



National Advisory Council on Indian Education (NACIE)

2021–2022 ANNUAL REPORT TO CONGRESS



Cover Top: Choate, J. N., Carlisle Indian School student body around 1885, with the Superintendent's House in background. [Photograph]. (1880–1889). Dickinson College Archives & Special Collections.

Cover Bottom: San Carlos Apache 2022 graduating class [Photograph]. San Carlos Unified School District in Peridot, Arizona.



September 5, 2022

RE: NACIE 2021–2022 Annual Report to Congress

The Honorable Charles Schumer

U.S. Senate Majority Leader
United States Senate

The Honorable Nancy Pelosi

U.S. Speaker of the House
United States House of Representatives

The Honorable Miguel Cardona

Secretary of Education
United States Department of Education

The Honorable Marty Walsh

Secretary of Labor
United States Department of Labor

The Honorable Mitch McConnell

U.S. Senate Minority Leader
United States Senate

The Honorable Kevin McCarthy

U.S. House Minority Leader
United States House of Representatives

The Honorable Debra Haaland

Secretary of the Interior
United States Department of the Interior

Dear Esteemed Congressional Leaders and Secretaries Cardona, Haaland, and Walsh:

This year marks the 50th anniversary of the Office of Indian Education (OIE). On behalf of the National Advisory Council on Indian Education (NACIE or the Council), it is my pleasure to transmit this *Annual Report to Congress 2021–2022*. The NACIE Annual Report is submitted to Congress as required by statute and reflects the activities of the Council for Fiscal Years (FY) 2021 and 2022. NACIE is authorized by §6141 of the [Elementary and Secondary Education Act of 1965 \(ESEA\)](#) as amended by the [Every Student Succeeds Act \(ESSA\)](#), 20 U.S.C. §7471. The current annual report reflects much of unchanged content and recommendations from the previous annual report, including continuing challenges from the [COVID-19 pandemic](#). This year's report is supplemented with content from the *May 2022 Federal Indian Boarding School Initiative Investigative Report*¹ findings that reinforce previous NACIE Annual Report content, including the Federal treaty and trust obligation for Indian education, the impacts of Federal American Indian policy including the mission and Indian boarding school policy, and resulting historical and intergeneration trauma as demonstrated in the persistence of the worst-of-the-worst statistical outcomes. Despite historical efforts to improve, the [high school dropout rate remains twice as high](#) for Native students compared to all students.

The Council is governed by the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, which sets forth requirements for the formation and the role of advisory committees. NACIE members are appointed by the President of the United States and serve with the following purpose and functions:

1. advise the Secretaries of Education and Interior concerning the funding and administration (including the development of regulations and administrative policies and practices) of any program, and any program(s) established under [Title VI, Part A of the ESEA](#), with respect to which the Secretary has jurisdiction and that includes American Indian and Alaska Native (AIAN) children or adults as participants or that may benefit AIAN children or adults;

¹ U.S. Department of the Interior. (2022). *Federal Indian Boarding School Initiative investigative report*. https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf



2. make recommendations to the Secretary of Education for filling the Director of the OIE position whenever a vacancy occurs;
3. submit to the Congress an annual report on the activities of NACIE, including any recommendations the Council considers appropriate for the improvement of Federal Indian education programs; and
4. advise the White House Initiative on Advancing Educational [Equity](#), Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities. Additional duties appear on **page 8** of this report.

NACIE is a 15-member Council representative of AIAN populations across the country, with 10 members currently serving and 5 vacancies remaining to be filled. Critical NACIE functions have not always been filled depending on the administration. NACIE’s primary goal and purpose in transmitting a comprehensive annual report to Congress is the result of our strong convictions and our expertise and experiences that each recommendation, when reviewed and addressed by Congress, will aid AIAN students in receiving a more equitable and quality education and improve the quality of life throughout Indian Country. While NACIE puts forth recommendations, there is a critical need to have progress reports made on those recommendations. Therefore, NACIE strongly urges Congress’ review and oversight and foresees a great need to have members of Congress and their staff meet regularly with NACIE to act upon these recommendations. NACIE is open to such meetings at your request to assist in successfully accomplishing the recommendations of this report to benefit AIAN students, their communities, and society.

The Council looks forward to working with Secretary Cardona (Education), Secretary Haaland (Interior), and newly with Secretary Marty Walsh (Labor) as the executive order (EO) updating the White House Initiative directs, as well as with the OIE team, to carry out responsibilities under the Council’s Charter (pursuant to EO 14049).

Ahéhee’ (Thank you)

Deborah Jackson-Dennison, Ed.D. (Navajo) Arizona

Chairperson, National Advisory Council on Indian Education

Members of the National Advisory Council on Indian Education (5 Vacancies)

Phylliss J. Anderson (*Mississippi Band of Choctaw Indians*) Mississippi

Theresa Arevgaq John, Ph.D. (*Yup’ik*) Alaska

Mandy Smoker Broaddus (*Fort Peck Assiniboine Sioux*) Montana

Doreen Brown (*Yup’ik*) Alaska

Robin Butterfield (*Winnebago/Chippewa*) Oregon

Aaron A. Payment, Ed.D. (*Sault Ste. Marie Tribe of Chippewa*) Michigan

Joely Proudfit, Ph.D. (*Luiseño/Payómkawichum*) California

Virginia Thomas (*Muscogee Creek Nation*) Oklahoma

Patricia Whitefoot (*Confederated Tribes and Bands of the Yakama Nation*) Washington

CC. U.S. House of Representatives (Indigenous Members)

The Honorable Tom Cole (*Chickasaw*)

The Honorable Kaiali Kabele (*Native Hawaiian*)

The Honorable Sharice Davids (*Ho-Chunk*)

The Honorable Markwayne Mullin (*Cherokee*)

The Honorable Yvette Herrell (*Cherokee*)



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EXECUTIVE SUMMARY

The National Advisory Council makes the following recommendations to Congress:

I. Build and Sustain True Government-to-Government Relations with Tribal Nations through Consultation

1.1 NACIE recommends that the Biden Administration update Congress on the implementation of consultation with Tribal Nations at the Federal, state, and local levels.

II. Honoring the Treaty and Trust Obligation for Education

2.1 NACIE continues to recommend creating and funding an Assistant Secretary of Indian Education

2.2 NACIE recommends Congress commit necessary funds to DoED to substantively implement various Presidential directives including EO 13175 on consultation as reaffirmed in President Biden's Presidential memorandum, A Proclamation on Indigenous Peoples' Day, 2021, and President Biden's EO 14049 expanding the White House Initiative.

2.3 NACIE recommends Congress substantively commit cross-departmental resources for the DoED and the Interior in coordination with the U.S. Departments of Justice, Health and Human Services (including the Administration for Children and Families), Labor, and related Departments, Federal agencies, and related federally established initiatives and commissions.

2.4 NACIE recommends that there be an increase in the quantity and quality of technical assistance provided to LEAs, school districts, Tribes, and AIAN communities that result in total local-level school improvement, including schoolwide planning, targeted resources, strategies for parental engagement, and comprehensive professional development.

2.5 NACIE recommends that funds be allocated for SEAs to create AIAN State Plans that will guide AIAN education; guide and analyze data on Native student outcomes; set priority goals for overall educational improvement; review and develop AIAN curriculum; provide ongoing technical assistance to LEAs; and evaluate progress toward identified goals. These plans should be developed in coordination with Tribes, Native educators, and AIAN parents and ensure that all ESSA funds are contributing to the educational success of AIAN students.

2.6 NACIE recommends that Title programs within ESEA include language that emphasizes the importance of coordination with Title VI, the Indian Education Act, to ensure that Title VI funds are not used to supplant other Title funds and services for Native students. Until these language changes are made to the ESEA legislation, additional technical assistance is necessary for SEAs and LEAs to make sure all funds are used appropriately.

2.7 NACIE recommends that Congress, through legislation, advocate for the hiring of AIAN professionals as experts and reviewers, as well as for technical assistance providers. This includes, but is not limited to, hiring for OIE discretionary grant administration, Comprehensive Centers, equity assistance centers, and other technical assistance centers.

2.8 NACIE recommends that funds and resources be designated for increasing the quantity and quality of educational professional development for teachers, district staff, and AIAN parents, focusing on culturally related academic achievement improvement.

2.9 NACIE recommends that the DoED request collaboration with the Office of Management and Budget and appropriate Federal administrative agencies and departments to operationalize a definition of AIAN at all levels to analyze and report data for various categories of AIANs. The



results should be put to formal Tribal consultation with AIAN Tribes concerning the appropriate scope of this critical definition.

2.10 NACIE recommends that a Native Student Identity and Resiliency Task Force be created to review and provide the necessary education and understanding of this social phenomenon and lasting impact on student counts and lingering intergenerational and historical trauma.

2.11 NACIE recommends that Congress continue supporting the National Indian Education Study (NIES) and other opportunities to increase participation of AIAN students in other data collection efforts of the National Center for Education Statistics (NCES). This should include both public schools and BIE schools and staff within all future iterations of the Schools and Staffing Survey. The practice of oversampling should continue along with analyses and publication of the results of BIE schools and public schools.

2.12 2.12 Continue to Reclaim and Strengthen Native Languages

A. NACIE recommends that Congress enact legislation that provides financial support for providing AIAN students with an education that honors their unique Native languages, histories, and cultures while preparing them for a successful future from pre-birth to lifelong learning.

B. NACIE recommends additional congressional appropriations are needed for DoED to intentionally focus funds and supports for Native schools and communities that are working to revitalize Native languages, especially when used as the medium for instruction.

C. NACIE recommends that Congress recognize the expertise of Native language speakers as proficient and as highly qualified in their respective language area and to recognize Tribal authority to establish a certification endorsement.

D. NACIE strongly recommends that a Native American Languages Resource Center be enacted (similar to S. 4510 from the 116th Congress) for the purpose of protecting and stabilizing Native American languages education.

III. Requests for Distinct Funding for Native Education

3.1 NACIE recommends that Congress maintain its support for both the *Indian Education Act* (Title VI) and JOM programs with distinct purposes, services, and funding requirements. NACIE also asks that student counts of eligible AIAN students within these programs be accurate and maintained annually.

3.2 NACIE recommends that Congress forward fund the JOM program.

3.3 NACIE recommends that Congress increase funding for the OIE to support the unique cultural, language, and educational needs of AIAN students.

3.4 3.4 Increase Funding and Support for Impact Aid, Title VII

A. NACIE recommends that Congress advance appropriate the Title VII Impact Aid Program.

B. NACIE recommends that Congress provide effective oversight of DoED to monitor implementation of the Impact Aid, Title VII, Indian Policies and Procedures to ensure LEA accountability to Tribal leaders and parents of Indian children.

C. NACIE recommends that Congress pass H.R. 5255, the Advancing Toward Impact Aid Full Funding Act, and provide increases to the Indian School Equalization Program formula for AIAN children enrolled in tribally controlled schools.

D. NACIE recommends that Congress repeal Section 7009 of the Impact Aid legislation.



E. NACIE recommends that Congress secure additional funds to help alleviate the backlog of Title VII, Section 7007, school construction and renovation needs, including the passage of a facilities infrastructure bill that would provide much-needed infrastructure funding for Impact Aid schools, including teacher housing.

F. NACIE recommends that Congress fund a study on the effect of Impact Aid on both rural and urban schools.

3.5 NACIE recommends that Congress continue to promote the unique role and responsibilities of TCUs in fulfilling the treaty and trust obligation and increase current levels of funding where increasing student enrollment and other needs of the institutions are demonstrated. NACIE recommends that Congress continue to promote the unique role and responsibilities of TCUs in fulfilling the treaty and trust obligation and increase current levels of funding where increasing student enrollment and other needs of the institutions are demonstrated.

