STATEMENT OF THE

NATIONAL INDIAN EDUCATION ASSOCIATION SUBMITTED TO THE SENATE COMMITTEE ON INDIAN AFFAIRS ON S.211, THE NATIVE AMERICAN EDUCATION IMPROVEMENT ACT OF 2001

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Submitted by:
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The National Indian Education Association (NIEA), the largest 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 pleased to submit this statement on S. 211, the Native American Education Improvement Act of 2001. On behalf of our president, Carole Anne Heart and Board of Directors we thank you for the opportunity to present testimony today. We would like to thank Chairman Campbell, Vice-Chairman Inouye and members of the committee for holding this important hearing.

Unlike public schools, which receive their funding from state and federal sources, funding for Bureau of Indian Affairs (BIA) and Department of Defense (DOD) schools is the sole responsibility of the Federal Government. Ideally, these two school systems should be the state of the art' when it comes to education policy. The unfortunate fact is that American Indian and Alaska Native students are achieving at rates lower than the general population, have the highest dropout rate, and are more likely to be diagnosed as learning deficient. The majority of the school buildings our children learn in are in need of repairs or need to be replaced entirely. For example, it would take nearly $1 billion to complete the current backlog in new school construction, repair and renovation projects in the BIA education system. This does not include those schools that would come 'on-line' each year as additional schools reach the top of the funding list. We are encouraged, however, to see President Bush take a stand on behalf of school construction as a major priority in Indian Country .

The Bush administration has also proposed new education strategies guaranteeing that "no child left behind" will drive education policy. While NIEA supports many of the President's education goals, initiatives such as higher accountability standards need to be carefully considered in terms of the capacity of Indian schools. One would generally assume that in order for all schools to be successful in implementing new standards that they should all be operating at the same level in terms of teacher quality, safe learning environments, adequacy of resources, etc. We are extremely concerned that Indian schools will be faced with the same requirements as public schools and be penalized should they fail to meet them within the prescribed timeframe. An equal playing field is necessary if we expect all schools, including Indian schools, to meet these high standards. We ask the committee's support in

ensuring that our Indian children are not faced with unrealistic policy decisions that could have the effect of doing more harm than good.

NIEA foresees a need for increased professional development of the BIA teaching force and additional resources for ensuring that standards congruent with national policy are developed with the BIA education system. While this has been an ongoing effort with much progress in recent years, the reform and standards movement will require additional demands on the already limited resources of the BIA education program.

According to the 1990 Census, there are 600,000 American Indian and Alaska Native children attending K-12 public and BIA schools nationally. Of this number 50,000, or less than ten percent of all Indian students, attend BIA schools. S.211 amends existing laws which govern how BIA schools, tribal grant and contract schools administer their programs to these students. NIEA supports the proposed amendments as they have been negotiated in consultation with other national Indian organizations. Our comments in relation to S.211 are reflective generally of the membership of NIEA. 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.
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> 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.

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 of 2000, NIEA became of a situation at certain school(s) where Facilities Operations and Maintenance (O&M) funds were being reduced from 3% to 16%. Then Assistant Secretary Kevin 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 from all regions of Indian Country 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.

P.L. 100-297:

- First Grant Payment - Under P .L.1 00-297, 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. Contract and Grants get 50%.

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.1 00-297 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.

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. By having this function dependent upon annual appropriations as it currently is, instructional dollars are being sacrificed when insufficient administrative costs are available. NIEA supports full funding of Administrative Cost Grants for the fiscal year in which they are required. Given the administration's move to focus on higher accountability standards, it will be necessary to ensure that local tribes have the resources available to ensure their administrative functions meet the challenge.

Reauthorization of the Elementary and Secondary Education Act

S.211 focuses on amendments that will be incorporated into the reauthorization of the Elementary and Secondary Education Act (ESEA). NIEA is concerned that the committee is undertaking only the amendments previously mentioned and not the entire breadth of Indian education programs in the Department of Education as well. NIEA would like to request that an additional hearing be held on the proposed changes to the current Title IX, Indian, Native Hawaiian and Alaska Native Education (Title VII of Senate draft). We are uncertain of the accountability measures and their impact on the largest Indian education program as administered by the Office of Indian Education within the Department of Education. The proposed changes could affect the program which currently serves over 450,000 Indian children in 1,200 programs in 43 states.

