



Oglala Sioux Tribe

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**WRITTEN TESTIMONY
SUBMITTED TO THE HOUSE NATURAL RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
H.R. 5444/S. 2907 TRUTH AND HEALING COMMISSION ON INDIAN BOARDING SCHOOL
POLICIES IN THE US ACT**

**OGLALA SIOUX TRIBE
May 26, 2022**

I. INTRODUCTION: THE OGLALA SIOUX TRIBE

The Oglala Sioux Tribe is a constituent Tribe of the Great Sioux Nation, also known as the Oceti Sakowin or Seven Council Fires. We are one of 16 sovereign nations in the Great Plains Region and an active member of the Great Plains Tribal Chairmen's Association. Our Pine Ridge Indian Reservation covers approximately 3 million acres (roughly the size of Connecticut) and our Tribe has more than 46,000 enrolled citizens.

Our treaty rights, the United States' obligations to us, and our unique political relationship with the United States are set forth in a series of treaties, including the Fort Laramie Treaty of 1851 (11 Stat. 749) and the 1868 Sioux Nation Treaty (15 Stat. 635). These treaties remain in effect today and are the Supreme Law of the Land. It is the responsibility of Congress, and every Federal Department, agency, and office to fulfill the United States' treaty obligations and trust responsibilities to Indian Country.

Chronic underfunding of Indian Country programs and neglect of treaty obligations over the years, particularly in the Great Plains Region, has taken an enormous toll on our Tribe. Our remote location also presents challenges for locally accessible job and educational opportunities for our people. Oglala Lakota County, which is entirely within our Reservation, is among the poorest counties in the United States with 51.9% below the poverty line, per capita income around \$8,768, unemployment in the 80% range, and a high school dropout rate of over 60%. The lack of good roads, reliable telecommunication systems, and other necessary infrastructure further impedes economic development, job creation, and a good quality of life on our Reservation.

We appreciate the opportunity to submit comments about draft legislation to create a Truth and Healing Commission. The efforts to address the United States' policies during the Federal Indian Boarding school era is long overdue. Our Tribe was deliberately injured by the United States under this policy as part of a larger plan to strip us of our culture and identity and rob us of our land. This pain is made even more acute with the knowledge that the United States pursued this policy all the while pretending to negotiate treaties with us in good faith.

The Federal Indian Boarding School Initiative Investigative Report, Volume I, cites our 1868 Sioux Nation Treaty to highlight that Indian education was a priority in U.S. – Indian relations.¹ Significantly, however, in our 1868 Sioux Nation Treaty, the United States promised to provide education to our children on the lands of the Great Sioux Nation:

...and the United States agrees that for every thirty children, between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher, competent to teach the elementary branches of an English education, shall be furnished, *who will reside among said Indians, and faithfully discharge his or her duties as a teacher.*²

The practice of kidnapping and relocating children, under the pretenses of providing education, is a Treaty violation. It is also notable that the Treaty itself uses the language “induced or compelled to attend school.” The methods resorted to by the United States were no secret then. The United States knew it was coercing Tribes and our members. This is consistent with one of the findings of Volume 1 of the Federal Indian Boarding School Initiative Report, which states “[t]here is ample evidence in Federal records demonstrating that the United States coerced, induced, or compelled Indian children to enter the Federal Indian boarding school system.”³

Moving forward, we look first to the recently published preliminary findings of the Federal Indian Boarding School Initiative. The Report constitutes the critical first pass at assembling and interpreting federal records on the United States’ boarding school activities and other policies designed to repress and eradicate Native peoples.

II. Key Findings from Volume 1 of the Department of the Interior’s Federal Indian Boarding School Initiative Investigative Report

The first volume of the Federal Indian Boarding School Initiative Investigative Report (hereinafter “Report”) found that federal records confirm that the United States subjected Indian children to the Federal Indian boarding school system in pursuit of the nation’s twin policies of Indian assimilation and territorial dispossession.⁴

For 150 years, Native children were sent to 408 schools across 37 states and territories.⁵ Children were robbed of their Native names, languages, religions, and cultural practices, and organized into units to perform military drills—all in furtherance of the United States’ policy to exterminate native cultures through identity-alteration methodologies.⁶ These children had their hair forcibly removed,⁷ and were forced to do manual labor such as *brick-making*, *garment-making*, and *working on railroads*.⁸ Older children were sometimes forced to punish younger children.⁹ In addition, “[r]ampant physical, sexual, and emotional abuse; disease; malnourishment; overcrowding; and lack of health care in Indian boarding

¹ Assistant Secretary—Indian Affairs Bryan Newland, Federal Indian Boarding School Initiative Investigative Report, Volume 1, 6 (May 2022) (“Report”).

² 1868 Treaty, Art 7 (*emphasis added*).

³ Report at 36.