3.6 NACIE recommends Congress support a Federal Annual Progress Report Card on the AIAN experience in higher education. Data collection and analyses should include factors that significantly impact AIAN retention and matriculation through to college graduation. Data-driven retention strategies should be fashioned to ameliorate adverse factors and support positive interventions.

IV. Improve Lifelong and Comprehensive Education

4.1 NACIE recommends that Congress expand Title VI legislation to support the programs within OIE so that OIE can more broadly disseminate information on promising practices within discretionary and Formula Grant programs that can be replicated elsewhere in Indian Country.

4.2 NACIE recommends that Congress support lifelong learning for AIAN students from early childhood through adulthood. There is a tremendous need for quality childcare, empowering parents, raising the bar for early learning, and reforming and expanding Head Start and Early Head Start. Congress should recommend Native language programs be directed specifically to AIAN students, especially programs aimed to educate children and families in Native language revitalization.

4.3 NACIE recommends that Congress provide additional funds for technical assistance and support for parents of AIAN students. Though programs such as JOM, Title VI, Title I, and other Titles in *ESEA* may contain the establishment of parent committees, there is an ongoing need to help restore the skills and knowledge of Native parents, especially in how they can reinforce school learning.

4.4 NACIE recommends that DoED's school support and technology programs and technical assistance programs identify current technical assistance regarding the use and availability of technology and how it is being targeted specifically to serve AIAN students, especially in light of circumstances exacerbated by the pandemic.

4.5 NACIE recommends that Congress fund a study to explore strategies and target resources to improve school climates in AIAN schools.



ANNUAL REPORT TO CONGRESS 2021–2022

Context for American Indian and Alaska Native Education

The United States acknowledges the unique political and legal relationship with the 574 federally recognized Indian Tribes,² as set forth in the U.S. Constitution, treaties, Federal court decisions, and various Presidential directives, including Presidential EOs. The Federal Government’s relationship with Tribes has been guided by a treaty and [trust responsibility](#): a long-standing commitment of the Federal Government to protect the unique rights and ensure the well-being of Tribes while respecting their [Tribal sovereignty](#). The following justification is drawn directly from the *2022 Federal Indian Boarding School Initiative Investigative Report* as cited in the first footnote of this report. The original citations are added here for ease of reference. This justification is likely the single best for Indian education contained in an official report of the Federal Government. The *Boarding School Initiative Report* authored by U.S. Department of the Interior Assistant Secretary Bryan Newland (Bay Mills Indian Community) is likely to be a seminal Indian education report transcending previous reports like Chapter 9 “Education” in the *1928 Meriam Report*³ and the *1969 Kennedy Report*.⁴

Two centuries of Supreme Court case law establish that there is an “undisputed existence of a general trust relationship between the United States and the Indian people.”⁵ The Federal Government, following “a humane and self-imposed policy ..., has charged itself with moral obligations of the highest responsibility and trust”⁶ obligations “to the fulfillment of which the national honor has been committed.”⁷ The Court has recognized that “[t]hroughout the history of the Indian trust relationship, ... the organization and management of the trust is a sovereign function subject to the plenary authority of Congress.”⁸ “Because the Indian trust relationship represents an exercise of that authority,” the Supreme Court has “explained that the Government ‘has a real and direct interest’ in the guardianship it exercises over the Indian [T]ribes; ‘the interest is one which is vested in it as a sovereign.’”⁹

On Indian reservations, outside of Alaska, “the government would provide ‘only sufficient land for their actual occupancy ... divid[ed] among them in severalty ... and in lieu of money annuities ... stock animals, agricultural implements, mechanic shops, tools and materials, and manual labor schools for the industrial and mental

² There are 578 federally recognized Tribes when counting the four Minnesota Chippewa Tribes under the umbrella of Minnesota Chippewa Tribal Nation.

³ Meriam, L. (1928). *The Problem of Indian Administration: Report of a Survey made at the Request of Honorable Hubert Work, Secretary of the Interior, and Submitted to Him, February 21, 1928/Survey Staff: Lewis Meriam...[et al.]*. Johns Hopkins Press.

⁴ United States Senate. (1969). *The Kennedy Report*.
<https://narf.org/nill/resources/education/reports/kennedy/toc.html>

⁵ United States v. Mitchell, 463 U.S. 206, 225 (1983).

⁶ Seminole Nation v. United States, 316 U.S. 286, 296–297 (1942).

⁷ Heckman v. United States, 224 U.S. 413, 437 (1912).

⁸ United States v. Jicarilla Apache Nation, 564 U.S. 162, 175 (2011).

⁹ Id. (quoting United States v. Minnesota, 270 U.S. 181, 194 (1926)).



education of their youth.”¹⁰ The reservations were, “in effect, envisioned as schools for civilization, in which Indians under the control of the agent would be groomed for assimilation.”¹¹

During the 2021 White House Tribal Nations Summit, the Biden Administration reaffirmed and acknowledged treaty rights in the following attestation by Federal interagency memorandum of understanding, including the U.S. Departments of Interior and Education, which acknowledges that:

“The United States Supreme Court has affirmed this principle of reserved rights, explaining that treaties are ‘not a grant of rights to the Indians, but a grant of rights from them, a reservation of those not granted.’ United States v. Winans, 198 U.S. 371, 381 (1905). Many of these treaties guaranteed the signatory tribes a unique set of rights ... including [the] rights to ... education.”¹²

Reinhardt and Tippeconnic¹³ document that of the 374 American Indian treaties, about a third (116) contain educational provisions. According to Cohen, more than 150 Indian treaties between Indian Tribes and the United States included education-related provisions, the terms of which often varied.¹⁴ Per the canons of treaty construction,¹⁵ Tribes interpret and understand this negotiated obligation exists into perpetuity. The text of many Indian treaties evinces that Indian education was a priority in U.S.-Indian relations. While in 1871, Congress ended treaty-making with Indian Tribes, existing treaty obligations were expressly validated and affirmed.¹⁶ Thereafter, the Federal Government used only statutes, executive orders, and agreements to regulate Indian affairs.¹⁷

Federal responsibility for Indian education began in a formal sense with the *Indian Civilization Act of 1819* and included the experience of American Indian children at Indian and mission boarding schools designed to “kill the Indian to save the man,” which is a direct quote from General Richard H. Pratt, the superintendent of the Carlisle Indian School.¹⁸

¹⁰ ARCIA for 1858, at 7.

¹¹ Cohen’s Handbook of Federal Indian Law § 1.03 (Nell Jessup Newton ed., 2019) (citing *United States v. Clapox*, 35 F. 575, 577 (D. Or. 1888)).

¹² Advisory Council on Historic Preservation, U.S. Department of Agriculture, U.S. Department of Commerce, U.S. Department of Defense, U.S. Department of Education, U.S. Department of Energy, U.S. Department of Homeland Security, U.S. Department of Housing and Urban Development, U.S. Department of the Interior, U.S. Department of Justice, U.S. Department of Labor, U.S. Department of State, U.S. Department of Transportation, U.S. Department of Veterans Affairs, U.S. Environmental Protection Agency, U.S. Office of Personnel Management, & White House Council on Environmental Quality. (2021). *Memorandum of understanding regarding interagency coordination and collaboration for the protection of Tribal treaty rights and reserved rights.*

<https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf>

¹³ Reinhardt, M., & Tippeconnic, J. (2010). Treaty basis for Michigan Indian education. *Indigenous Policy Journal*, XXI (4).

¹⁴ Cohen’s Handbook of Federal Indian Law, § 22.03 (1)(a) (Nell Jessup Newton ed., 2019).

¹⁵ Canby, W. (2009). *American Indian law in a nutshell* (5th ed.). West Group Publishing.

¹⁶ An act of Congress of March 3, 1871 (16 Stat. 566).

¹⁷ Cohen’s Handbook of Federal Indian Law § 5.01 (2) (Nell Jessup Newton ed., 2019).

¹⁸ Perdue, T., & Green, M. (2010). *North American Indians: A very short introduction*. Oxford University Press.



Exhibit 1: Secretary Haaland

Notwithstanding this tragic past, our nation’s historical first American Indian cabinet member (Exhibit 1), Secretary of Interior Deb Haaland (Laguna Pueblo), announced on June 22, 2021, a Federal Indian Boarding School Initiative to include “a comprehensive review of the troubled legacy of Federal boarding school policies.” Through this initiative, “the Interior Department will address the inter-generational impact of Indian boarding schools to shed light on the unspoken traumas of the past, no matter how hard it will be.”¹⁹

The first citation in the cover letter to Congress cited the results of the *Federal Indian Boarding School Initiative Investigative Report* (or the Newland Report for short). Resisting the temptation to do a full recitation of the Newland Report, what follows are highlights and policy/legislative recommendations.

One objective of the report was to establish a baseline number of Indian mission and boarding schools under the following four criteria, including whether the institution (1) provided on-site housing or overnight lodging; (2) was described in records as providing formal academic or vocational training and instruction; (3) was described in records as receiving Federal Government funds or other support; and (4) was operational before 1969. Initial results show that Federal Indian boarding schools operated from 1801 to 1969 and that the system was expansive, consisting of 408 schools. These schools were located at 431 sites across 37 states (including 21 schools in the Alaska territory and 7 schools in Hawaii territory).

As cited in the report, the twin Federal policy of Indian boarding and mission schools was territorial dispossession and Indian assimilation through militarized and identity-alteration methodologies to assimilate AIAN people—primarily children—under the rubric of education. The Federal Indian boarding school system discouraged or prevented the use of Native languages or cultural or religious practices. These schools were also places of punishment, including corporal punishment such as solitary confinement, flogging, withholding food, whipping, slapping, and cuffing. The Federal Indian boarding school system at times made older Indian children punish younger Indian children. Finally, many AIAN children simply did not survive this Federal policy as the Department’s investigation has so far identified marked or unmarked burial sites at approximately 53 different schools across the Federal Indian boarding school system. As the investigation continues, the Department expects the number of identified burial sites to increase. These assimilation mills focused on manual labor and vocational skills that left

¹⁹ U.S. Department of the Interior. (2021, June 23). *Secretary Haaland announces Federal Indian boarding school initiative* [Press release]. <https://www.doi.gov/pressreleases/secretary-haaland-announces-federal-indian-boarding-school-initiative>



Native graduates with employment options often irrelevant to the industrial U.S. economy, further disrupting Tribal economies.

One observation is that while Congress debates whether or not to include Hawaii Native education and has created a separate treatment of Alaska Native education, the Indian boarding and mission school implementation for Alaska and Hawaii Natives is indistinguishable from that of the lower 48 United States. Further, through this report and in previous annual NACIE reports, the concept of historical and intergenerational trauma is described and cited. The Newland Report provides the single most comprehensive Federal report to document the experiences of American Indians at the hand of Federal Indian policy that likely explains the worst-of-the-worst statistical outcomes as borne out in the U.S. Commission on Civil Rights Broken Promises Report. An exhaustive list of recommendations is made in the Newland Report.²⁰

Key Indian education initiatives have occurred over the years, including the [*Johnson-O'Malley Act of 1934*](#) (JOM)²¹ following the inclusion of a chapter on Indian education in the 1928 Meriam Report, which recommended the abandonment of the assimilation strategy that it was “necessary to remove the Indian child as far as possible from his home environment” because “[an emerging] modern point of view in education and social work lays stress on upbringing in the natural setting of home and family life.”²² JOM originally “authorize[d] contracts for the education of eligible Indian students enrolled in public schools” and evolved to offer resources to “include such programs as culture, language, academics and dropout prevention.”²³

Beyond nominal funding awarded in the *1934 JOM Act* and thereafter, a more substantive commitment did not occur until the publication of a 1969 report that became known as the Kennedy Report. In this report, a foreword by Senator Edward Kennedy, chair of the Special Subcommittee on Indian Education, explained that the Federal Government had failed in the treaty and trust obligation for Indian education.²⁴ Ironically, data shared in the Kennedy Report from 52 years ago that American Indian “drop-out rates are twice the national average in both public and Federal Schools” matches the current disparity as reported in the Broken Promises Report²⁵ for both Indian young men and women. Put simply, while gains were made in Indian graduation rates, the same proportional disparity observed in 1969 remains in place.