The Elementary and Secondary Education Act (ESEA) of 1965 was last reauthorized in 1994. NIEA has previously 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).

During the 106th Congress, at least five major proposals were 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 supported in relation to Indian education programs within the Department of Education was S.2. S.2 maintained all programs under the Office of Indian Education while the other legislative versions eliminated 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 will be recommending to Indian Affairs Committee. 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.

New Millennium White House Conference on Indian Education

NIEA would like to ask the committee's support for conducting a New Millennium White House Conference on Indian Education. The last one in 1992 occurred during the former Bush Administration, however, the President was unable to attend. The first White House Conference on Indian Education brought national attention to the myriad of educational problems still facing Indian people. The first conference set the stage for many major education advancements on behalf of Indian people during the close of the 20th century. The new century provides new energy and challenges and a new conference could set the stage for further advancements in such areas as educational technology, educational accountability and research on Indian education. Additionally, the last White House Conference on Indian Education authorization was included in the 1988 reauthorization ofESEA and could easily be included in this year's version.

Crosscutting Issues Affecting American Indian and Alaska Native Education

Below we have identified the major areas that have the potential to impact the education of American Indian, Alaska Native and Native Hawaiian people. The broad categories should be considered by the committee in the event a broader look is taken on the reauthorization of ESEA or as other legislative proposals get introduced this session of congress.

1. Sustaining basic operational, facility, and student service needs of schools and Tribal colleges funded through federal agencies such as the Departments of Interior, Education, Health and Human Services, and Agriculture.

Programs that are permanently authorized such as Snyder Act programs in the BIA and programs authorized periodically through statutory law changes such as the Department of Education's Office of Indian Education, are mainstays for Indian communities and students. These programs need adequate annual funding increases in an effort to stay current with inflation.

2. Increased funding for school repair and renovation for public and Bureau of Indian Affairs schools serving American Indian students.

In 1997, the General Accounting Office (GAO) identified a backlog in BIA repair and

renovation needs exceeding $800 million. During the same year, the appropriation for repair/renovation for BIA schools was $60 million. In FY2001, the appropriation was $293 million.

3. **Ensuring that the Executive Order on American Indian and Alaska Native Education and the Tribal College Executive Orders both remain in force throughout the term of the next administration.**

The Executive Order on American Indian Education was signed in 1998 and provides a vehicle for ensuring that federal agencies coordinate efforts in the delivery of educational resources to Indian communities. The executive order requires a comprehensive federal Indian education policy statement to be developed. The former administration was proposing to finalize one by the end of 2000 which never occurred.

The 1996 Executive Order on Tribal Colleges and Universities will still be active as they develop and/or implement their five year plans as submitted by participating agencies. Both executive orders must be sufficiently funded and supported by the agencies where they are located and through administrative support via appropriations.

4. **Development of a National Blueprint on Indian Education. Prioritizing attention for early childhood, adult learning, and cultural education programs with holistic teaching approaches that address concurrent needs for employment, physical and mental well-being, Tribal economic development, substance abuse education, and Tribal land resource utilization.**

Since 1993, the National Indian Education Association (NIEA) has been engaged in a comprehensive strategy looking at the total Indian community. Indian communities, whether they are located on a reservation or in an urban setting, rely not only on education, but other services such as social programs, law enforcement and economic development in an effort to meet the needs of the Indian community. Indians that reside within tribal land jurisdiction are often more reliant on federal education and social services programs to meet their immediate needs than they are on state programs. Often these adjoining issues come into play when problems arise with a student such as legal problems, child and family issues and so on. The need to look at education as only one facet of the entire "Indian" community must be acknowledged, understood, and facilitated to the point where these individual components compliment one another. NIEA supports the blueprint ideals and realizes that expertise from other professionals need to be incorporated if the blueprint strategy is to work.

