



# NATIONAL CONGRESS OF AMERICAN INDIANS

## U.S. House of Representatives Committee on Natural Resources Subcommittee on Indigenous Peoples Oversight Hearing: Examining the Bureau of Indian Education's School Reopening Guidance During the COVID-19 Pandemic

**Head Councilman Joe Garcia**  
National Congress of American Indians  
September 10, 2020

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Chairman Gallego, Ranking Member Cook, and members of the Subcommittee, My name is Joe Garcia, and I am Head Councilman and former three-term Governor of Ohkay Owingeh, a federally recognized tribal nation in New Mexico. I am also Co-Chair to the Department of the Interior's Tribal Budget Formulation Education Subcommittee, and a former two-term President of the National Congress of American Indians (NCAI). NCAI, founded in 1944, is the oldest and largest representative organization of tribal nations and communities.

This hearing could not come at a more critical time. September is the time that schools reopen for the new academic year. This year that task is complicated by the COVID-19 pandemic, which continues to plague Indian Country and the nation as a whole. But even if that were not the case, the month of September is the best time to discuss the state of Indian education. The Bureau of Indian Education (BIE) has historically faced difficulties in providing quality, robust education to our American Indian and Alaska Native (AI/AN) students due to the underfunding of our programs, inadequate facilities, limited access to broadband, difficulty recruiting and retaining teachers, and a lack of culturally appropriate educational opportunities – all of which have been exacerbated by the COVID-19 pandemic.

### The Reopening of Bureau of Indian Education Schools

The BIE funds 183 schools located on 63 reservations in 23 states. Of these 183 schools, 132 are tribally-controlled schools operated pursuant to a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. § 2501, et seq.) or pursuant to a contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301, et seq.). The remaining 55 schools are Bureau-operated, which gives the BIE Central Office more authority over how these schools operate. Today, the most critical issue before this Subcommittee is the question of whether these 55 Bureau-operated schools should reopen for in-person instruction. NCAI's position is that schools should reopen for in-person instruction only where BIE, the tribal government(s) that the schools service, the parents, and the teachers all concur that it is safe to do so. These decisions must be made at the local level, free of overreach from the BIE central office, and free in every respect from political interference. By this, I mean to say that the White House has no business influencing the BIE on whether it is safe to open a school.

On August 10, NBC News reported that the U.S. Department of the Interior's Office of Indian Affairs announced that it would reopen "brick and mortar schools"

under its jurisdiction to the “maximum extent possible” on September 16.<sup>1</sup> It was widely believed that the Interior Department took this action out of a desire to please the President, if not in response to direct pressure from the White House. This announcement was not well received in Indian Country. Furthermore, we are aware that the news report led parents to seriously consider pulling their children out of BIE schools this academic year.

The document on which the NBC News story was based is a Dear Tribal Leader Letter signed by Assistant Secretary Tara Sweeney on August 6<sup>th</sup>. The Dear Tribal Leader Letter included another sentence that was not mentioned by NBC News. That sentence reads, “Local decisions will be made in coordination with tribes, states, and local public health officials.” This is closer to where NCAI wants things to be.

A month has passed since the NBC News story, and we are a week away from school opening. The question before us now is whether BIE will respect the local judgments of tribal nations and parents on whether school opens in person or virtually. The BIE should be here today to answer the question for all of us. But unfortunately, the Bureau declined the Subcommittee’s invitation to testify.

On August 21, the BIE issued its final reopening plan titled *Return to Learn*. While this guidance provides more information than previous documents issued by the Bureau, it does not ensure that the decisions of tribal governments will be respected when it comes to the reopening of K-12 schools. Once again, the Interior Department states that schools will operate in-person on a regular full-time schedule to the maximum extent possible. In effect, they are doubling down on the very position that drew strong criticism from Indian Country in early August.