Three years after the Kennedy Report was published, the OIE and the **National Advisory Council on Indian Education (NACIE)** was established legislatively as one of the major provisions of the [*Indian Education Act of 1972*](#).²⁶ This Act is part of and an extension of [*ESEA*](#).²⁷

²⁰ U.S. Department of Interior (2002, May). *Federal Indian Boarding School Initiative investigative report* (p. 94). https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf

²¹ U.S. Department of the Interior, Bureau of Indian Education. (n.d.). *Johnson-O'Malley*. <https://www.bie.edu/topic-page/johnson-omalley>

²² Institute for Government Research. (1928). *The Problem of Indian administration*. https://www.narf.org/nill/documents/meriam/n_meriam_chapter9_part1_education.pdf

²³ U.S. Department of the Interior, Bureau of Indian Education. (n.d.). *Johnson-O'Malley*. <https://www.bie.edu/topic-page/johnson-omalley>

²⁴ Committee on Labor and Public Welfare, U.S. Senate, Special Subcommittee on Indian Education. (1969). *Indian education: A national tragedy - A national challenge*. <https://www.narf.org/nill/resources/education/reports/kennedy/toc.html>

²⁵ U.S. Commission on Civil Rights. (2018). *Broken promises: Continuing Federal funding shortfall for Native Americans*. <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

²⁶ Pub. L. No. 92-318, 86 Stat. 235

²⁷ Pub. L. No. 89-10, 79 Stat. 27



Successive reauthorizations of the *ESEA* have retained the provisions establishing NACIE and are codified.²⁸

NACIE Advisory Role

NACIE advises the Secretaries of the U.S. Departments of Education (DoED) and Interior concerning the administration and funding of all programs over which the Secretaries have jurisdiction. This includes all programs and/or services that may benefit AIAN children or adults as participants. While EO 13592, signed on December 2, 2011, launched the initial [White House Initiative on American Indian and Alaska Native Education \(WHIAIANE\)](#), EO 14049, issued in 2021, updated the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities²⁹ (the White House Initiative) and expanded NACIE’s role to advise the Secretaries of Education, Interior, and Labor on aspects of the White House Initiative, including:

- what is needed for the development, implementation, and coordination of educational programs and initiatives to improve educational opportunities and outcomes for Native Americans;
- how to promote career pathways for in-demand jobs for Native American students, including registered apprenticeships as well as internships, fellowships, mentorships, and work-based learning initiatives;
- ways to strengthen [Tribal Colleges and Universities \(TCUs\)](#) and increase their participation in agency programs;
- how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Native American students face and the causes of these challenges and disparities;
- approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the policy set forth in Section 1 of this order, consistent with applicable law; and
- actions for promoting, improving, and expanding educational opportunities for Native languages, traditions, and practices to be sustained through culturally responsive education.

In fulfilling its responsibilities and functions at the President’s direction, consistent with the NACIE Charter, two assignments from the previous reporting period remain and are addressed through subcommittees to complete specific responsibilities: the Annual Report Subcommittee and the By-laws Subcommittee.

NACIE seeks to fulfill its responsibility and submit an annual report to the 117th Congress for the period of 2021–22, with recommendations and rationale. The recommendations herein are based on NACIE’s foundation that full implementation, with sufficient funding and ongoing substantive support from both the DoED and Interior, and most recently the U.S. Department of

²⁸ 20 U.S.C. §7471

²⁹ The White House. (2021). *Executive Order on the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/11/executive-order-on-the-white-house-initiative-on-advancing-educational-equity-excellence-and-economic-opportunity-for-native-americans-and-strengthening-tribal-colleges-and-universities>



Labor per the new White House Initiative, will help to achieve AIAN academic student success and meet the provisions of the *ESEA* and related legislation and policies.

These recommendations are congruent with, and in many cases identical to, the recommendations NACIE has made in previous NACIE reports to Congress. To date, Congress has yet to provide a response to NACIE for these reports. Accountability to Congress necessitates a presentation of this annual report to the U.S. Senate Committee on Indian Affairs and any congressional committees of jurisdiction.

NACIE affirms that the Federal trust responsibility for AIANs makes it essential that the DoED increase its accountability for Native children's success in public schools on or near Indian reservations and at urban, rural, and [Bureau of Indian Education \(BIE\)](#) schools. Over 93 percent of AIAN students attend public schools, with more than half enrolled in K–12 schools in our nation's large urban centers. It is important to recognize the unique needs of the diverse Tribal and non-Tribal communities where AIAN students attend school. As in previous years, NACIE members are unanimous in setting the first priority for the Federal Government to raise the profile and academic success of AIAN students through Indian education in every way possible.

AIAN Education Grade Report: How Are We Doing?

It is important to recognize the worst outcomes experienced by AIAN students as explained by historical and intergenerational trauma,³⁰ ³¹ Tribal critical race theory,³² Indian boarding schools, and forced assimilation experiences as well as the Federal removal and reservation policy, all of which have adversely impacted social, economic, and inequitable educational opportunities; have perpetuated adverse outcomes; and have resulted in stark disparities between AIANs and the general population. Supplemental to the 2020–21 NACIE Annual Report, the Newland Report vastly expands our understanding of the impact of Federal Indian boarding school policy and documents the experience in an unprecedented way by the Federal Government.

Educational Attainment Rates for AIAN Students Remain the Worst of Any Racial or Ethnic Group in the United States

As a group, Native students are underperforming academically, as evidenced by disproportionately low reading and math proficiency, low test scores, and less access to high-rigor courses. The dropout rate for Native students remain the worst of any racial or ethnic group: 13.1 percent of male students (ages 16–24) and 9.9 percent of female students (ages 16–24) have dropped out, as compared with 7.2 percent of male students (ages 16–24) and 5.2 percent of female students (ages 16–24) of all races.³³ Thus, the dropout rate remains twice as high for Native students compared to all students, which suggests that little progress has occurred in terms of equity since the publication of the 1969 Kennedy Report over a half century

³⁰ Brave Heart, M. Y. H. (2000). Wakiksuyapi: Carrying the historical trauma of the Lakota. *Tulane Studies in Social Welfare*, 21(22), 245–66.; Brave Heart, M. Y. H. (2004). The historical trauma response among Natives and its relationship to substance abuse: A Lakota illustration. *Journal of Psychoactive Drugs*, 35(1), 7–13.

³¹ Newbreast, T. (2011). *Historical trauma and Native Americans: Training of trainer workshop*. Chico: CA. Connecting Circles of Care. <https://www.nativewellness.com/events.html>

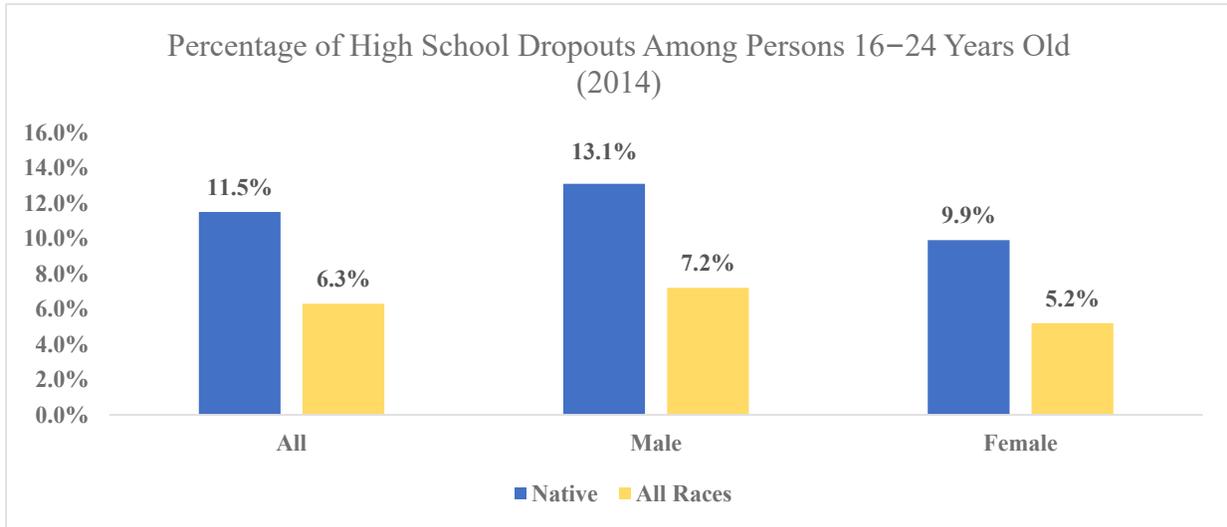
³² Brayboy, B. M. J. (2005). Toward a Tribal critical race theory in education. *The Urban Review*, 37(5), 425–444. doi: 10.1007/s 11256-005-0018-y

³³ U.S. Commission on Civil Rights. (2018). *Broken promises: Continuing Federal funding shortfall for Native Americans*. <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>



ago (**Exhibit 2**). Additionally, only 17 percent of Native students begin college, as compared to 62 percent of all students nationwide.³⁴

Exhibit 2: Dropout Rate – Native Students vs. Other Racial or Ethnic Groups



Source: U.S. Department of Commerce, Census Bureau, American Community Survey (ACS), 2014

AIAN Students, in the Aggregate, Score Far Lower Than Their Non-Native Peers on National Assessments of Reading and Math Proficiency

In 2017, fourth-grade Native students scored an average of 21 points lower on reading assessments and an average of 14 points lower on math assessments than non-Native students; likewise, eighth-grade Native students scored an average of 14 points lower on reading assessments and an average of 17 points lower on math assessments than non-Native students. From 2003–2017, score gaps between fourth-grade Native students and non-Native students increased by 8 points for reading and 4 points for mathematics assessments while average scores of Native students in reading remained the same and average mathematics scores increased over that period. From 2003–2017, score gaps between eighth-grade Native students and non-Native students increased 1 point for reading assessments and 6 points for mathematics assessments.³⁵

The COVID-19 Pandemic Exacerbated Long-Standing Educational Disparities: Baseline Understanding for Comprehensive Remediation Still Needed

As reported in 2021–22, approximately 620,000, or 93 percent, of AIAN K–12 students were enrolled in public schools, both urban and rural, while 48,000, or 7 percent, attended schools within the BIE system. There are 183 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 37 TCUs in the United States that serve more than 160,000 AIAN students and other rural residents each year through a wide variety of academic and community-based programs.

³⁴ Martinez, D. (2014). School culture and American Indian educational outcomes. *Procedia - Social and Behavioral Sciences*, 116(21), 199–205.

³⁵ U.S. Commission on Civil Rights. (2018). *Broken promises: Continuing Federal funding shortfall for Native Americans*. <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>



When the transition happened from place-based education to virtual education during the COVID-19 pandemic in both the BIE and public schools, many education systems were caught off guard with very little curriculum effectively implemented for the 3 to 4 months at the end of the 2019–20 school year. Without having adequate time to prepare, many districts or school systems simply issued worksheets with little or no virtual connectivity and inadequate devices for remote learning. The politics of the pandemic have exacerbated confusion of whether to send children into possible harm’s way. Conversely, the lack of socialization when placed-based education was interrupted likely resulted in socioemotional, developmental, and academic challenges.

