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*Via Electronic Mail*

Ruben Gallego, Chairman  
Subcommittee for Indigenous Peoples of the United States  
Committee on Natural Resources  
United States House of Representatives  
Washington, D.C. 20515

**Re: Examining the Bureau of Indian Education's School Reopening Guidance during the COVID-19 Pandemic – Additional Questions from the Committee**

Dear Chairman Gallego:

Thank you for inviting the Law Center to appear before the Subcommittee for Indigenous Peoples of the United States on September 10, 2020. We appreciate the opportunity to provide information on the important issues facing Native American students with disabilities. Below please find the answers to the additional questions presented by Subcommittee members.

**1. Are BIE schools required under IDEA to provide eligible students with special education services during the COVID-19 related closures?**

Yes, it is clear from the guidance provided by the United States Department of Education and the BIE's own guidance it provided to its schools that schools must comply with the IDEA and provide students with services during school closures.

**a. To what extent did schools provide these services to eligible students after BIE schools closed in the spring of 2020?**

Based on our contact with families, schools consistently failed to provide any special education or related services to students when they closed in the spring. Some parents reported that they received a call from a teacher to generally check in on how things were going but schools were not providing coordinated or substantive services or supports.

**2. You mentioned that the BIE is unable to meet the basic educational needs of students with disabilities.**

**a. Can you expand on the issues you have identified?**

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*The Protection & Advocacy System for Native Americans with Disabilities.*

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The BIE consistently fails to provide schools with appropriate staff, supports & services, including assistive technology and related services, such as speech, physical or occupational therapy in order to meet the needs of students with disabilities. Many schools under the BIE's supervision report an inability to provide related services due to a lack of staff. The schools frequently fail to timely identify and evaluate students who have suspected disabilities and fail to timely develop and implement Individual Education Plans (IEPs), the document that guides a student's educational program. The schools also consistently fail to constructively address students' behavior that is related to their disabilities, instead resorting to exclusionary discipline practices that improperly remove students from school.

Additionally, the BIE lacks the infrastructure and consistent practice across its schools to properly document what special education and related services students are entitled to receive in their IEPs and what the students actually receive. In some instances, this inconsistent recordkeeping makes it virtually impossible to determine what service, if any, a student is provided or entitled to in compensatory education services. This critical issue was amplified in the May 2020 GAO Report where it determined the BIE was unable to fully account for the services students with disabilities were provided.

Structurally, one of the major difficulties facing students with disabilities is the BIE's failure to finalize either regulations or policies to consistently implement the IDEA. The IDEA was last reauthorized in 2004. The BIE's procedures have been in "draft" form since 2012. To date, there are no publicly available procedures on which parents, or their advocates, can rely to ensure that students with disabilities receive appropriate services as required by the IDEA. One issue that the Law Center has addressed multiple times is the complaint system provided by the IDEA. This complaint system is intended to be a quick and easy way for parents to address concerns about a school's failure to provide services consistent with an IEP. The IDEA regulations require that a complaint be investigated and addressed within 60 days. The Law Center has waited up to six to nine months for the BIE to address a complaint. At one point this issue was "fixed," because the BIE had addressed internal contracting issues that led to the delays but it has again become a problem with one client waiting over three months for the BIE to begin investigating a complaint. Since the BIE did not have clear procedures regarding investigations, the offending school used Department of Interior regulations to object to the investigation after the 60-day timeline had passed, further delaying the BIE's ability to address the complaint.

**b. Have GAO and/or IG reports mentioned or raised similar concerns?**

In May 2020, the Government Accountability Office issued a report specifically on the BIE's provision of special education services. In addition to interviews with relevant parties, the GAO reviewed specific student files. The report documents that:

- BIE Schools did not provide or did not account for 38% of special education and related service time.
- BIE's limited monitoring and technical assistance hindered its oversight and support for special education.
- BIE cannot ensure that the schools it funds are meeting their responsibilities under the IDEA.

In February 2018, the Department of Interior Office of Inspector General issued a report on the BIE's use of background checks in its schools. The OIG found that:

- The BIE does not require completion of local law enforcement checks.
- Reinvestigations are not up to date and the backlog was increasing.
- Oversight responsibility for background checks at tribally controlled schools was unclear.
- The background check guidance and information system are outdated & inadequate.

In May 2010, the Department of Education Office of Special Education Programs (OSEP) sent a letter to the BIE documenting the results of its Continuous Improvement and Focused Monitoring System to verify compliance with the IDEA. The results of this process found that:

- BIE did not have a system to effectively monitor educational results, functional outcomes for students with disabilities or to ensure compliance with the IDEA.
- BIE did not have a system to ensure correction of identified areas of noncompliance in a timely manner. It was:
  - Unable to review data to ensure issues have been corrected
  - Unable to determine the cause of noncompliance
  - Unable to require a change in policies or procedures that contributed to noncompliance.


In March 2007, the United States Department of Education Office of Inspector General issued a final audit report on the results of its audit of implementation of the IDEA. The OIG found that:

- BIA was unable to demonstrate that it provided planned special education services to 68% of students.
- BIA was unable to adequately account for \$111 million of IDEA funds.

In addition to this history of the BIE's failure to properly serve students with disabilities, provide required legal protections, properly account for federal funds, and take reasonable measures to protect all students, the United States Department of Education Office of Special Education Programs (OSEP) has had the BIE school system designated as "needs intervention" for over nine years. It is the only school system in the country that has had this designation for such a long period of time and indicates the BIE's ongoing failure to address long identified issues that ensure that students with disabilities receive services consistent with the IDEA.

Thank you again for the Subcommittee's interest in these important issues. Please contact us at your convenience if we can provide any further information.

Sincerely,



Therese E. Yagan