

Testimony of Cecilia Fire Thunder Before the February 12, 2025, House Committee on Natural Resources, Subcommittee on Oversight and Investigations Oversight Hearing Titled “Leaving Indian Children Behind: Reviewing The State of BIE Schools.”

Chairman Gosar, Ranking Member Dexter, and members of the House Subcommittee on Oversight and Investigations, thank you for the opportunity to testify today on the State of Bureau of Indian Education Schools. My name is Cecilia Firethunder, and I am the President of the Oglala Lakota Nation Education Coalition (OLNEC), President of the Little Wound School (LWS) Board, and a member of the Board of Directors for the Oglala Lakota College (OLC).

OLNEC represents the Oglala Sioux Tribe's six tribally controlled grant schools, thus expressing a unique voice within the Bureau of Indian Education (BIE) system of schools.¹ The schools operate pursuant to the Tribally Controlled Schools Act of 1988 (Public Law 100-297) and the Indian Self Determination and Education Assistance Act of 1975 (ISDEAA), as amended. We are located on the Pine Ridge Reservation in southwestern South Dakota.

The Unique Status of Tribal Nations

As the 119th Congress begins with a new Administration under President Trump, we urge Congress to protect the legal and moral obligations that uphold the federal government’s Treaty and Trust responsibilities to Indian Country. We remind Congress that this unique federal trust relationship between our sovereign Tribal Nations and the Federal government is based on the political status of Tribal Nations.

For example, Articles IV, VII, and XIII of the U.S. Treaty of Fort Laramie with the Great Sioux Nation, signed on Apr. 29, 1868, guaranteed education to the Oceti Sakowin, also known as the Seven Council Fires, which represents seven divisions of the Sioux Nation now covering North Dakota, South Dakota, Montana, Minnesota, Nebraska, and Wyoming. In fact, between 1778 and 1871, the United States signed approximately 374 treaties with Native American tribes. These legally binding agreements formalized the cession of millions of acres of tribal lands in exchange for the protection of tribal rights, the recognition of tribal sovereignty, and promises of resources and services.

These treaties are recognized as the "supreme law of the land" under the U.S. Constitution (Article VI), and the Supreme Court decision in *Worcester v. Georgia* (1832) reaffirmed that these obligations must be honored. Without tribes agreeing to cede vast swaths of land and natural resources through these treaties—lands that provided gold, coal, timber, oil, natural gas, steel, and iron—the United States could not have achieved its strength or provided refuge for millions seeking freedom of religion and opportunity. In exchange, one of the core promises of these treaties and trust responsibilities is the education of Indian children.

When Congress legislates, appropriates funds, and takes action concerning Tribal Nations, it does so under its unique obligations toward Tribal Nations and their citizens. Congress acknowledges the distinct political status of Tribal Nations rather than categorizing them as a

¹ Little Wound School, American Horse School, Wounded Knee District School, Loneman Day School, Porcupine Day School, and Crazy Horse School.

racial class under constitutional legal analysis. We must be clear: programs for Tribal Nations are separate and distinct from Diversity, Equity, and Inclusion (DEIA) initiatives, contrary to how this Administration has recently misclassified them. This misclassification has resulted in the freezing of multiple programs vital to Tribes, including Indian Education initiatives such as Title I programs.

Mislabeling Tribal programs as DEIA initiatives severely undermines the treaty and trust relationship between Tribal Nations and the federal government.

In recognition of the trust responsibility and the sovereign status of Tribal Nations, we request that Congress take action to ensure that funding for Tribal programs and services remains uninterrupted. National education standards show that Indian Country continues to lag behind the rest of the nation. The federal government's trust responsibility to Indian tribes is a legal and moral obligation that we ask Congress to meet. Education is the foundation for any thriving community, and Indian children deserve equitable opportunities to learn in safe and supportive environments. Prioritizing the Bureau of Indian Education and Indian education initiatives will honor treaty obligations, uphold tribal sovereignty, and provide Native students with the resources necessary to succeed.

100-297 Tribally Controlled Grant Schools

While the vast majority of Indian students attend public institutions, thousands of students still attend one of the 183 federally funded Bureau of Indian Education (BIE) schools. The BIE serves as a mechanism to fulfill the federal government's treaty and trust responsibility for Indian education. It is also a capacity builder and service provider that supports tribes in delivering culturally appropriate education across Indian Country. However, the BIE urgently needs your support. Today, the federal government operates two separate education systems with drastically different outcomes and funding levels.

The Department of Defense Education Activity (DoDEA) has been described as one of the best education systems in the United States². DoDEA serves approximately 65,000 students across 161 schools in the U.S. and abroad, receives approximately \$25,000 per student annually, and consistently ranks among the top-performing school systems in terms of teacher recruitment, retention, and student performance in reading and math³.