Pathway Back from Pandemic: Inertia in Education

The complexity of a worldwide pandemic and its impacts on education are not yet fully known. Thus, a complete assessment of how AIANs fared through the pandemic is necessary to determine what remediations are needed to plot a pathway back from the challenges of the pandemic. The 2021–22 school year has concluded, yet we still do not have any new information to report on the experience of American Indian students and how they fared through the pandemic. Of particular concern is if they met benchmarks, if their sociability needs are being met, if retention and matriculation were adversely impacted, and if there manifested any additional disciplinary actions. New and innovative interventions are needed to catch students up to be at or ahead of grade level. While the Federal Government did not create the pandemic, the conditions that AIAN students face as a result are nonetheless fully the responsibility of the Federal Government as part of the treaty and trust obligation. To prescribe solutions, we need a baseline understanding of the impacts of the pandemic in order to fashion responses to intervention initiatives to aid AIAN students to reach grade-level proficiency and beyond.

Broadband Connectivity to Tribal Communities is Critical

Limited broadband access and limited technology infrastructure in Native communities hampered efforts to provide effective virtual culture-based education options for Native students throughout the pandemic, particularly those who attend BIE and tribally controlled schools.

The advent of the COVID-19 pandemic laid bare the woefully inadequate broadband network connectivity available across the nation. These deficiencies are especially acute in Indian Country, often characterized by rural communities and checkerboard reservations. In addition, technology devices such as tablets or laptops were needed—both in timely distribution and maintenance, which often did not happen. While software- and website-based educational supplements have advanced as has the use of internet-based standardized assessment tools, district- and community-based technology to support these innovations has not kept pace. If necessity is the mother of invention, then temporary accommodations and innovations that have worked during the pandemic should be examined for their utility and retention. It seems limited to move backward to a face-to-face instructional environment without retaining some virtual innovations that may have worked for some students in some situations. This too should be more closely examined and developed to advance education. **Section 4.4 Study and Improve the Availability of Technology Use in Indian Country on page 45** in this report expounds further on the interface of education and technology and the role of broadband in supporting continued innovation.

In spring of 2021, the Biden Administration, championed by Vice President Kamala Harris, announced \$1 billion in broadband funding to address internet deserts in Indian Country. [Tribal](#)



[consultation](#) occurred and while the process oversubscribed the need to be greater than \$5 billion, these funds are in the process of being distributed. Further, the 2021 *Infrastructure Investment and Jobs Act* made available an additional \$2 billion in broadband funding as distributed through the National Telecommunications and Information Administration. Whether these funds will aid in meeting educational needs of Indian children depends largely on the applications submitted and whether Tribes articulated this need in their applications. Since funds are in the process of being distributed, it is too early to assess the efficacy of this initiative for meeting the educational needs of Tribal students under DoED as well as those who attend BIE schools.

Additional Infrastructure Needs Laid Bare

Prior to the pandemic, the Federal Government recognized that AIAN students were being educated in inadequate facilities. For example, 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. In addition to these infrastructure disparities that result in less-than-ideal learning conditions, 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 salaries make it difficult for quality teachers to consider careers in the BIE system.

The BIE Education Construction Program reconstructs and rehabilitates BIE schools and dormitories. There are 183 BIE schools and dormitories in 23 states that serve approximately 48,000 students from K through 12th grade. In addition, BIE owns and operates two postsecondary institutions. The Facilities Condition Index is a system BIE uses to calculate, manage, and develop construction plans for repair and rehabilitation of school facilities. In FY 2015, there were 82 schools that were considered in good condition, 46 in fair condition, and 55 in poor condition. It would take approximately \$388 million in deferred maintenance to bring the schools up to good conditions. According to the [National Congress of American Indians \(NCAI\)](#),³⁶ at the pace that BIE school construction is funded, it will take generations to catch up.

Budget Formulation

Unfortunately, the 2021 *Infrastructure Investment and Jobs Act* did not include any substantive funding for the backlog of BIE school repairs or new construction.³⁷ Additionally, the *Build Back Better Act* legislation as previously drafted did not include provisions for catching up the backlog of repairs, maintenance, and new construction for BIE schools. These needs also exist in the public schools as the main educators of AIAN students. Budget formulation efforts should be attuned to these needs, and this information should be shared through the DoEd and BIE to the appropriate congressional committees of jurisdiction. Following the waning of congressional interest in passing less ambitious *Build Back Better* legislation, if piecemeal projects are revived, the dilapidated conditions of some Tribal grant schools and public education facilities in general should be considered. At the time of writing of this report, the 2022 *Inflation Reduction Act* was enacted but again did not include any Tribal school-related infrastructure funding to meet the backlog of dilapidated Tribal schools. It also did not provide substantial funding for new Tribal

³⁶ U.S. House Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs. (2017, March 9). *Oversight: Hearing on improving and expanding infrastructure in Tribal and insular communities* [Video]. <https://naturalresources.house.gov/hearings/hearing-on-infrastructure-iana-3-9-17>

³⁷ H.R. 3684 Infrastructure Investment and Jobs Act. www.congress.gov/bill/117th-congress/house-bill/3684/text



schools. As election cycles go, entering midterm congressional elections suggests no large relief packages are impending.

AIAN Mascots: Safe and Culturally Appropriate Environment for All Students to Learn?

The use of American Indian mascots provides potentially harmful and negative impacts on AIAN students by interfering with positive self-identity and overall well-being, perpetuates negative stereotypes, encourages bullying based on race or unique political status as American Indians, and ultimately creates unhealthy learning environments where not all students feel a sense of belonging and respect. Such harmful effects are well documented through research that shows “these mascots generate undesirable effects.” They are psychologically detrimental to Native American students. For non-Native persons, they are associated with negative stereotypes of Native Americans. These mascots undermine intergroup relations by increasing negative stereotyping of AIANs.³⁸

While national sports teams like the Washington and Cleveland teams have retired their American Indian-themed team names, public education lags behind in providing a safe and culturally appropriate environment for all students to learn in. In NACIE’s annual report to Congress last year, it was reported that 18 public schools had retired their mascots with nearly 2,000 more to go.³⁹ While the constancy of this data is valid and reliable, numbers change as the Ending Indian Mascots Initiative (Indian Mascot Tracker) discovers more schools that use inappropriate American Indian mascots. This explains the variance in the following update. According to the NCAI Indian Mascot Tracker, 1,920 districts continue to have American Indian mascots, with 61 retired in 2021 and 16 thus far in 2022.⁴⁰ For a list of schools that have “changed the name,” see **APPENDIX E: National School Mascots Tracking Database**. The continued use of AIAN-themed mascots perpetuates the distinction of AIANs as the only race subjected to such practice. If the use of mascots is an act of honoring, as some claim, why are AIAN students the only group befitting from such an honor?

While educational institutions and educational standards for educational leaders change, in 2015, the National Policy Board for Educational Administration provided professional standards for educational leaders. These standards reflect expectations for effective educational leaders and include the following practices:

1. Place children at the center of education and accept responsibility for each student’s academic success and well-being [Standard 2c (S2c)].
2. Safeguard and promote the values of equity, social justice, and diversity [S2d].
3. Lead with an understanding of all students’ backgrounds and cultures [S2e].

³⁸ Davis-Delano, L. R., Gone, J. P., & Fryberg, S. A. (2020). The psychosocial effects of Native American mascots: A comprehensive review of empirical research findings. *Race Ethnicity and Education*, 23(5), 613–633. <https://www.changethemascot.org/wp-content/uploads/2020/06/Davis-Delano-Gone-Fryberg-The-Psychosocial-Effects-of-Native-Mascots...pdf#:~:text=First%2C%20they%20are%20psychologically%20detrimental%20to%20Native%20America n,relations%20by%20increasing%20negative%20stereotyping%20of%20Native%20Americans>

³⁹ National Congress of American Indians. (2021). *Mascots – State activity tracker*. <https://ncai.org/Ending.Indian.Mascots.Initiative.State.Activity.Tracker.pdf>

⁴⁰ NCAI Ending Indian Mascots Initiative. (2022). *National school mascots tracking database: The current numbers*. https://www.ncai.org/NCAI_School_Mascot_Tracking_Database_-_Overview_and_Numbers.pdf



4. Ensure each student is treated fairly, respectfully, and with an understanding of each student's culture and context [S3a].
5. Recognize, respect, and employ each student's strengths, diversity, and culture as assets for teaching and learning [S3b].
6. Promote the preparation of students to live productively in and contribute to diverse cultural contexts [S3f].
7. Confront and alter institutional biases of student marginalization and low expectations associated with race, class, culture, and language [S3e].⁴¹

A 10-minute primer on including the above standards in education is presented by Dr. Aaron Payment (then-first vice president of the NCAI) on the American Indian mascot issue from an academic, former [Tribal leader](#), and advocate perspective. This primer is accessible on the NCAI website and linked herein.⁴² Further elaborating a wealth of research, data, and Tribal leader input on the subject of American Indian mascots, the documentary *Imaging the Indian*⁴³ presents a comprehensive picture of the enduring practice of singling out American Indians to be used as derogatory sports mascots in schools and national sports stadiums across the country. It seems incongruous for educational leaders such as school superintendents, principals, teachers, school board members, or others in the educational environment to ensure these standards are met while vestiges of such practices are tolerated and equated with school pride.

While NACIE recognizes that public education is primarily a district matter as guided by the respective states with facilitation by the DoED, the AIAN educational treaty and trust obligation is a Federal matter. Therefore, the NACIE Council recommends that the DoED through guidance letters from the Secretary to states encourage schools, colleges, and universities to replace Native American-themed mascots, team names, and imagery with choices that are less likely to contribute to racially hostile environments and more likely to promote an inclusive learning environment for all students.

Further, while in 2015 the DoED, the White House Initiative, and NACIE collaborated on a comprehensive examination of this issue, the Federal Government should ascertain what additional work is necessary and complete this prior work in order to issue a report on the impact of the continued use of such mascots on the only segment of American society subjected to such practice openly in public education. This is critically important work. A great investment of time, effort, and consultation with Tribal Nations occurred such that the incompleteness of this project may be perceived as an incomplete grade or lack of substantive commitment on school climate issues impacting AIAN students. The NACIE Council understands our advisory role and that the DoED has a delicate balance with leading in the education responsibility on behalf of the country and with respect to state sovereignty. However, a real and substantive commitment to the treaty and trust obligation necessitates that the DoED provide educational opportunities and *learning moments* for states and their educational instrumentalities. We understand that at this time, states have the prerogative to voluntarily adopt recommendations carried in guidance letters from

⁴¹ National Policy Board for Educational Administration. (2015). *Professional standards for educational leaders*. http://www.npbea.org/wp-content/uploads/2017/06/Professional-Standards-for-Educational-Leaders_2015.pdf

⁴² National Congress of American Indians. (n.d.). *Ending the era of harmful "Indian" mascots* [Video]. <https://www.ncai.org/proudtobe> [time stamp ~ 30:35 to 39:40]

⁴³ Kempner, A., & West, B. (Directors). (2021). *Imagining the Indian: The Fight Against American Indian Mascoting* [Film]. A Ciesla Foundation Film. <https://imaginingtheindianfilm.org/>



Secretary Cardona. But, if this leadership does not at least promote learning through guidance letters, then states are less likely to evolve their practices related to indigenous languages and assessment and curriculum related to American Indian education.



Journeying Toward Shilgozhóó: San Carlos Unified School District's Trauma-Informed Initiative

The full story may be viewed in Appendix A.

Like all American Indian Tribes across the country, the San Carlos Apache people experienced a long history of conflict with the U.S. Government, and the Apaches are said to be the last Tribe to have surrendered. To stop the Apache from raiding American and Mexican settlements, the U.S. Government established the San Carlos Indian Reservation in 1871. The adjustment to the confined reservation life was traumatic, but by 1890 all Apache groups had submitted to the Government's reservation policy.