5. **Exploring new education strategies based on coordinated analyses of the Indian Nations At Risk, White House Conference on Indian Education reports and the impact of the 1998 Executive Order on American Indian and Alaska Native Education.**

The decade of the nineties represented a renaissance in the federal approach to dealing with

long-standing educational issues facing Indian people. Key events such as the release of the Indian Nations at Risk Report, the White House Conference on Indian Education and an Indian education summit all played a part in defining the problems inherent in Indian education and the need for positive long range solutions. The Indian Education Executive Order provided a solution to some of these long-standing concerns and was additionally supported by increased federal appropriations targeted at the most critical need areas such as teacher training.

6. Elevating the Director, Office of Indian Education within the U.S. Department of Education to Assistant Secretary.

The enactment of the Department of Education on October 17, 1979, changed the organizational placement and status of Indian Education Programs authorized by Public Law 92-318, Title IV, the Indian Education Act of 1972. Prior to the establishment of the Department, all then Title IV Indian Education Programs were located in a distinct and separate organizational entity within the Office of Indian Education (OIE) at the Department of Health, Education and Welfare (HEW). The top Indian administrator of OIE, Dr. William Demmert, was the first Deputy Commissioner to be appointed on January 30, 1975. During this initial phase of the Act, the Deputy Commissioner reported directly to the Commissioner of Education.

Although all Title IV Indian Education Programs remained intact after establishment of the United States Department of Education, the Secretary of Education authorized a change in the organizational placement of Indian Education Programs to their present location with the Office of Elementary and Secondary Education (OESE). The status and identity of Title IV programs were changed from a separate Office of Indian Education to Indian Education Programs and the title of the top Indian administrator was changed from the Deputy Commissioner for Indian Education to a Deputy Assistant Secretary for Indian Education. This position formally changed in 1981 to "Director of Indian Education Programs" who now reports to the Assistant Secretary for OESE, rather than the Secretary of Education, a significant change in status.

While the directorship for Indian education has worked satisfactorily over the years, the location of the director within the Department of Education administrative hierarchy adds another layer of bureaucracy between the OIE director and the Secretary. The National Advisory Council on Indian Education could assist in the fulfilling the advisory role on behalf of Indian education, but since it is not adequately funded, this option is not viable.

7. Strengthening national oversight of American Indian/Alaskan Native education by reestablishing the office of the National Advisory Council on Indian Education (NACIE) within the U.S. Department of Education.

The National Advisory Council on Indian Education (NACIE) is a fifteen member board whose members are appointed by the President. NACIE was established at the same time as the Indian Education Act was first enacted into law in 1972. NACIE's mission is to provide

recommendations to the Congress on ways to improve educational opportunities for American Indians and Alaska Natives. Since 1996, the National Advisory Council on Indian Education (NACIE) has been without a physical office within the Department of Education. By not reestablishing this office, the likelihood that Indian education concerns will be further addressed are greatly reduced.

8. Examining Federal-State-Tribal partnerships to better coordinate educational programs for native students in both reservations and urban settings, and to support Indian-controlled schools.

The majority of American Indian and Alaska Native students (90%) attend public schools as opposed to Bureau of Indian Affairs or tribal schools. Current funding mechanisms within the Department of Education allow for certain set-asides to be used for direct funding to Indian schools. Generally, these set-aside funds go to Bureau of Indian Affairs (BIA) Schools. The majority of Indian students in public schools are eligible for services through many Department of Education K-12 programs. The extent to which these programs serve Indian students in public schools is varied and difficult to assess given the relatively low number of Indian students compared to the general population (generally less than one percent).

The need for tribal and state partnerships is increasing as the population of Indian students increases. What was once considered to be a federal responsibility only is now a shared responsibility among state and tribal stakeholders. These partnerships needs to be encouraged as vehicles for broader access to federal and state education programs.

NIEA also sees the need for continued advocacy with Capitol Hill and among federal agencies that set policy in matters affecting Indian education. There is an urgent need to build coalitions among all national Indian organizations in an effort to meet the increasing demands in educating Native people. In October, 2000 NIEA initiated such an effort when a memorandum of agreement was signed with the American Indian Higher Education Consortium, the National Indian School Board Association, and the National Congress of American Indians. Partnerships with our Indian and non-Indian counterparts are critical if we are to gain the support needed for positive change.