In contrast, the Bureau of Indian Education (BIE) operates 183 schools across 23 states, serving approximately 48,000 students with an average of just \$6,900 per student annually. BIE schools face persistent challenges, including chronic underfunding, outdated and unsafe infrastructure, and teacher shortages. BIE schools face persistent challenges, including chronic underfunding, outdated and unsafe infrastructure, and a 2024 school replacement backlog estimated at \$6.7 billion, with deferred maintenance costs exceeding \$1 billion. These funding disparities have resulted in unsafe and dilapidated buildings, teacher shortages, and a lack of resources that hinder educational opportunities and outcomes for Indian students.

² <https://www.nytimes.com/2023/10/10/us/schools-pandemic-defense-department.html>

³ <https://www.brookings.edu/articles/public-school-systems-can-learn-a-lot-from-the-department-of-defense-education-activity/>

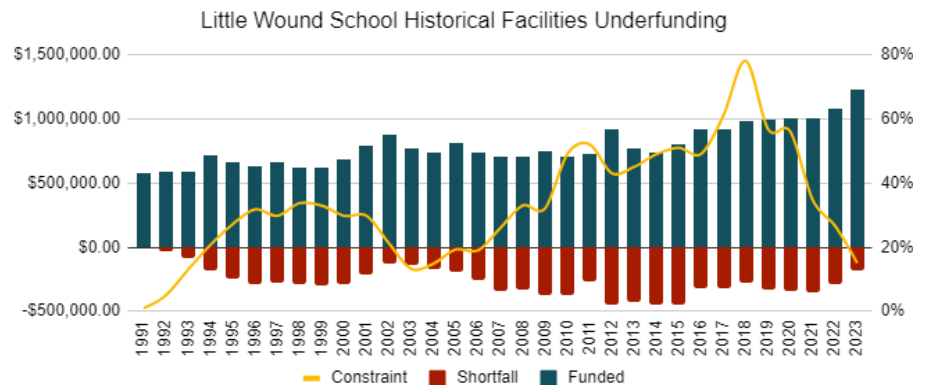
Please remember that while small, BIE direct-operated schools and Tribally Controlled Schools (TCS) – that is, locally controlled schools, are the primary providers of education for on-reservation Indian students. Since more than 90% of tribally controlled school funding comes from Congress to meet the federal government’s treaty and trust obligations for Indian education, only Congress can solve our funding problem.

BIE Facilities, Operation, and Maintenance Funding

According to the BIE, facilities operations and facilities maintenance (O&M), funding is intended for (1) operations, including utilities, water, sewage, basic safety, and cleanliness; (2) basic school maintenance, including upkeep of outdoor lighting, fixing broken windows, and replacing deteriorated floors and surfaces; and (3) unscheduled maintenance, including the correction of unforeseen costs up to \$2,500, such as the fixing of a leaky furnace or storm damage to the school’s roof. These are not luxuries that a school can go without. Unfortunately, funding for O&M facilities is consistently inadequate for these basic needs.

Each O&M category is a necessary and fundamental element of school operation. Unfortunately, for the last 40 years, O&M funding has been consistently inadequate. To make matters worse, the Department of the Interior (Interior) has not requested it, and Congress has not appropriated full funding to cover essential operational needs. As our school facilities continue to age, costs will inevitably continue to increase. We note that federal regulations state: *"The Assistant Secretary [of Indian Affairs] shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981."* 25 C.F.R. § 39.1203 (emphasis added). Yet, since 1981, we have received 100% of funding only once; funding streams do not meet annual needs.

Since 1990, Little Wound School has had a \$10 million (34%) shortfall in O&M funding compared to our identified need. As a result of the lack of funds to perform the basic upkeep of our facilities, they fall into disrepair. Our elementary school building is over 80



years old, and our middle school is a 45-year-old, poorly insulated metal building designed for temporary use. These buildings are heated by an outdated oil-burning furnace that would cost more than \$5 million to replace. In 2021, this outdated furnace cost the school over \$100,000 for heating.

On its own, this is a significant problem. However, it is compounded by the fact that we must use other revenue sources to cover this 34% shortfall in O&M funding. We cannot educate a second-grade student in a cold school, allow a middle schooler to use broken toilets in a building that is not insulated, or tolerate having high school math classes take place in a classroom that consistently leaks throughout winter. To make these basic repairs, we must cannibalize another source of

federal revenue that is intended for educating our students: the Indian Student Equalization Program (ISEP), which itself is already underfunded. Annually, we use hundreds of thousands of dollars to fill this gap in federal funding for facility operations and maintenance.