As part of the assimilation era, in 1900 the U.S. Government opened a boarding school on the San Carlos Apache Reservation. Apache children were taken away from their families and forced to attend this school. Children were forced to speak English only and were not allowed to speak their Apache language or practice their traditional cultural ways of life. According to the Meriam Report of 1928 and re-emphasized again in the Kennedy Report of 1969, the way in which American Indian children were being educated, by forced assimilation across the country, was a failure. In so many ways, this experiment along with other adverse colonization efforts in education continue even today as history repeats itself with American Indian students; schools on reservations are continuously among the lowest performing nationwide.

In 1965, the San Carlos Unified School District (San Carlos) was established as a state public school system. Throughout the years, the school district continued to struggle and was consistently among the lowest-performing school districts in Arizona.

In 2016, San Carlos began a comprehensive systemic reform journey under the new leadership of Superintendent Dr. Deborah Dennison and her leadership team. Since 2002, Dr. Dennison, an enrolled member of the Diné (Navajo) nation, a woman educational leader and superintendent, has successfully developed and implemented her expertise with research-based systemic reforms at other Indian reservation public schools in Arizona, which has resulted in community-wide positive growth and academic improvements. Similar to those school districts demographically, San Carlos Unified School District, now a pre-K–12 public school district located on the San Carlos Apache Indian reservation, serves approximately 1,500 students who are 99.1 percent enrolled members of the San Carlos Apache Tribe.

Since 2016, the district has experienced positive changes under the Systemic Reform Plan and Accountability Model. But like so many schools across the country, the COVID-19 pandemic only exasperated the social and emotional ills and traumas that have always affected Tribal communities. Although San Carlos's journey to become trauma-informed was still at the early stages of implementation, student needs were more successfully addressed throughout the year and a half of the school being closed. Prior to COVID's interruptions to school, the one-to-one laptop initiative was implemented, allowing learning to continue at home. In addition, the school district partnered with the local San Carlos Apache Tribal utility company to help ensure connectivity for those students without internet. Still, for the students without electricity and running water, a location for them to come with their laptops was made available. Bandwidth issues continue to hinder learning at home, but through resiliency and determination, school during COVID-19 continued. Through becoming trauma-informed, San Carlos was able to identify success coaches to work with those students who struggled with the situation at hand, whether academically or socially, on a daily basis.



I. Build and Sustain True Government-to-Government Relations with Tribal Nations through Consultation

1.1 Continually Monitor and Improve Education Consultation with Tribes to Reignite Implementation of the *ESSA* and Regulations through the *ESSA* 2016 Negotiated Rulemaking Process Inclusive of Curriculum Development and Indigenous Language Instruction and Assessment.

NACIE recommends that the Biden Administration update Congress on the implementation of consultation with Tribal Nations at the Federal, state, and local levels.

Rationale: Some believe the treaty and trust obligation is borne out of adverse experiences American Indians faced at the hands of a foreign nation or through experiences with settlers under a twisted manifest destiny ideology, then under Federal Indian policy. It is true that the history of the American Indian experience is one of the worst in world history, including what one American Indian researcher termed an “American Indian Holocaust” with a population decline from over 2 million in what is now the United States prior to contact, to about 150,000 at the turn of the 20th century.⁴⁴ Notwithstanding nearly becoming extinct, Indian treaty rights are legal obligations, not welfare nor retribution and not even a matter of social justice. In an era of anti-critical race theory and an aversion to the idea of blaming White settlers and their descendants, it is critically important to educate United States citizens of the origins of and legal basis for the treaty and trust obligation as it relates to Indian education. The requirement for consultation embedded in the *ESSA* and 2016 Negotiated Rulemaking Process places the requirement for consultation related to cultural and age-appropriate curriculum with the states. DoED, however, can play a key and instrumental role in facilitating accurate accounts in history and collaboration with the indigenous people to cross the threshold of providing such curriculum. The method for achieving this is through webinars and guidance letters to states but also in providing capacity-building Indian Education Technical Assistance Centers while adding curriculum and language assessment to their charge.

Tribal Nations were independent sovereigns prior to the formation of the United States. While treatment of the indigenous people of what is now the United States was not always respectful of Tribal sovereignty, competition for resources among the various nations intent on colonializing formulated a blueprint for original government-to-government relations. Federal U.S. Indian policy began to evolve and acknowledge Tribes as sovereigns with inherent rights to self-government, possession, and control of their territory. This led to nation-to-nation relations with the Federal Government that, through the Northwest Ordinance, extended government-to-government relations founded on mutual respect, mutual consent, and deference to internal Tribal self-governance and self-determination.⁴⁵ This relationship has been reaffirmed through

⁴⁴ Thornton, R. (1990). *American Indian holocaust and survival: A population history since 1492*. University of Oklahoma Press.

⁴⁵ Northwest Ordinance. (1787). (National Archives Microfilm Publication M332, roll 9); Miscellaneous Papers of the Continental Congress, 1774-1789; Records of the Continental and Confederation Congresses and the Constitutional Convention, 1774-1789, Record Group 360; National Archives.

<http://www.ourdocuments.gov/doc.php?flash=true&doc=8>



Supreme Court judicial precedence, legislation, and administratively through executive orders, Presidential memoranda, and proclamations.

In 2000, EO 13175⁴⁶ established modern-day government-to-government relations with Tribal Nations. It was extended through subsequent Presidential memoranda, further stipulated in the 2015 reauthorization of the *ESEA*, and most recently transformed through President Biden's *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*.⁴⁷

Tribal Nations and their elected leaders often express that the current process for consultation does not allow or encourage Tribes to have substantial, meaningful, and sustained input in the policy-making process before such policies or actions are carried out. President Biden's current Presidential memorandum, however, establishes that "[i]t is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy."

Additionally, DoED under Section 8538 of the 2015 *ESSA* requires local educational agencies (LEAs) that either (1) have 50 percent or more of their student enrollment made up of AIAN students or (2) received a Title VI Indian Education Formula Grant in the previous FY that exceeds \$40,000 to consult with Tribes prior to submitting a plan or application for certain programs. These *ESEA* programs include, but are not limited to, the following: (1) [Title II](#), Part A, Supporting Effective Institution; (2) [Title IV](#), Part B, 21st Century Schools; and (3) Title V, Part B, Subpart 2, Rural and Low-Income School Program.

NACIE recognizes that the issue of Tribal consultation is complex. True and meaningful Tribal consultation is best understood as a dynamic process rather than a static outcome. Too often, Federal consultation in general is limited in scope, after the fact or with predetermined outcomes such that the exercise of consultation takes the form of unidirectional listening sessions for which decisions are already made. Tribes recognize that government-to-government relations are often a continuation of a paternalistic approach of the Federal Government harkening back to a time when American Indians were classified as "wards of the state." From time to time, congressional or administrative action calls for Tribal input in the development of Federal regulations. As such, the scope of such input is typically posted in the *Federal Register* with no less than 90 days to gather input. The requirement for Notice and Comment, however, does not preempt nor should it supplant Tribal consultation pursuant to EO 13175 or President Biden's recent Presidential memoranda updating consultation, which calls for facilitating frequent collaborations between the White House Initiative and Tribal Nations, Alaska Native entities, and other Tribal organizations.⁴⁸

Detailed input and articulation of implementation plans are achieved through a sequential exercise of listening sessions to help formulate formal questions to be posed during Tribal consultation sessions. Even then, respect for sovereignty of Tribal governments necessitates an

⁴⁶ Exec. Order No. 13175, 3 C.F.R. (2001).

<https://www.doi.gov/sites/doi.gov/files/migrated/subsistence/upload/EO13175.pdf>

⁴⁷ The White House. (2021). *Memorandum on Tribal Consultation and strengthening nation-to-nation relationships*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

⁴⁸ The White House. (2021). *Memorandum on Tribal Consultation and strengthening nation-to-nation relationships*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>



inclusive formative approach rather than a summative conclusion for gathering Tribal consultation input. **APPENDIX C: Tribal Consultations Conceptual Framework** is illustrative of a reflexive process rather than a summative “one-and-done” conclusion. **Exhibit 3** summarizes the Tribal consultations and listening sessions conducted in 2022.

Exhibit 3: Tribal Consultations and Listening Sessions Conducted in 2022

Listening Sessions to Enhance Meaningful Services to the U.S. Office of Indian Education Title VI (Part A) Community

Date	Topic	Location / Details
March 16, 2022 1 p.m. – 3 p.m. ET	Understand Educational Technology Needs: Realities & Opportunities	Identify ways the OIE can better support and guide the Indian education community to leverage the power of technology.
March 17, 2022 1 p.m. – 3 p.m. ET	Advance the Interagency Memorandum of Agreement on Native Languages: Promising Practices & Persistent Barriers	Identify ways the agencies can work together to encourage programs and projects to include instruction on and advance, preserve, protect, and promote the rights and freedoms of Native Americans to use, practice, and develop their languages.
March 21, 2022 1 p.m. – 3 p.m. ET	Identify Social, Emotional, & Mental Health Needs: Realities & Needs	Identify ways the OIE can better embrace and support the whole Native child, including social, emotional, and mental health needs.
March 22, 2022 1 p.m. – 3 p.m. ET	Align Indian Parent Committee Needs to Efficient & Effective Supports: Learning from Vetted Practices to Resolve Barriers	Identify ways the OIE can support the role of Indian Parent Committees. The session advances Secretarial Supplemental Priority 6(a) to increase parent and family engagement.

Tribal Consultations

Date	Topic	Location / Details
June 30, 2022 1 p.m. – 4 p.m. ET	U.S. Department of Education Fiscal Year 2024 Budget Priorities	Receive meaningful input and ensure that Tribal leader views inform budget priority development.
August 23, 2022 1 p.m. – 4 p.m. ET	U.S. Department of Education Alaska Native Education (ANE) Program & the <i>Build America, Buy America Act</i> (BABAA) Requirements	Receive meaningful input on how to offer renewed support for the Department’s ANE program and obtain Tribal authorities’ perspectives regarding the Department’s implementation of BABAA requirements.



II. Honoring the Treaty and Trust Obligation for Education

2.1 Create and Fund an Assistant Secretary of Indian Education Position, Advance Access to the White House Initiative Executive Director

NACIE continues to recommend creating and funding an Assistant Secretary of Indian Education.

Rationale: As justified by NACIE last year and reinforced by NCAI and the [National Indian Education Association \(NIEA\)](#), in recognition of the Federal treaty and trust obligation and responsibility for “education,” an Assistant Secretary of Indian Education (ASIE) would provide a clear commitment, critical leadership, accountability, and collaboration at a necessary and higher level to fulfill the “education” component of the treaty and trust obligation for health, education, and social welfare. Elevated senior American Indian posts exist under the Secretary of Interior and Secretary of Health and Human Services (Assistant Secretary of Interior – Indian Affairs and Indian Health Service Director, respectively) and typically hold the rank of Executive Schedule V.

While the BIE under the Interior implements the education treaty obligation for the 7 percent of the AIAN student population who attend BIE schools, the remaining 93 percent of AIAN students deserve no less of a commitment to an education pursuant to Indian treaties. Currently, the highest-ranking position of the OIE Director is a Government Services rank of GS-15. A more senior rank of ES V would have greater latitude to ensure cross-agency collaboration. An ASIE would ensure oversight and cross-cutting teamwork in the DoED, Federal Title equity program implementation, and in collaboration with the 2021 White House Initiative.

While this recommendation was not fulfilled since the last report, the appointment of the White House Initiative Executive Director on a more permanent basis is appreciated. Given the importance of fulfillment of the treaty and trust obligation for Indian education rests with a special and substantive commitment, it is recommended that the White House Initiative Executive Director be granted greater access to the Secretary of Education to ensure proper placement and treatment of the treaty and trust obligation for Indian education.

In the transition to a new U.S. President, the NCAI, NIEA, National Indian Impacted Schools Association, and other national Indian organizations collaborated on a policy recommendation that reinforces establishment of an ASIE for Indian education.⁴⁹ In the meantime, full access to collaborate across agencies should be expressly articulated to rest with the White House Indian Education Initiative.