⁴ Report at 5, 21.

⁵ Report at 6. These figures are now-current. The Report makes clear that many of Volume 1’s figures are subject to change as the Initiative’s research continues.

⁶ Report at 7.

⁷ *Id.*

⁸ Report at 8.

⁹ *Id.*

schools are well documented.”¹⁰ They were punished by *whipping, flogging, slapping, cuffing*, through *food deprivation*, and through *solitary confinement*.¹¹

So far, over 500 children are known to have died while in Boarding School custody.¹²

Everything about these practices is abhorrent to our Lakota culture and values. They should also be abhorrent to any human with a moral compass.

Ultimately, the Assistant Secretary of Indian Affairs recommended that an independent research group conduct a comprehensive investigation of the health, education, economic, and other impacts Indian boarding schools have had on American Indians, Alaska Natives, and Native Hawaiians who attended the schools.¹³ He also recommended that several additional research avenues be pursued, including the analysis of almost 100 million sheets of potentially responsive documents housed in the American Indian Records Repository.¹⁴ Additionally, regarding the forced labor of the child attendees, the Report states that the value of the economic contribution of Indian and Native Hawaiian children in the Federal Indian boarding school system is unknown and that further investigation is needed.¹⁵

III. Comments About H.R. 5444

Bill Amendments to Address Recommendations of the Department of the Interior

The Assistant Secretary—Indian Affairs (ASIA) made numerous recommendations in Volume 1 of the Report. Some of these are ripe for Congressional action.

Centralized Repository. The ASIA recommended that a specific repository be created at the Department of the Interior Library to act as a centralized resource for Federal boarding school system records.¹⁶ Congress must fund the creation, staffing, and maintenance of this necessary resource.

NAGPRA Reform. The ASIA recommended that Congress make necessary amendments to the Recreation and Public Purposes Act to facilitate the Bureau of Land Management’s compliance with the Native American Graves Protection and Repatriation Act (NAGPRA), and to increase support for Federal NAGPRA activities.¹⁷ We think that Congress must also provide financial support to Tribal Historic Preservation Offices to conduct the work contemplated by the Initiative—identification, repatriation, and reinternment of individuals, as appropriate.

Native Cultural Revitalization. The ASIA also recommended that Congress support Native language revitalization, and promote Indian health research.¹⁸ We agree with this recommendation, and will discuss this in further depth in our Reparations section, below.

Acknowledge and Apologize. The ASIA’s report concludes with the recommendation to “[r]ecognize the generations of American Indian, Alaska Native, and Native Hawaiian children that

¹⁰ Report at 56.

¹¹ Report at 8. We note that the first of these constitute clear physical abuse of children. We also note that United Nations officials have stressed that solitary confinement should *never* be used with youth and those with mental or physical disability or illness, and have said that prolonged solitary confinement is a *form of torture*. As is made clear throughout Volume 1 of the Report, children at these boarding schools were not only young, but were malnourished and ill.

¹² Report at 9.

¹³ Report at 88.

¹⁴ Report at 95.

¹⁵ Report at 63.

¹⁶ Report at 98.

¹⁷ Report at 98-99.

¹⁸ Report at 99.

experienced the Federal Indian boarding school system with a Federal memorial.”¹⁹ We concur with ASIA Newland’s recommendation that a memorial is appropriate, and we appreciate the ASIA’s diplomatic phrasing of the request. We will put it more bluntly. The United States Congress must, by this Act of Congress, apologize. This apology should be incorporated into the Federal memorial, for all the world to see. Additionally, Congress must acknowledge that by imposing forced Christian education on our children constituted egregious violations of the First Amendment prohibition against the establishment of religion and principles of separation of Church and State. Moreover, through this memorial and apology Congress must also acknowledge that the United States’ policies and activities constituted a purposeful cultural genocide of the Native peoples of this country.

Technical Comments

The bill should be updated to reflect new information attained as a result of the release of Volume 1 of the Department of the Interior’s Boarding School Initiative.²⁰

The bill should be amended to require the Commission to give at least 30 days’ notice of a virtual meeting, and to require that a virtual meeting be hosted via videoconference with telephonic call-in capabilities supported.²¹

There should be a National Indian Health Board representative on the Advisory Committee.²²

The Commission must also be empowered to send tribal representatives to sites of trauma to perform healing and other cultural ceremonies to honor the deceased and put them at peace.

Finally, while it is appropriate and necessary that the bill requires the Committee to conduct tribal consultations in carrying out its responsibilities, it is also critically important that Congress and the President consult with Tribes as they solicit nominations for appointments to the Committee. Nowhere in the language establishing the Committee do Tribes appear to have a say in who gets to represent them.²³ The bill must be amended to require Tribal Consultation during the nomination process. Funding must be made available to Tribes to facilitate this consultation.

