

Written Testimony of the Navajo Nation Relative to Title 20, Subchapter VIII, Impact Aid (20 U.S.C. §7701 et seq.) and Title IX, of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.), Senate Indian Affairs Committee Oversight Hearing, October 27, 1999

Mr. Chairman, honorable members of the Senate Indian Affairs Committee, the Navajo Nation appreciates this opportunity to testify relative to Title 20, Subchapter VIII, Impact Aid (20 U.S.C. §7701 et seq.) and Title IX, of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.). The primary recommendation which the Navajo Nation makes is for repeal of the provisions of 20 U.S.C. §7709, which allow states to take credit for federal Impact Aid funds and reduce state financial aid to local educational agencies on the basis of receipt of Impact Aid funds from the federal government. The provisions of 20 U.S.C. §7709 have historically been used by the states of Arizona and New Mexico to reduce the amount of state financial assistance provided to local educational agencies serving Navajo students, resulting in severe financial hardships to these local educational agencies, inability of these local educational agencies to construct, maintain, and renovate school facilities, and loss of funds which would otherwise be used to provide educational services to Navajo students.

Secondly, the Navajo Nation would like to take this opportunity to recommend against the elimination of a number of programs contained within Title IX, which would be eliminated from Title IX under the draft of proposed House amendments which the Navajo Nation has reviewed. While some of these programs have not been funded by Congress, and others have lacked appropriations for a number of years, these programs are needed by Navajo students and the Navajo Nation. The Navajo Nation notes the maintenance of current Title IX programs in the draft Senate bill and makes a few recommendations for changes in the draft Senate bill.

I. Impact Aid, Title VIII, ESEA, Title 20, Subchapter VIII, Impact Aid (20 U.S.C. §7701 et seq.)

The purpose of the Impact Aid program, as stated in 20 U.S.C. §7701 is to fulfill the federal responsibility to provide financial assistance to local educational agencies that educate students who reside on federal property and that need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands. 20 U.S.C. §7704 requires local educational agencies which receive Impact Aid funds under 20 U.S.C. §7703 on the basis of enrollment of Indian children to provide opportunities to Indian tribes and the parents of such Indian children for consultation and input on the use of such Impact Aid funds. However, the provisions of 20 U.S.C. §7709 destroy the potential favorable effect of the receipt of Impact Aid funding by local educational agencies and the required consultation, by allowing states to reduce the amount of state financial assistance to such local educational agencies by nearly the entire amount received in Impact Aid funds. 20 U.S.C. §7709 allows the states to accomplish this end by seeking certification by the Secretary of Education that the state has a method of equalizing per-pupil revenues or expenditures.

At this time, only three states continue to utilize 20 U.S.C. §7709 to reduce the amount of

state financial assistance to local educational agencies; New Mexico, Kansas and Alaska. The State of Arizona ceased its retention of Impact Aid basic support funds in the middle 1990s when a coalition of federally impacted local educational agencies, including those serving portions of the Navajo Nation, successfully challenged the State of Arizona's equalization formula. The use of 20 U.S.C. §7709 by the State of New Mexico continues to negatively affect the delivery of scarce educational resources to Navajo students being served by local educational agencies, and to place these local educational agencies under severe hardships, both in the areas of operations and capital expenditures.

The best example of a local educational agency severely and negatively affected by the operation of 20 U.S.C. §7709 is the Gallup-McKinley County School District in western New Mexico. The Gallup-McKinley County School District covers 5,000 square miles and is the largest district in the continental United States. Of this land base, sixty-one percent (61%) is Navajo Indian Country, federal lands which cannot be subjected to property tax. The enrollment of the Gallup-McKinley County School District is roughly 15,000 students, of which approximately seventy five percent (75%) are Native American and fifteen percent (15%) are Hispanic. Over fifty five percent (55%) of students within the Gallup-McKinley County School District are Navajos, residing on the Navajo Nation.