⁴⁹ National Congress of American Indians. (2020). *Approval of the NCAI transition plan for the presidential transition effort following the November 2020 elections.* https://ncai.org/attachments/Resolution_KTvnWQsHnrFjTxNhVRWLulVxUXYuEZflTMKIFmZrGtrfTPpgYfz_PD X-20-054%20&%20Plan.pdf



2.2 Strengthen the White House Indian Education Initiative and Other Presidential Directives and Substantively Fund Implementation

NACIE recommends Congress commit necessary funds to DoED to substantively implement various Presidential directives including EO 13175 on consultation as reaffirmed in President Biden’s Presidential memorandum, A Proclamation on Indigenous Peoples’ Day, 2021, and President Biden’s EO 14049 expanding the White House Initiative.

Rationale: Two principal Federal actions in modern times called attention to and initiated the Federal obligation to an American Indian treaty right to an education—the establishment of NACIE in the *Indian Education Act of 1972*, Pub. L. No. 92-318, 86 Stat. 235, and in 1975 *The Indian Self-Determination and Education Assistance Act* (U.S.C. 450 et seq.). The current set of Presidential directives further articulate the original EO 13175, which established government-to-government relations between the Federal Government and Indian Tribes. Presidential memoranda over several administrations reaffirm and expand the administrative intent to support the treaty and trust obligation for Indian education.

EO 13270 (2002) focused on TCUs. Subsequently, EO 13592 (2011) expanded this commitment beyond Tribal colleges to include educational opportunities for AIAN students at all levels by establishing WHIAIANE. This EO designates NACIE as the official advisory body and specifies its advisory responsibilities. The most recent Presidential memoranda issued by President Biden in January 2021 establishes timelines for ensuring all Federal agencies comply with establishing department and agency-level consultation policies. It also recommitted and expanded the Federal Government’s commitment to the White House Initiative on AIAN education with an enhanced facilitative role of NACIE to perform under the direction of the DoED with linkages to the Secretaries of Interior and Labor as co-chairs of the current White House Initiative.

President Biden’s proclamation designating the nation’s first Indigenous Peoples’ Day crystalizes a commitment to promoting an insightful knowledge of the American Indians’ role in American history. According to President Biden, “We must never forget the centuries-long campaign of violence, displacement, assimilation, and terror wrought upon Native communities and Tribal Nations throughout our country.”⁵⁰ The 2021 EO establishing the White House Initiative recognized the detrimental role of Indian mission and boarding schools by noting that “their effects and resulting trauma reverberate in Native American communities even today” as well as their lingering impact on American Indian identity, self-esteem, and resulting aspirations.⁵¹ Additionally, President Biden affirms that “we acknowledge the significant sacrifices made by Native peoples to this country—and recognize their many ongoing contributions to our Nation.”⁵² The enactment of the 2015 *ESSA* established a Federal directive

⁵⁰ The White House. (2021). *A proclamation on Indigenous Peoples’ Day, 2021*.

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/08/a-proclamation-indigenous-peoples-day-2021/>

⁵¹ The White House. (2021). *Executive Order on the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/11/executive-order-on-the-white-house-initiative-on-advancing-educational-equity-excellence-and-economic-opportunity-for-native-americans-and-strengthening-tribal-colleges-and-universities>

⁵² The White House. (2021). *A proclamation on Indigenous Peoples’ Day, 2021*.

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/08/a-proclamation-indigenous-peoples-day-2021/>



for “consultation” between states and Tribes to address issues of American Indian curriculum and indigenous languages and assessment. Full implementation of an indigenous curriculum seeks the truth. During the entire previous administration and upon repeated requests, however, NACIE was unable to secure a report on implementation or issuance of guidance to states to facilitate implementation. Fidelity to the 2015 *ESSA* warrants follow-up and oversight.

According to President Biden’s EO 14049 on the White House Initiative, “the Federal Government must put strong focus on early childhood and K–12 educational opportunities. These are important to developing and strengthening Native American communities, and they set the stage for educational advancement and career development, including opportunities to attend TCUs.”⁵³ This suggests a greater level of attention to matriculation from early childhood education to higher education inclusive of vocational technical training for those who choose this path. This greater level of commitment is not surprising given the dedicated focus of educational leaders and First Lady Dr. Jill Biden, who has visited the Diné Navajo Nation, Saginaw Chippewa Tribe, and Cherokee Nation, including touring early childhood and Tribal college facilities.

The original charge and expanded role of NACIE will require increased expenditures by DoED. As a carryforward recommendation from the last reporting year, no appreciable increased appropriations have been made to carry out these Presidential directives. Additionally, NACIE has not received increased funds to cover additional expenses of full implementation of these directives. This recommendation asks Congress to provide targeted increases for Indian education for both the DoED and BIE. An increase in NACIE’s operating budget for FY 2021–22 and thereafter is necessary to allow NACIE to fulfill its expanded responsibilities per the President’s welcomed direction.

2.3 Expand the Cross-Departmental and Multidisciplinary Collaboration as Required by EO 14049 and Restated in President Biden’s White House Initiative

NACIE recommends Congress substantively commit cross-departmental resources for the DoED and the Interior in coordination with the U.S. Departments of Justice, Health and Human Services (including the Administration for Children and Families), Labor, and related Departments, Federal agencies, and related federally established initiatives and commissions.

Rationale: In addition to reaffirming the treaty right to an education, the interagency memorandum of understanding previously noted calls upon several Federal agencies to collaborate in ensuring compliance with said treaty rights.⁵⁴ Further justification for the need for collaboration includes substance abuse issues, issues of school discipline and special education disparities, civil rights inequities, and the existing school-to-prison pipeline that

⁵³ The White House. (2021). *Executive Order on the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/11/executive-order-on-the-white-house-initiative-on-advancing-educational-equity-excellence-and-economic-opportunity-for-native-americans-and-strengthening-tribal-colleges-and-universities>

⁵⁴ U.S. Department of the Interior. (2021, November 15). *Interior Department, Federal partners commit to protect Tribal treaty rights* [Press release]. <https://www.doi.gov/pressreleases/interior-department-federal-partners-commit-protect-tribal-treaty-rights#:~:text=The%20Memorandum%20of%20Understanding%20%28MOU%29%20affirms%20the%20federal,an d%20to%20fully%20implement%20federal%20government%20treaty%20obligations>



disproportionately affects and devastates AIAN students and families. Collaboration between Federal departments and agencies is necessary when conducting listening sessions and consultations on related topics. Resources and new strategies are necessary to better address circumstances that exist in Indian Country.

The initiative 1st Kids First, with funding by the W.K. Kellogg Foundation, involved a collaboration between NIEA, NCAI, the National Indian Child Welfare Association, and the National Indian Health Board and has directly impacted student outcomes. More such initiatives should be instituted with collaboration to identify and address the needs of AIAN students. These efforts should coordinate and align with the Alyce Spotted Bear and Walter Soboleff Commission on Native Children.⁵⁵

Evidence shows that AIAN students are subjected to greater-than-average disciplinary outcomes. According to a U.S. Government Accountability Office report published in March 2018, for the 2013–2014 school year, AIAN students were subjected to higher-than-average rates of corporal punishment, in-school and out-of-school suspensions, expulsions, referrals to law enforcement, and school-related arrests.⁵⁶ Even more disturbingly, while AIAN students make up 1.1 percent of the population of early childhood education, they represent a disproportionate 1.7 percent of the out-of-school suspensions.⁵⁷ AIAN students who are overdisciplined do not learn proactive social skills. Instead, they develop an increased likelihood of challenging behavior in the future.

Overdisciplined students do not develop or enhance their capacity to function in a normalized environment, and those AIAN students may feel traumatized, which may inhibit their ability to establish relationships with essential personnel who would otherwise offer support and guidance in their educational growth. Native families, community members, and other professionals must have opportunities to engage and implement strategies for effective behavioral support practices for all students, especially for Native students receiving special education services, who are disproportionately affected by current discipline policies and practices.

2.4 Increase and Improve the Quality of Technical Assistance and Capacity Building to Support the Improvement of AIAN Education

NACIE recommends that there be an increase in the quantity and quality of technical assistance provided to LEAs, school districts, Tribes, and AIAN communities that result in total local-level school improvement, including schoolwide planning, targeted resources, strategies for parental engagement, and comprehensive professional development.

Rationale: It has been decades since Native schools and districts serving Native students have had comprehensive technical assistance, not just for Title VI programs, but for the total LEA system. The elimination of the original six Indian Education Technical Assistance Centers within the *Improving America's Schools Act*, prior to the *No Child Left Behind Act* and *ESSA*, caused a huge void in the services provided to schools at the local level.

⁵⁵ The Alyce Spotted Bear and Walter Soboleff Commission on Native Children. (n.d.). *Home*. <https://commissiononnativechildren.org/>

⁵⁶ U.S. Government Accountability Office. (2018). *K–12 Education: Discipline disparities for Black students, boys, and students with disabilities* (GAO-18-258). <https://www.gao.gov/assets/gao-18-258.pdf>

⁵⁷ U.S. Department of Education, Office for Civil Rights. (2021). *An overview of exclusionary discipline practices in public schools for the 2017–18 school year*. <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf>



Currently, Comprehensive Centers provide support to state education agencies (SEAs), but there is limited technical assistance provided to LEAs. Though some states try to provide some oversight for Title VI programs, not all states provide the level of support that many rural AIAN schools require. OIE provides grant preparation and monitoring support but does not provide the intensive in-service to AIAN schools needed to improve student academic achievement. Title VI was created to address the culturally related academic needs of Native students, but the programs are intended to supplement, not supplant, other Title funds or basic school support funds.

What many schools educating AIAN students really need is comprehensive technical assistance for school improvement with teacher and staff professional development based on research-based best practices in Indian education.

2.5 Create Positions and Indian Education Plans (as Part of State Comprehensive Plans) at the SEA Level to Oversee AIAN Education

NACIE recommends that funds be allocated for SEAs to create AIAN State Plans that will guide AIAN education; guide and analyze data on Native student outcomes; set priority goals for overall educational improvement; review and develop AIAN curriculum; provide ongoing technical assistance to LEAs; and evaluate progress toward identified goals. These plans should be developed in coordination with Tribes, Native educators, and AIAN parents and ensure that all ESSA funds are contributing to the educational success of AIAN students.

Rationale: It is evident in looking at Native student outcomes (i.e., graduation rates, academic achievement, discipline data) that greater support is needed for schools and districts educating AIAN students. The State Comprehensive Plans required within *ESSA* rarely describe in detail strategies and resources for directly improving Native student outcomes. However, states like Oregon, Montana, Washington, and a few others have created AIAN state-level plans, as well as AIAN Advisory Councils that guide ongoing improvement efforts. Many other states lack these important infrastructures.

It is critical that funds be dedicated to the creation of AIAN State Plans and AIAN Advisory Councils, as well as the hiring of key Native personnel at the SEA level to oversee the ongoing implementation of such plans, strategies, and resources. Funds are also needed to develop and implement AIAN history and cultural lesson plans. These funds and infrastructures help the Federal Government fulfill its trust responsibility for Indian education promised in treaties.

2.6 Supplement, Not Supplant, Title VI Indian Education Funds and Services

NACIE recommends that Title programs within ESEA include language that emphasizes the importance of coordination with Title VI, the Indian Education Act, to ensure that Title VI funds are not used to supplant other Title funds and services for Native students. Until these language changes are made to the ESEA legislation, additional technical assistance is necessary for SEAs and LEAs to make sure all funds are used appropriately.