IV. Comments About H.R. 5444: Bill Expansion

General Comments

The findings of the bill itself suggest that the bill should take a broader tact. The bill notes the “need for an investigative Federal commission to further document and expose assimilation and termination efforts to eradicate the cultures and languages of Indigenous peoples *implemented under Indian Boarding School Policies*,”²⁴ and “to acknowledge and heal the historical and intergenerational trauma caused by...*other cultural and linguistic termination practices* carried out by the Federal Government and State and local governments...”²⁵ Although the boarding school policies certainly furthered the United States’ policies of assimilation and termination, the operation of boarding schools

¹⁹ Report at 99.

²⁰ For example, H.R. 5444 Sec. 2 (19)(A) reports that there are at least 367 boarding schools. The AS-IA’s report identified 408. Report at 66.

²¹ Under the General Services Administration’s guidance, Federal Advisory Committee Act committees are only required to give 15 days’ notice of a virtual meeting in the Federal Register. This is simply not enough notice. Tribes need more lead time to mobilize and engage with these meetings. Congressional Research Service, *Access to Government Information: An Overview*, 16-17 (Mar. 31, 2022).

²² See H.R. 5444 Sec 5 (g)(2).

²³ See H.R. 5444 Sec. 5(b) (*emphasis added*).

²⁴ H.R. 5444 Sec. 2 (35) (*emphasis added*).

²⁵ H.R. 5444 Sec. 3(4).

was by no means the only manner in which the United States pursued Indian assimilation and termination. The bill must establish a Commission with a broader mandate—one that will be able to bridge agency actions across the federal government and through time. To this end, the bill should not limit the Commission to investigating only Indian Boarding School Policies.

Moreover, with respect to schools specifically, Volume 1 of the Report clarified that the Department of the Interior’s study did not comprehensively address federally supported assimilation activities:

Outside the scope of the Federal Indian Boarding School Initiative, the Department identified over 1,000 other Federal and non-Federal institutions, including Indian day schools, sanitarium, asylums, orphanages, and stand-alone dormitories that may have involved education of American Indian, Alaska Native, and Native Hawaiian people, mainly Indian Children.²⁶

In particular, the Report highlighted Indian Day schools as precursors to Indian Boarding Schools in every respect, yet the Report did not consider day schools.²⁷ Congress must empower the Truth & Healing Commission to conduct much broader research. The bill should direct the Commission to address federal and non-federal activities, and should not be limited to schools, but should incorporate the various entities not studied as a part of the Federal Indian Boarding School Initiative.

Expansion of the scope of the Truth & Healing Commission’s purpose would be consistent with the recommendation of the American Bar Association, which has recommended that Congress direct the Commission to investigate and issue reports “*regarding the root causes of human rights abuses at Indian Boarding Schools, and to make recommendations to prevent such future atrocities.*”²⁸

Site Management

Support for activities on non-federal land

To address the issue of boarding school children buried on now-private lands, Congress should incentivize land owners (perhaps through a grant or a tax credit) to permit Tribes to handle and repatriate the children. First, the Department of the Interior must identify the Tribal affiliations of children, and notify the relevant Tribes. Then, with permission from and in coordination with the relevant Tribe(s), the Department of the Interior and Tribe(s) should approach the private landowner of the burial site with a Tribally informed proposal for handling the remains. Most importantly, Congress should authorize and appropriate money for the Department of the Interior for the relevant Tribe to identify, care for, disinter, and repatriate the remains (and any associated funerary goods). Congress could consider authorizing compensation for the landowner for their cooperation. Congress should ensure that the terms of the deal between the Department of the Interior, the Tribe(s), and the landowner are kept private, and that the location of the site is kept confidential.

Co-management of federal sites

Congress should direct the Department of Interior to enter into co-management agreements with Tribes to administer Federal Indian boarding school sites still under federal control. The Department should work with BIA law enforcement and the Indian Health Service to have employees present in the event remains are found at these sites.

²⁶ Report at 6.

²⁷ Report at 42.

²⁸ American Bar Association, 2021, Resolution 801 (2).

<https://www.americanbar.org/content/dam/aba/administrative/news/2021/08/annual-meeting-resolutions/801.pdf>

Facilitate Ongoing Research Efforts

Museums & Libraries

As is well-documented by now, the records of the United States' boarding school policies are scattered and lost. Local libraries, historical societies, and museums are frequently the local repositories for local records. They may hold critically important information about the conditions children and other Indigenous peoples were kept in and subjected to in their local communities, or may contain information about the fate of some of these children.²⁹ It is, therefore, important that museums and libraries in receipt of federal funding (through grants, contracts, or otherwise) must survey their holdings. The bill should direct museums and federal libraries to inventory and submit a report about records and information in their collections with relevance for the investigation into the United States' Federal Indian boarding school policies, as well as for other activities related to forced assimilation and termination. This would be consistent with a recommendation of the American Bar Association, that all reasonable efforts are made to obtain boarding school records.³⁰ Congress should appropriate funds to the Institute of Museum & Library Services to administer in support of these efforts. In no instance should these federal funds be permitted to be used to do "investigations" or "conduct research" on human remains in these collections. Those human remains should have already been repatriated under the Native American Graves Protection & Repatriation Act. If archival investigations suggest a linkage to human remains in one of these collections, the museum (as defined under NAGPRA) must conduct Tribal consultation *immediately*.