In the 1996-97 School Year, the Gallup-McKinley County School District was eligible to receive \$18.9 million in Impact Aid basic support funds and generated such funding within the State of New Mexico. However, due to the operation of the equalization formula within the State of New Mexico, the Gallup-McKinley County School District received only the benefit of \$948,000 of the Impact Aid basic support funds. This extremely inequitable allocation was due to the accompanying reduction in state educational aid to which the State of New Mexico subjected the Gallup-McKinley School District on the basis of its receipt of Impact Aid funds. In effect, the operation of 20 U.S.C. §7709 allowed the State of New Mexico to supplant state funds with federal funds in the provision of state educational assistance to the Gallup-McKinley County School District. This supplanting of state funds has been ongoing since the implementation of 20 U.S.C. §7709. In the 1976-77 School Year, the local property tax revenues were \$36,064,952 and Impact Aid funds amounted to \$19,960,965. This has progressed to a situation wherein local tax revenues have been reduced to \$7,096,083 and Impact Aid funds have increased to \$38,052,116, see attached chart.

While the State of New Mexico equalization plan supposedly equalizes expenditures, this facial equalization ignores the fact that capital expenditures are excluded from the equalization formula, leading to severe inequities for the Gallup-McKinley County School District. The Gallup-McKinley County School District is bonded to its capacity but cannot meet its facilities construction, maintenance and renovation needs, due to its inability to apply property tax to the federally-owned lands within the district. All available funds are applied to attempt to address the school construction needs of the district, leaving crucial maintenance and renovation issues unaddressed, as well as other capital expenditures, including school transportation vehicles. The State of New Mexico does not generally fund capital outlay for local educational agencies, which must address these needs through local property taxes. As local educational capital outlay expenditures within the State of New Mexico are left to local property tax revenues, the Gallup-McKinley County School District cannot possibly achieve equity in the areas of facilities construction, maintenance and renovation and other capital outlay, while the State of New Mexico continues to reduce state educational assistance to the district by reducing such assistance on the basis of Impact Aid funds generated by the Gallup-McKinley County School District.

These negative effects impact directly on Navajo students who are intended to be the beneficiaries of the Impact Aid funds which they generate. Navajo students in the Gallup-McKinley County School District go to learn in old, dilapidated school facilities, which the school district simply cannot afford to replace, renovate or even adequately maintain. Our Navajo students spend their school days in classrooms contained in 225 portable buildings. When the Gallup-McKinley County School District spends operational funds on capital expenditures, the accompanying reduction means less books, supplies and materials for use in the education of Navajo students. The supposed equalization of revenues or expenditures set forth in 20 U.S.C. §7709 and implemented in the State of New Mexico has never resulted in the true equalization of revenues or expenditures for Navajo students and continues to deny Navajo students equity in educational facilities and services. Average per pupil expenditures across the United States are approximately \$6,100; but average per pupil expenditures in New Mexico school districts amount to less than \$3,500. The equalization of per pupil expenditures at this level will never allow federally-impacted school districts in New Mexico to improve relative to their more affluent counterparts.

While the loss of Impact Aid fund benefit for capital outlay is a severe problem, it is not the only hardship worked on the Gallup-McKinley County School District and the Navajo students by the operation of the Impact Aid equalization provisions. Impact Aid funds can be utilized for both capital and operating expenses, at the discretion of the local educational agency. The loss of the benefit of these Impact Aid funds through the reduction of state educational assistance prevents the Gallup-McKinley County School District from providing language acquisition, extended school day, transportation and other supplemental services which are in dire need for Navajo students. Such funds could also be applied to address salary issues leading to unacceptably high teacher turnover rates and inadequate housing for teachers residing on Navajo lands. Currently, students within the Gallup-McKinley School District test substantially under the state norm in standardized testing and are subject to a drop-out rate of 35-45% per graduating class.

The Education Committee and the Intergovernmental Relations Committee of the Navajo Nation Council have recommended to the United States Congress the repeal of the equalization provisions of Impact Aid set forth at 20 U.S.C. §7709. These resolutions are attached to this testimony. The Navajo Nation again recommends that the equalization provisions of the Impact Aid law be repealed in order to allow the Impact Aid funds to be properly applied to the purpose stated in 20 U.S.C. §7701, "to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children ... and to help such children meet challenging state standards."