Rationale: Federal laws prohibit use of Indian education funds for district functions. Title VI uses Indian education grants in targeted ways, adhering to the Federal Government's trust responsibility for Tribes and AIAN students. These funds should focus on the culturally related academic needs of AIAN students to promote the vitality of Native languages and cultures, as well as the health of Native people (as advocated by the United Nations Declaration on the Rights of Indigenous Peoples and treaties between Tribes and the Federal Government). In



addition, Native students may also qualify as migrant, bilingual ([Title III](#)), high-poverty (Title I), and special needs students. All these Title program funds should be utilized in addition to Title VI funds because each Title addresses something different. Also, all these other Titles have higher per-pupil allocations to address student outcomes, much more than Title VI does, with Title VI supplementing the other Titles.

Section 3115(g) of Title III of the ESEA (hereafter “Title III”) provides as follows: SUPPLEMENT, NOT SUPPLANT -- Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for limited English proficient children and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.⁵⁸

In practice, the prohibition against supplanting under Title III means that recipients may not use those funds to pay for services that, in the absence of Title III funds, would be necessary to be provided by other Federal, state, or local funds.

There are instances at both the SEA and LEA levels where Native students qualify but are not included in the services that specific other Titles are required to provide. NACIE is concerned that budgeted and unfilled vacancies at DoED and OIE have reduced the capacity to monitor all ESEA grant programs to ensure that Title funds are used appropriately. Additional funds are needed to provide this much-needed oversight.

2.7 Increase the Hiring of AIAN Professionals as Experts and Reviewers, as well as Technical Assistance Providers, and Build Capacity for all Reviewers to be Culturally and Linguistically Qualified

NACIE recommends that Congress, through legislation, advocate for the hiring of AIAN professionals as experts and reviewers, as well as for technical assistance providers. This includes, but is not limited to, hiring for OIE discretionary grant administration, Comprehensive Centers, equity assistance centers, and other technical assistance centers.

Rationale: Native expert reviewers bring a unique and invaluable perspective to the evaluation of discretionary programs and services that will have a powerful and knowledgeable impact on Native students. Native expert reviewers increase the likelihood that Native history and culture will be understood and respected in the decision-making process. Whenever possible, NACIE encourages Congress to include in legislation Native subject matter experts as discretionary grant field reviewers and evaluators for all the Title programs beyond Title VI within ESSA.

2.8 Professional Development for Teachers, Staff, and Parents of AIAN Students

NACIE recommends that funds and resources be designated for increasing the quantity and quality of educational professional development for teachers, district staff, and AIAN parents, focusing on culturally related academic achievement improvement.

Rationale: Research is consistent and clear that the greatest single variable to improve student academic achievement is the quality of the classroom teacher. Additional research acknowledges

⁵⁸ U.S. Department of Education. (n.d.). *Supplement not supplant provision of Title III of the ESEA*. <https://www2.ed.gov/programs/sfgp/supplefinalattach2.pdf>



the powerful impact that parental engagement has on student attitudes toward school, academic achievement, attendance, graduation rates, etc. Improving both teacher capacity and AIAN parental support for learning requires ongoing, high-quality, culturally compatible professional development. In addition, as states like Oregon, Washington, Montana, New Mexico, and others continue to develop culturally appropriate history and culture curriculum, there is an expanded need for teacher and staff in-service training on the appropriate use of those newly created classroom materials.

Similarly, developing and delivering Native parental engagement strategies that focus on teaching and learning is critical to overcoming the long history of Federal policies focusing on removing AIAN children from their families and placing them in boarding schools. Research identifies the role of parents, aligned with classroom instruction, as an important variable for improving Native student academic achievement. Significant funds are necessary to expand opportunities for AIAN parental engagement workshops.

2.9 Formal Consultation with Tribal Nations to Clarify the Definition of American Indian and Alaska Natives and the Categorical Inclusion of Native Hawaiians

NACIE recommends that the DoED request collaboration with the Office of Management and Budget and appropriate Federal administrative agencies and departments to operationalize a definition of AIAN at all levels to analyze and report data for various categories of AIANs. The results should be put to formal Tribal consultation with AIAN Tribes concerning the appropriate scope of this critical definition.

Rationale: There is a critical need for accurate counts of Native students, not only because it dramatically impacts the funding of program allocations but also because it is needed to collect reliable data on program effectiveness, challenges, and successes. Without properly operationalizing “AIAN” as a category for data reporting, any analyses of academic performance or graduation statistics are likely to be spurious as an overcount, undercount, or false positives or negatives, making inferences unreliable and with questionable validity.

There are various government criteria and eligibility requirements that define AIANs and by extension AIAN students. Enumerating the number of AIANs is incredibly complex due in large part to forced assimilation policy and reluctance to self-report (**elaborated under the header “U.S. Census Chronic Undercounts and Error Rate for Indian Country” below**). One segment of the population is the number who are registered citizens of the 574 federally recognized Indian Tribes. Add to this the population who are registered members of state-recognized Tribes and those seeking Federal recognition as a Tribal Nation. Confounding the total is the voluminous population who self-report and may or may not trace descendency to a Federal- or state-recognized Tribe. Tribal enrollment in a federally recognized Tribe is an actual statistic but not previously recorded in any reliable or official manner including in the U.S. Census. However, the recent distribution of relief funds under the *American Rescue Plan Act of 2021* based on certified Tribal counts resulted in a comprehensive total count of citizens of federally recognized Tribes. Additionally, the Tribal-Interior Budget Council situated under the Interior has taken preliminary steps to formulate a comprehensive data collection initiative of the population of citizens of federally recognized Tribes.



U.S. Census Chronic Undercounts and Error Rate for Indian Country

To elaborate the complexities of the AIAN count, changes from 2010 to 2020 in the U.S. Census count of AIANs in combination population increased by 160 percent. What portion of this count is attributable to Tribal Nation enrollments is not immediately discernable as the U.S. Census is self-reported and not a verified count as is actual Tribal enrollments. In 2020, the AIAN population (3.7 million) accounted for 1.1 percent of all people living in the United States compared with 0.9 percent (2.9 million) in 2010. An additional 5.9 million people self-identified as AIAN and another race group in 2020. Together, the AIAN alone or in combination population comprised 9.7 million people (2.9 percent of the total population) in 2020, up from 5.2 million (1.7 percent) in 2010. The AIAN alone population grew by 27.1 percent, and the AIAN in combination population grew by 160 percent since 2010.⁵⁹

The current AIAN population or heritage self-report efforts were developed and promulgated without full consultation with federally recognized Tribal Nations or reconciliation against Tribal enrollment populations. As a result, the category of AIAN is broader than the legal relationship between AIAN peoples and the U.S. Government through the treaty and trust obligation. Specifically, the current definition has included the original peoples of South America and Central America. These groups do not have treaties, agreements, statutes, or other historical legal relationships with the U.S. Government, and their well-being is not contemplated under the trust doctrine.

A look at the categories is instructive. First, individuals are asked to identify as either Hispanic or Latino or not Hispanic or Latino. Second, individuals are asked to indicate one or more races. AIAN (a person having origins in any of the original peoples of North and South America (including Central America) may maintain cultural identification through Tribal affiliations or community attachment.

Categorical Reporting to Ensure Full Accounting

DoED and the Office of Management and Budget should consult Tribal Nations to assure that the AIAN category is neither over- nor under-inclusive. NACIE asks that Congress cooperate with these Government entities in their important work in arriving at a valid and reliable AIAN count statistic with various strata of other related populations under the broader umbrella of “American Indian.”⁶⁰ All data reporting should reflect these categories.

As an example, the Indian Health Service uses a narrower definition applicable to AIANs who have an affiliation with a Tribal group of the United States to establish eligibility for their programs. The Indian Health Service does not include indigenous people of Latin America or Canada.

(1) irrespective of whether he or she lives on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those Tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendent, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or is a

⁵⁹ Norris, T., Vines, P. L., & Hoeffel, E. M. (2012). *The American Indian and Alaska Native population: 2010* (C2010BR-10). U.S. Census Bureau. <https://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>

⁶⁰ Regional Educational Laboratory Northwest. (n.d.). *Native youth count*. U.S. Department of Education. <https://ies.ed.gov/ncee/edlabs/regions/northwest/pdf/aian-enrollment.pdf>



California Indian, or is considered by the Secretary of the Interior to be an Indian for any purpose, or is determined to be an Indian under regulations promulgated by the Secretary of HHS.⁶¹

2.10 Create a Native Student Identity and Resiliency Task Force

NACIE recommends that a Native Student Identity and Resiliency Task Force be created to review and provide the necessary education and understanding of this social phenomenon and lasting impact on student counts and lingering intergenerational and historical trauma.

Rationale: Misclassification and underrepresentation of AIAN students is exacerbated by American Indian identity, which is complex as a result of contradictory and overlapping Federal Indian policies of assimilation to self-determination. First situated in the United States Department of War, then the [Bureau of Indian Affairs](#), the Indian boarding school pedagogy was “kill the Indian to save the man.” Not surprisingly, resulting American Indian identity issues are present and are understood through general theory of social anomie,⁶² through the lens of historical and intergenerational trauma,⁶³ further explained by immigrant and ethnic studies,⁶⁴ and perpetuated through the systemic lack of opportunity for American Indian communities understood under the lens of Tribal critical race theory.⁶⁵

The results of the *Federal Indian Boarding School Investigative Report* (Newland Report) reinforce recommendations made in the NACIE 2021–22 Annual Report to Congress with respect to establishing a Native Student Identity and Resiliency Task Force. The Federal Indian boarding school system deployed systematic militarized and identity-alteration methodologies to attempt to assimilate AIAN children through education, including but not limited to the following:

- renaming Indian children from Indian to English names;
- cutting the hair of Indian children;
- discouraging or preventing the use of American Indian, Alaska Native, and Native Hawaiian languages, religions, and cultural practices; and
- organizing Indian and Native Hawaiian children into units to perform military drills.

⁶¹ Congressional Research Service. (2016). *The Indian Health Service (IHS): An overview*.

<https://www.tribalseg.gov/wp-content/uploads/2021/05/IHS-Overview.pdf>

⁶² Young, T. J. (1991). Suicide and homicide among Native Americans: Anomie or social learning? *Psychological Reports*, 68(3), 1137–8.

⁶³ Newbreast, T. (2011). *Historical trauma and Native Americans: Training of trainer workshop*. Chico: CA. Connecting Circles of Care; Brave Heart, M. Y. H. (2000). Wakiksuyapi: Carrying the historical trauma of the Lakota. *Tulane Studies in Social Welfare*, 21(22), 245–266.; Brave Heart, M. Y. H. (2004). The historical trauma response among Natives and its relationship to substance abuse: A Lakota illustration. *Journal of Psychoactive Drugs*, 35(1), 7–13.

⁶⁴ Bender, E., & Kagiwada, G. (1968). Hansen’s law of “third-generation return” and the study of American religious-ethnic groups. *Phylon*, 29(4), 360–370.

⁶⁵ Brayboy, B. M. J. (2005). Toward a Tribal critical race theory in education. *The Urban Review*, 37(5), 425–444. doi: 10.1007/s 11256-005-0018-y; Williams, R. (2011). *The role of leadership in Native American student persistence and graduation: A case study of one Tribal college* (Accession No. 3472237) [Doctoral dissertation, Mercer University]. ProQuest.



The outcomes of historical and intergenerational trauma are real. The cultural discontinuity and social anomie results explain the worst-of-the-worst statistical outcomes. The above list, drawn directly from the Newland Report, makes clear that the experiences of the vast majority of American Indian pupils during the nearly 166 years of this historical erasure of identity and culture warrant a renewed commitment to not only study the problem, but to identify solutions. Even military soldiers receive a debriefing and resocialization upon returning from war. While PTSD remains a major issue for military veterans, no such debriefing has ever occurred for American Indians who experience similar psychological denigrating experiences at the hands of the Federal Government.

As the original migratory people of this land, AIANs and by extension AIAN students continue to be engaged in their traditional ways of life by traveling across school district boundaries to fulfill their historical practices of fishing, indigenous food gathering, agricultural work, and forestry stewardship. Further, as a possible indicator of social anomie—namely transience—tracking student academic progress and retention becomes intricate.