Military Records

Some boarding schools were located on active or decommissioned military sites. Congress must require the Department of the Defense and the Department of Homeland Security to de-classify and turn over all records related to these boarding schools to the Department of the Interior and to the Truth & Healing Commission. Moreover, the Departments must de-classify and turnover all records related to the United States' policies of cultural assimilation, termination, and territorial dispossession. Congress should also direct the Department of the Defense to help with efforts underway to repatriate children, particularly from unmarked graves.

Reparations

Restitution to Individuals

Congress must compensate the victims and victims' families for the United States' treatment of Tribal members in these schools. We think it best at this time that the Commission be given a broad mandate and authority to research the full extent of people affected by the United States' assimilation and termination policies. The Commission should also hire experts to provide economic assessments to Congress to inform future reparations.

Additionally, as we note above, Volume 1 of the Report stated that the value of the economic contribution of Indian and Native Hawaiian children in the Federal Indian boarding school system is unknown.³¹ Congress must fund an investigation into the full scope of this contribution, and ultimately compensate Indian Country for the work *in quantum meruit*—provide payment for the services rendered.

²⁹ See American Bar Association, 2021, Resolution 801, 3, (noting that children may have died in the custody of their "Outing System" families and never heard from again)

<https://www.americanbar.org/content/dam/aba/administrative/news/2021/08/annual-meeting-resolutions/801.pdf>

³⁰ American Bar Association, 2021, Resolution 801 (3).

<https://www.americanbar.org/content/dam/aba/administrative/news/2021/08/annual-meeting-resolutions/801.pdf>

³¹ Report at 63.

Congress must also make it clear that Tribal land settlement by the Indian Claims Commission does not preclude or estop individual boarding school survivors and relatives of boarding school students from bringing claims against the United States.

Restitution to Tribes

In addition to awarding compensation to survivors and relatives of school attendees, Congress must also authorize compensation to Tribes themselves. Tribes lost valuable members of their communities and were deprived of the value of consortium with these members, sometimes forever. Congress must develop, in consultation with Tribes, a formula for calculating the amount owed to each Tribe, taking into consideration the number of Tribal members known or suspected to have been stolen and sent to a boarding school and the overall impact on the Tribe and its culture.

Volume 1 of the Report also found that the United States “may have used monies held in Tribal trust accounts, including those based on cessions of Indian territories to the United States, to fund Indian children to attend Federal Indian boarding schools.”³² Congress must further investigate this and furthermore, must appropriate money for restitution of the treaty and trust funds robbed (with interest). The ASIA recommended that Volume 2 of the Report pursue an accounting of support for boarding schools, including through the use of trust funds.³³ Congress should support this continued investigation, and should convene the Commission to review the Report and propose remedial measures to Congress.

Among other sources of funding, the Report identified that Federal Indian boarding schools were funded through appropriations made under the educational provisions of Indian treaties, through the proceeds of the sale of lands of Tribes, and through accumulations of money accruing in the Treasury from the sale of lands.³⁴

The United States must make every effort to make Tribes whole. Congress must appropriate funds for these purposes. Congress must make clear that Tribal claims for restitution from the Truth & Healing Commission are not estopped by any previous legal claim made or resolved.

Congress must also waive the United States’ sovereign immunity from assessment of interest. The United States’ policies’ impacts were felt not only in the moments of action, but in the years since as the intended legacy of assimilation and dispossession.

Investment in Native cultural revitalization

In order to counteract the targeted effort to eradicate Native cultures, Congress must invest substantially in Native cultural revitalization. Congress must provide increased support for Native-run education programs, vocational training in traditional Native arts and disciplines, and must better support Tribal governments. Congress must adequately fund Native language schools and revitalization efforts. Congress must also implement stronger punishments for museum non-compliance with the Native American Graves Protection and Repatriation Act.

V. Conclusion

Thank you for the opportunity to provide feedback on the current bill. We appreciate H.R. 5444 and offer our comments in a cooperative spirit with the bill’s lead sponsor and cosponsors in an effort to improve the legislation for our elders who lived through the boarding school ordeals and for our Tribe and our many generations to come.

³² Report at 7.

³³ Report at 97.

³⁴ Report at 43.