Adding to the confusion, there is no evidence that the Interior Department or BIE officials have deferred to positions that tribal leaders have expressed to them. There are more BIE-controlled schools on the Navajo Nation than any other tribal nation in the country. On August 24, 2020, Navajo Nation President Jonathan Nez sent a letter stating that every BIE-operated school located within the Navajo Nation must remain closed for face-to-face and in-classroom instruction for the entirety of the Fall 2020 semester, after which point the issue will be reviewed again. As of September 8, 2020, the Department of the Interior still has not acceded to this request. We are uncertain how the Department has handled similar communications that other tribes have submitted.

We urge the Subcommittee to demand that the Department of the Interior commit to abide by the wishes of tribal governments when it comes to reopening schools. The BIE must also provide a straightforward process for tribal leaders to request that the Bureau provide online or distance learning until a tribal community deems it safe to reopen. Finally, there may be situations where a tribal government is willing to reopen schools on its reservation for in-person instruction if it is convinced it is safe to do so. The Interior Department needs to provide straightforward assurances that BIE schools will be able to fulfill this promise. Furthermore, if an outbreak should arise, they should be prepared to close the school and swiftly move to a remote learning environment.

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<sup>1</sup> NBC News, “Federal agency to reopen 53 Native American schools despite coronavirus fears,” Miranda Green, August 10, 2020, <https://www.nbcnews.com/news/us-news/federal-agency-reopen-53-native-american-schools-despite-coronavirus-fears-n1236253>.

Other areas of concern regarding the BIE's *Return to Learn* plan include how the Agency will guarantee students that are required to receive special education services do so. This is troublesome to tribal leaders considering the Government Accountability Office published a report this year finding that BIE schools did not provide or did not account for 38 percent of special education and related service time for students with disabilities during a regular school year.

Tribal leaders have also voiced their concerns during the Department of Interior's Tribal Interior Budget Council meeting, held on August 10-14, 2020, that because of the BIE's inadequate communications to tribal families, many families are withdrawing their students from the BIE system for this academic year. Therefore, tribal leaders have requested that the Bureau freeze Average Daily Membership (ADM) levels for the 2020-2021 school year to 2019-2020 levels. These ADMs have a critical role in the appropriations each school receives every year, and tribal leaders are concerned that the withdrawal of students for this academic year will negatively impact their federal funding for years to come.

### **The State of Indian Education**

Even if the pandemic had not occurred, we would be here today to describe the state of Indian education as troubling. The COVID-19 pandemic has only exacerbated longstanding educational disparities that directly result from the federal government's chronic underfunding of its trust and treaty responsibilities. There are approximately 620,000 AI/AN students enrolled in public schools, both in urban and rural areas, while 48,000 attend BIE schools. There are 183 BIE-funded schools located on 63 reservations in 23 states. The most recent data shows the high school graduation rate for BIE students is at 67 percent compared to the national average of 85 percent for the rest of the country.<sup>2 3</sup>

Prior to the pandemic, the federal government recognized that AI/AN students were being educated in inadequate facilities. For example, the Department of the Interior identified \$629 million in deferred maintenance for BIE-funded education facilities and \$86 million in deferred maintenance for BIE educational quarters, including severely overcrowded classrooms.<sup>4</sup> In addition to the crumbling physical infrastructure, tribal communities disproportionately lack the infrastructure to engage in culturally rich remote education.

In addition to these infrastructure disparities that result in less than ideal learning conditions, the BIE has historically had difficulties with recruiting and retaining highly effective teachers. Inadequate housing, the inability for tribally controlled schools to provide their staff Federal Employee Health Benefits, and low salary make it difficult for quality teachers to consider careers in the BIE system.

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<sup>2</sup> U.S. Department of the Interior, Budget Justification and Performance Information, FY 2021 Bureau of Indian Education, <https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-budget-justification-bie.pdf>.

<sup>3</sup> U.S. Department of Education, National Center for Education Statistics. (2020). The Condition of Education 2020 (NCES 2020-144), <https://nces.ed.gov/fastfacts/display.asp?id=805>.