This illustrates a pattern: consistently underfunded programs at the BIA and BIE force tribal grant schools to fill shortfalls with ISEP money. As a result, money that was intended to hire great teachers, pay them a living wage, provide them with adequate healthcare and retirement benefits, equip classrooms with technology and books and materials, and enrich student education through gifted and talented programming and extracurriculars is siphoned away to compensate for underfunding of other Bureau programs. Last year alone, more than half of our ISEP income was used to subsidize underfunding for food service, transportation, and facilities operation and maintenance, and special education.

Let us not forget another critically important point. The federal government built and owns these buildings that tribally controlled schools administered on behalf of the Federal government's trust responsibility to tribes. In simple terms, Congress is not appropriating adequate funds to pay their building's utility bills. In no other scenario would Congress not appropriate enough funds to pay their bills, not in the military or federal agencies, but for over 40 years, Congress has let Native students take the fall for under-appropriating their utilities and operations bills. We simply ask that Congress appropriate the necessary funds to pay the actual operating cost of BIE schools so that Indian students' education funds are not unnecessarily reduced to pay for Congress's appropriation shortfalls.

Little Wound Schol Replacement and Construction Costs

Our school's facilities date from the 1930s through the 1980s and include several portable classrooms. These facilities are outdated, inefficient to operate, contain asbestos and mold, are not ADA-compliant, and are dangerous.⁴

In addition to the four schools in South Dakota on the BIE school replacement, other schools on the immediate replacement include schools in Washington, Maine, and Montana. However, with the average annual school replacement funding appropriated amounting to just \$116 million, it would take decades to fix the over \$1 billion dollar deferred maintenance backlog, let alone replace the current priority list totaling over \$6.7 billion.

For one of our schools, the Little Wound School (LWS), we have advocated for new school construction funds since the early 2000s, specifically through placement on the Bureau of Indian Affairs' construction priority list. In 2016, the LWS School Board applied for a new school under the BIE's selection process. In 2018, The LWS School Board participated in the BIE Pilot Program, where a government contractor reassessed the school replacement list based on FCI scores, deferred maintenance, and safety issues. In 2019, the LWS was selected and placed on the BIE School Replacement list. In FY22, Little Wound School received a \$500,000 planning and feasibility grant from the BIA for the initial work associated with new school construction,

⁴ Safety of Native American schoolchildren repeatedly compromised under government watch. https://richmond.com/news/nation-world/education/native-american-boarding-schools-indian-education/article_5136f166-5903-593c-b628-9813884e041d.html 4/10/2024.

including site determination. The total cost of new school construction in FY2022 was \$120 million.

Today, LWS is currently ranked as the #2 school to be replaced on the 2026 school replacement list, but funding for this project remains uncertain. In addition, as a result of inflation, the once estimated \$120 million dollar school is now estimated to cost \$200 million, despite current BIE construction funding, which is capped at \$130 million, which is insufficient for multiple projects. These values are based on known construction costs for other tribal schools constructed in our region in the past five years.

Little Wound School is grateful for federal funding for this needed school replacement. It demonstrates our students' worth and that their education is important. However, we also recognize the inflationary pressures in the United States economy, especially in the construction sector. The current inflation rate is 8.5% for the twelve months ending July 2022; the Construction Financial Management Association (CFMA) noted that in 2021 alone, the rate of inflation for construction was 19.1%. Each day that goes forward, our ability to construct a new school adequate to our needs is diminished by inflation.

Accurately Calculating Construction Funding

The chronic underfunding of tribally operated schools - as demonstrated by the above chart - is further complicated by the BIE's use of the Indian Affairs-Facility Management System (Maximo) to track the facility's needs. Because of the way Maximo operates, we are no longer able to determine the shortfall percentage. As a result, we rely on the annual BIE budget justification for such information. MAXIMO does not present a measurable way for schools to understand how or why construction services are funded.

Regardless of the source, the outcome is clear: tribally operated schools need increased support. While we recognize that appropriations do not fall under this Committee's jurisdiction, we want to share that we believe an increase of 31.5% in BIE funding and a 100% increase in Facilities Operation and Maintenance are urgently needed to address facility safety concerns. We ask this Committee to support these funding levels in your discussions with the appropriators.

Government Inefficiency and Its Ramifications

The delays, budget overruns, and lack of accountability within BIA (up to \$5 million construction authority) and the Department of Interior's Division of Facilities Maintenance and Construction (DFMC), responsible for all other managed construction projects, continue to undermine tribal sovereignty, hinder educational development, and waste federal resources. This inefficiency is rooted in bureaucratic red tape, restrictive federal regulations, and mismanagement of funding streams such as Operations and Maintenance (O&M), which historically have been funded at merely fifty cents on the dollar.

