation, our attorney provided several substantive and technical suggestions for overall improvement of S.211. We hope the Committee will seriously consider these suggestions. We have a joint responsibility to make S. 211 a bill you can be proud to sponsor!

We sincerely thank each member of this Committee for your commitment to enhancing educational opportunities for the 50,000 Indian children in the BIA-funded school system.