<sup>4</sup> Statement of Jason Freihage, Deputy Assistant Secretary For Management Office Of The Assistant Secretary For Indian Affairs Department of The Interior Before The Subcommittee on Interior, Environment, and Related Agencies, House Committee on Appropriations on Education Facilities And Construction (July 24, 2019), <https://www.congress.gov/116/meeting/house/109835/witnesses/HHRG-116-AP06-Wstate-FreihageJ 20190724.pdf>

## **Funding During the Pandemic**

Initially, tribal and educational leaders were hopeful after the CARES Act was enacted because \$153.75 million was allocated under the Department of Education’s Education Stabilization Fund to programs operated or funded by the BIE. In addition to these funds, \$69 million was appropriated directly to the BIE to “prevent, prepare for, and respond to coronavirus.” On March 31, 2020, NCAI and the National Indian Education Association sent an intertribal organizational letter to both the Departments of Education and Interior requesting that funds allocated under the CARES Act be disbursed quickly and with maximum flexibility to BIE-funded schools. Despite this request, it was not until April 28 and 30 that the Department of Education held formal tribal listening sessions regarding the disbursement of the \$153.75 million in funding. Finally, on June 9, the BIE began distributing their directly appropriated \$69 million to BIE schools, and on July 2, the Agency began distributing the \$153.75 million from the Department of Education.<sup>5</sup> This 97-day delay in releasing funds impaired access to distance learning, prevented schools from preparing for summer programming, and delayed assessment of technology needs as described in NCAI’s testimony before the U.S. Commission on Civil Rights Hearing on COVID-19 in Indian Country.<sup>6</sup>

## **Emergency Funding and Current Needs for our AI/AN Students**

As BIE-funded schools continue to plan for the 2020-2021 academic year, it is clear that our K-12 schools do not have the resources and educational infrastructure to ensure a safe return for our students. To address this, 21 national and regional tribal organizations have requested the following: (1) investment in emergency broadband access and deployment for BIE schools and tribal communities; (2) at least \$1 billion in emergency funding to address the backlog of unfunded repairs and renovations at Bureau-funded schools which are especially needed to address overcrowded classrooms; and (3) at least \$1.5 billion to BIE funded schools to meet the health, safety, and educational needs of students due to the impacts of COVID-19.<sup>7</sup>

## **Conclusion**

Thank you again to the Committee for holding this hearing, and I look forward to your questions and working with you to address these disparities.

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<sup>5</sup> U.S. Department of Interior, BIE Listening Session, (July 2, 2020), [https://www.bia.gov/sites/bia.gov/files/assets/asia/opa/BIE\\_CARES\\_Act\\_Slides%20-%20July%202nd%20Update.pdf](https://www.bia.gov/sites/bia.gov/files/assets/asia/opa/BIE_CARES_Act_Slides%20-%20July%202nd%20Update.pdf)

<sup>6</sup> National Congress of American Indians, Testimony before U.S. Commission on Civil Rights Hearing on COVID-19 in Indian Country: The Impact of Federal Broken Promises on Native Americans, (July 17, 2020), <http://www.ncai.org/resources/testimony/written-testimony-of-president-fawn-sharp-at-the-hearing-on-covid-19-in-indian-country-the-impact-of-federal-broken-promises-on-native-americans>

<sup>7</sup> Inter-tribal Letter to Congress on Tribal Priorities for COVID-19 Relief Package, (July 20, 2020), [http://www.ncai.org/Covid-19/indian-country-priorities-for-covid19-stimulus/Tribal\\_Inter-Org\\_COVID\\_Relief\\_Letter\\_-7.20.2020--FINAL-.pdf](http://www.ncai.org/Covid-19/indian-country-priorities-for-covid19-stimulus/Tribal_Inter-Org_COVID_Relief_Letter_-7.20.2020--FINAL-.pdf)