Tribes are consistently restricted from investing federal funds effectively due to BIE and federal regulations. The result is a systemic failure to prioritize the health, safety, and educational

environment of Native students, despite repeated findings in Government Accountability Office (GAO) reports.

Key Concerns:

1. Chronic Delays in Construction Projects

DFMC-managed projects routinely experience delays that double or triple original timelines and budgets. Projects intended for 12-18 months have dragged on for 36-48 months, with costs escalating beyond initial estimates as a result of delays. This inefficiency leads to students consenting to learn in unsafe and outdated facilities that are already listed as safety concerns.

2. Lack of Accountability

There is no systematic accountability within DFMC or BIE when projects face delays or cost overruns. Critical design errors, poor project management, and inadequate oversight often go unchecked, leaving tribes to bear the consequences without recourse.

3. Funding Inequities

The O&M funding for Tribal Grant Schools has historically been underfunded, limiting tribes' ability to maintain safe, functional educational facilities. The inability to invest in federal funds due to restrictive BIE and federal regulations further exacerbates these issues, perpetuating cycles of neglect.

4. Bureaucratic Burden

Tribes are consistently burdened by the BIA's bureaucratic processes, where significant portions of funding are absorbed by administrative positions rather than being directed toward improving school facilities. This misallocation leaves students in hazardous environments, despite the clear need for infrastructure improvements highlighted in numerous Government Accountability Office (GAO) reports, most recently the March 2024 report titled: *Indian Affairs Is Unable To Effectively Manage Deferred Maintenance of School Facilities*.

5. Missed Cost-Saving Opportunities

Tribal-led projects under 638 and 100-297 laws, which are operated under local control, consistently demonstrate cost-saving efficiencies. For example, Little Wound School successfully completed an American Disability Act compliance renovation on time and under budget, saving federal dollars. In contrast, DFMC's mismanagement has led to multi-million dollar overruns on similar projects.

Real-World Examples of Impact

• Mobile Classroom Installation (2020-Present)

During COVID-19, the BIE allocated mobile classrooms to LWS as part of a multi-tribe contract managed by DFMC. What was projected to be a 12-month project completion timeline, even now, in February 2025, LWS still hasn't received a Certificate of Occupancy. The mobile classrooms have been unused for over two years, and DFMC continues to approve additional funding for a project that has now been four years delayed and over budget.

- **Sports Complex Delays**

Once a tribal school receives notice of an award for a project, DFMC regulations require the federal government to provide the option for the project to be completed under local control. On this specific project, DFMC refused and continues to refuse to allow LWS to exercise the local control option to proceed with a \$2.2 million softball/baseball field project in 2021. As a result of DFMC's delay in approving the project, the project was later reapproved at \$6.2 million. This inefficiency cost the federal government an additional \$4 million, which could have been saved if LWS had been allowed to manage the project from the start.

Congressional Recommendations

1. **Increase Tribal Autonomy**

Empower tribes to manage their construction projects under 638 and 100-297 laws, reducing reliance on DFMC's inefficient processes.

2. **Reform O&M Funding**

Ensure O&M funding is allocated at full, adequate levels to maintain safe learning environments.

3. **Accountability Measures**

Implement strict oversight and accountability for DFMC and BIE project managers, with clear consequences for delays and budget overruns.

4. **Streamline Bureaucratic Processes**

Reduce the bureaucratic burden that diverts funds from critical educational infrastructure to administrative overhead.

5. **Utilize GAO Findings**

Address the systemic issues highlighted in GAO reports, focusing on improving facility safety and functionality for Tribal Grant Schools.

6. **Authorize Tribal Binding and Access to Capital**

Current Federal laws and regulation do not authorize tribes or tribal school to use bonding that would allow the tribes access to non-federal capital. Thus, we ask you to support the Bipartisan Tribal Tax Investment and Reform Act (ACT). Within this ACT, tribal school would benefit from 1. Treatment of Tribes as States with Respect to Bond Issuances and Excise Taxes. 2. Treatment of Pension and Employee Benefit Plans Maintained by Tribal Governments. 3. Treatment of Tribal Foundations and Charities like Charities Funded and Controlled by Other Governmental Funders and Sponsors. T

Conclusion

The inefficiencies within the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE), and Division of Facilities Maintenance and Construction (DFMC) are not just bureaucratic failures—they are barriers to educational equity, tribal sovereignty, and responsible federal stewardship. Immediate congressional action is necessary to reform these systems, prioritize student safety, and support the success of Tribal Grant Schools. Adequate funding and accountability are crucial to ensuring that Indian students have access to quality education in safe and supportive learning environments.