II. Title IX of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.)

The Navajo Nation is at a critical juncture in the development of the educational system within Navajo Indian Country. Increasingly, the Navajo Nation is being constantly faced with new education and education-related issues which test the existing capacity of the Division of Diné Education and the Education Committee of the Navajo Nation Council to address these critical matters. The growth of the tribally-controlled contract and grant school systems within the Navajo Nation, as well as new initiatives at the state level, including the establishment of charter schools in the State of Arizona.

The Navajo Nation is supportive of the maintenance of all currently authorized programs set forth in Title IX of the Elementary and Secondary Education Act of 1965. While some of the programs contained in Title IX have not recently been funded, including the provisions relative to establishment of tribal departments of education, the purposes and objectives set forth in these programs continue to be valid and important in the delivery of education and education-related services to Navajos.

The Navajo Nation is pleased to see that the draft of the proposed Senate version of the Title IX reauthorization legislation maintains the existing programs within Part A - Indian Education, and

in some areas augments the educational services provided for within Title IX. In particular, the amendments relative to authorized services and activities for the formula grants to local educational agencies would specify as particular services and activities those "that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency", "activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency", "activities to promote coordination and collaboration between tribal, Federal, and State public schools in areas that will improve American Indian and Alaska Native student achievement", and "family literacy services." See, proposed Section 9115, draft Senate ESEA Reauthorization Bill, and 20 U.S.C. §7815. The Navajo Nation recommends one change to the proposed amendments to 20 U.S.C. §7815 in the area of particular services and activities. The Navajo Nation recommends that the language in Section 9115(b)(9) be changed to authorize "activities that incorporate American Indian and Alaska Native specific curriculum content, to the maximum extent consistent with State standards, into the curriculum used by the local educational agency."

The Navajo Nation notes the addition of more specific language relative to the inclusion of tribal grant and contract schools within Section 9116(g), Student Eligibility Forms and student court periods within Section 9116(h). See, 20 U.S.C. §7816. The Navajo Nation is concerned that the methods of student count set forth in the proposed amendment not be utilized to undercount the number of students eligible for assistance under the formula grant program, and that students not be excluded from participation in the program. However, the amendment language as currently drafted appears to be drafted generally enough to allow for full participation. The of language relative to timing of child counts set forth in Section 9116(h) would not appear in its present to have a negative effect on Navajo students to be counted for purposes of the formula grant.

The Navajo Nation is concerned relative to the reduction in administrative costs available under the special programs and projects to improve educational opportunities for Indian children under Section 9121(e). See, 20 U.S.C. §7831. There is currently no language within the statutory section which limits the administrative costs chargeable under the section. While the Navajo Nation has a modest indirect cost rate of 15.2%, even these necessary costs would not be recoverable in Navajo Nation administration of such a special program or project. The Navajo Nation strongly recommends the elimination of this provision from the proposed amendments.

The Navajo Nation notes the addition of specific language within Section 9122(I), Professional Development for inservice training for teachers of Indian children. See, 20 U.S.C. §7832. The addition of this grant program could reasonably be expected to increase the provision of high quality inservice training and is supported by the Navajo Nation.

As noted above, the Navajo Nation is pleased that the draft Senate bill maintains provisions for tribal departments of education in Section 9125. However, the Navajo Nation is concerned that funding authorized for this grant program has been lacking since the inception of the provision. See, 20 U.S.C. §7835. The reauthorization language maintains the modest level of \$3,000,000 for appropriations under this provision. In light of the increased needs of Indian tribes in the areas of educational management, administration, and service delivery, the Navajo Nation recommends that the Senate Indian Affairs Committee strongly support the appropriation of funds for this grant program.

Mr. Chairman, thank you for this opportunity to provide testimony to the Senate Indian Affairs Committee. The Navajo Nation appreciates its participation in the legislative process on a Government-to-Government basis and will continue to monitor and address the ESEA amendments as the bills are considered in both houses of Congress.