9. Block Grant and Ed-Flex funding proposals are being considered by the Congress as methods of moving federal education dollars directly to the states. In theory, this would eliminate the need for a myriad of federal agency programs to administer program dollars from Washington by having them administered locally.

Recurring congressional proposals for block granting federal education dollars to states may have a negative impact on American Indian students. Programs such as Office of Indian Education programs are already direct funded to local education agencies and bypass state education agencies altogether. Should block granting become federal policy, the level of funding would likely decrease for Indian students. In addition, there would be no guarantee that

these dollars would actually find their way to Indian students. NIEA recommends that certain federal education dollars not be block granted. These would include Indian Education Act dollars, Impact Aid, and other federal support which already contain a set-aside funding mechanism.

10. Bureau of Indian Affairs Schools

Funding for Bureau of Indian Affairs (BIA) schools 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 bonds in order to build or repair local school buildings. Tribal and BIA schools, on the other hand, must rely on the federal government to ensure their academic and construction needs are met. 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. Over one half of all schools qualify for ranking on annual construction repair and maintenance waiting lists. Typically less than ten schools can be assisted in a given budget year.

Aside from infrastructure needs of BIA schools, funding gaps exist in every functional category from early childhood to adult education though postsecondary education for Indian students. While improvements have been made in recent years, the breadth of these changes tend to be reliant on levels of funding. Other factors which prevent consistent improvement in BIA schools include high teacher turnover rates, remoteness of schools, and student transfer rates.

In 2000, a new Education Foundation bill was signed into law, allowing the BIA to accept donations of real and personal property. Funding will need to be secured for its implementation. Additionally, the Congress funded a new pilot program called the Therapeutic Residential Treatment Programs (TRTP) at three BIA boarding schools and dormitories. According to the Centers for Disease Control (CDC), American Indian, students attending BIA schools are at higher risk for sever problems associated with, substance abuse, depression, poverty, neglect, homelessness, and physical abuse. This "initiative will make appropriate professionals available at each pilot site to provide intervention treatments for students. This program and the early childhood FACE program need to be expanded in the FY2002 budget.

11. Native Hawaiian Issues

In 1999, NIEA was the first national American Indian and Alaska Native organization to allow Native Hawaiians voting privileges equal to American Indian members. This unprecedented move creates a national education voice on behalf of all aboriginal citizens of the United States. The Association of Hawaiian Civic Clubs recently held their 41st annual convention and passed a resolution to develop Ka Haka 'Ula O Ke'elikolani College within the University of Hawaii at Hilo including facilities and programs of the college. This college is the only Native Hawaiian college and is unique in the United States in its focus on Native language medium education from preschool through graduate school. Besides standard university undergraduate and

graduate programs, it has a teacher licensing program, a preschool-grade 12 laboratory school program, a telecommunications education program and a curriculum development/research center. It also has outreach to other Native Americans in this area as well as to Native Hawaiians outside Hawaii.

The college has never received direct federal support and lacks a building for its programs. They currently maintain a consortium agreement with the 'Aha Punana Leo School' in conducting many of its programs. NIEA urges increased financial and policy support to their efforts.

12. Native Language Issues

Native language issues are a critical aspect of indigenous populations. For hundreds of years, beginning with the arrival of European settlers on America's shores, the native peoples of America have had to fight for the survival of their cultures. History has shown that the ability to maintain and preserve the culture and traditions of a people is directly tied to the perpetuation of native languages. Like others, the traditional languages of Native American people are an integral part of their culture and identity. They provide the means for passing down to each new generation the stories, customs, religion, history and traditional ways of life. To lose the diversity and vibrant history of many Indian nations, is to lose a vital part of the history of this country. We recommend funding native language revitalization programs including the reintroduction of amendments to the Native Languages Act of 1992 that were introduced in 2000. Additionally, efforts at instituting "English Only" legislation, is in our view, counterproductive to the vitality of indigenous populations.

Conclusion

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.