As Indian Country brings a unique and invaluable experience, it is imperative that the DoED develop an Indian Education Recruitment and Outreach Plan, including central and state staff positions, in collaboration with DoED's OIE. It is incumbent on DoED to fulfill its trust responsibility in ensuring Native students no longer experience invisibility and erasure in this unique educational opportunity. If historical and intergenerational trauma explain the worst-of-the-worst statistics as borne out in the Broken Promises Report, then solutions must start with addressing issues of Indian identity starting with follow-through with substantive and accurate curriculum inclusion of AIANs as recommended by the *ESSA 2016* Negotiated Rulemaking Process.

Further, Native students and their families' indigenous ways of life meet the eligibility criteria of the [Migrant Education Program](#) services. However, Native students in Tribal and urban communities have not fully benefitted from the comprehensive services provided.

2.11 Expand Federal Accountability for Data Collection and Assessment

NACIE recommends that Congress continue supporting the [National Indian Education Study \(NIES\)](#) and other opportunities to increase participation of AIAN students in other data collection efforts of the National Center for Education Statistics (NCES). This should include both public schools and BIE schools and staff within all future iterations of the Schools and Staffing Survey. The practice of oversampling should continue along with analyses and publication of the results of BIE schools and public schools.

Rationale: First, it is important to recognize both the collective Tribal and individual obligation for Indian education to both the respective Tribal Nation but also the individual AIAN student who is dependent upon the fulfillment of the treaty and trust obligation for education. While various efforts at data collection, analysis, and policy recommendation exist for evaluating the efficacy of the treaty and trust obligation for Indian education, an accurate accounting of academic performance collectively and individually remains elusive. Failure to adequately include and properly operationalize AIAN students in the collection, analysis, and dissemination of national-level educational data represents a failure of the Federal Government to observe and reflexively evaluate its treaty and trust obligation for Indian education.



Admittedly, an accurate count confounded by issues of Indian identity represent a unique challenge of operationalizing research related to AIANs. Without accurate and complete data collection, analysis, and reporting, it is impossible to know with any certainty the extent and success to which AIAN students are being educated. Further, effectively addressing persistent inequities or identifying schools that are educating AIAN students in academically and culturally appropriate ways becomes diffuse. Since DoED collects data on all other students, it is the Department's responsibility to take additional and appropriate means to include AIAN students, including oversampling, if necessary. Given the *small n* data⁶⁶ challenges with statistics analyses, oversampling is important to ensure valid and reliable data.

The NCES should continue and expand analysis and dissemination of data pertaining to Native students by the NIES. Any diminishment of this effort could result in data that is collected but made available only via an electronic format. Given the lack of technological access and capacity issues in many parts of Indian Country, this may impact the overall accessibility and utility of these important data. This may also compromise the work of researchers who depend on these data to accurately portray the educational conditions and outcomes of AIAN students. The NCES should continue inclusion of BIE-affiliated schools and staff in the Schools and Staffing Survey as the loss of these data would have significant, negative impacts on both practitioners and researchers as they work to understand and respond to the educational conditions and subsequent outcomes of AIAN students within these schools.

Finally, Tribal Nations and Native organizations should have more frequent access to training in data collection and analysis, either by the NCES or another provider. DoED should emphasize Indian preference in the selection process for data collectors and analysts to build capacity in Tribal communities. If possible, a team approach to data handling should be utilized.

2.12 Continue to Reclaim and Strengthen Native Languages

A. Expand Funding

NACIE recommends that Congress enact legislation that provides financial support for providing AIAN students with an education that honors their unique Native languages, histories, and cultures while preparing them for a successful future from pre-birth to lifelong learning.

Rationale: AIAN languages are not spoken anywhere else in the world, and if they are not enhanced, they will disappear forever. In Native communities across the country, Native languages are in rapid decline. Successful language acquisition and proficiency by children depends on a community of proficient language speakers to take hold and flourish.

U.S. assimilation policies have created historical trauma and damaged AIAN identity. Numerous Federal reports conclude that language and culture ameliorate the negative outcomes of Federal Indian policy. Evidence-based research shows that Native language revitalization is a key empowerment tool for AIAN communities.

Tribes should be encouraged and supported to develop and implement programs appropriate for adult members wishing to learn or deepen their knowledge of traditional languages. Learning is a holistic enterprise that intersects all aspects of children's lives. Therefore, NACIE asks Congress

⁶⁶ Sauro, J. (2013). *Best practices for using statistics on small sample sizes*. MeasuringU. <https://measuringu.com/small-n/>



to urge and support increased collaboration by all Federal entities that have an impact on Native language revitalization, including but not limited to DoED, the Bureau of Indian Affairs/BIE, and the U.S. Departments of Health and Human Services and Justice. In this way, Native students studying in Tribal immersion and language-medium schools or other educational environments will be able to enhance and reinforce their language-learning at home and in their communities.

Congress should acknowledge and insist that executive orders such as EO 14049 and relevant Federal legislation should preempt state laws that impinge upon or disrupt the educational programs of AIAN students and their learning of their Native languages and cultures. Congress needs to enact legislation to expand funding for indigenous language acquisition and proficiency of adult Tribal members. There is also tremendous need to continue to support language acquisition and proficiency for Native students through culturally responsive programs, including, but not limited to, immersion schools. Funding should be expanded within *ESSA* Title III (Language Instruction for English Learners and Immigrant Students) in addition to Title VI funding.

Further, Congress should see that the appropriate Federal entities strenuously enforce Federal laws and regulations aimed at protecting indigenous peoples' cultures and languages, such as the [*Native American Languages Act \(NALA\)*](#).

B. Clarify the Distinction Between Native Languages vs. World Languages

NACIE recommends additional congressional appropriations are needed for DoED to intentionally focus funds and supports for Native schools and communities that are working to revitalize Native languages, especially when used as the medium for instruction.

Rationale: Not all SEAs and LEAs have the capacity to fully support the development and continuation of Native language revitalization efforts. Still, where there are those that do have the interest and involvement of Native speakers, there is a need for articulated agreements between SEAs, LEAs, and Tribes.

Further, NACIE recommends that Congress recognize that Native language be classified under world languages instead of as “foreign” languages so that Native languages may be allowed to satisfy non-English language proficiency requirements. Finally, NACIE recommends that Congress find ways (such as the Competitive Grants for State Assessments) to encourage DoED to establish Native language assessment supports for SEAs and LEAs.

C. Expand the Certification of AIAN Language Speakers

NACIE recommends that Congress recognize the expertise of Native language speakers as proficient and as highly qualified in their respective language area and to recognize Tribal authority to establish a certification endorsement.

Rationale: Native language speakers (particularly the Tribal Elders) teaching Native languages in public schools should be exempt from any requirement in the reauthorization of *ESSA* that would be detrimental to Native language instructors. They should be valued for the unique expertise that they bring. When possible, the fluent speaker should be paired with a certified teacher to co-teach and to incorporate the subject matter expert's knowledge of the curriculum and instructional practices.

Asking a Tribal Elder to go back to school through a teacher certification program is unrealistic and unlikely to happen. These highly qualified experts in Native languages can only be certified



for their specific language expertise through their respective Tribes. Though this certification exists in some states, it is not universally employed by all SEAs that have significant AIAN populations.

D. The Development of a Native American Languages Resource Center

*NACIE strongly recommends that a Native American Languages Resource Center be enacted (similar to S. 4510 from the 116th Congress) for the purpose of protecting and stabilizing Native American languages education.*⁶⁷

Rationale: Congress has funded 16 Centers for Foreign Language Excellence in various universities to provide support for foreign language learning. However, no such center has been established for Native American languages despite enactment of the *NALA* and the existence of a unique legal relationship and trust responsibility of the Federal Government to Native people.

With the passage of the *NALA* in 1990, it has been Federal policy to not only allow but to promote the inherent right of Native students to be educated in their Native languages. This represents a major reversal of previous policy whereby the Federal Government used education to eliminate Native languages. For example, during the Indian boarding school era, the Federal Government and churches established boarding schools with the intent to advance the assimilationist policies toward Indian children, including the suppression and genocide of Native languages and cultures. In the 1868 *Report to the President by the Indian Peace Commission*, it asserted: “**Schools should be established, which children should be required to attend; their barbarous dialect should be blotted out and the English language substituted.**”⁶⁸

Since the 1990s, the *NALA* has been incorporated into reauthorizations of the *ESEA*, including in the most recent 2015 reauthorization. The *ESSA* continues important distinctive provisions in Title III Sections 3124 and 3127, which allow for the use of Native languages as the medium of instruction and affirms the right of Native children to express themselves and be educated and assessed in their language. Native language-medium schools often face barriers that other educational institutions do not. Individual state and local school-governing entities often lack familiarity of the provisions within the *NALA*, resulting in poor and uneven implementation of its policies.

Further, the results of the 2022 Newland Report (*Federal Indian Boarding School Initiative Investigative Report*) may very likely result in a policy and legislative focus to vastly expand the *Esther Martinez Native American Languages Preservation Act* to include new, innovative, and much more pervasive provisions for revitalizing AIAN and Hawaiian languages in order to ameliorate the negative impacts of Federal Indian policy and the outcomes as demonstrated in the U.S. Commission on Civil Rights Broken Promises Report. A 166-year systemic adverse impact on Native languages will take a similar national commitment to erase this stain.

⁶⁷ [S.4510 - 116th Congress \(2019-2020\): Native American Language Resource Center Act | Congress.gov | Library of Congress](#)

⁶⁸ Indian Peace Commission. (1868). *Report to the President by the Indian Peace Commission* (pp. 16–17). <https://www.afsc.org/sites/default/files/documents/Commission%20Report%201868.pdf>



III. Requests for Distinct Funding for Native Education

3.1 Clarify and Maintain the Distinction Between Title VI and Johnson-O'Malley Programs

NACIE recommends that Congress maintain its support for both the Indian Education Act (Title VI) and JOM programs with distinct purposes, services, and funding requirements. NACIE also asks that student counts of eligible AIAN students within these programs be accurate and maintained annually.

Rationale: DoED administers the implementation of the Title VI programs, and the BIE oversees the JOM program. There are distinct differences in how students are identified, which services are provided, and what student outcomes are established. BIE and DoED have different eligibility requirements, purposes, and allowable costs. Both the National Johnson-O'Malley Association and the NIEA support these distinctions.

The *JOM Act* was passed in 1934 and gave the Federal Government the authorization to contract directly with Tribes. However, until the 1970s most of the contracts were given to states and public-school districts. These funds could be used to cover parental costs, counseling, and other services for AIAN students on or near reservation lands. JOM students must be a member of a federally recognized Tribe or be one-fourth or more Indian and be 3 years old to Grade 12 students. Native parental involvement evolved over time, including the ability to approve or disapprove these programs.

The *Indian Education Act of 1972* authorized new supplemental funds for programs and services for AIAN students, including Formula Grants to meet their unique educational and culturally related needs. This new legislation required open consultation by state public school districts with AIAN parents. These funds could be used by school districts anywhere that had at least 10 or more Native students. Title VI eligibility requires that either the K–12 student, a parent, or grandparent be an enrolled member in a federally recognized or state-recognized Indian Tribe or Alaska Native community. Initially, when this legislation was enacted, it included funds for Adult Basic Education, competitive grants for targeted purposes, scholarships for Natives going into education, Native teacher training programs, and six regional technical assistance service centers. Most of these components have been discontinued.

As part of Congress's annual budget submission, NACIE requests that Congress direct the BIE to submit a report on JOM program student counts, results, and accomplishments to ensure Congress is annually informed about the positive impacts and outstanding achievements of the supplemental education programs provided by JOM funds.

3.2 Advance Appropriations for Indian Education Funding as a Federal Treaty and Trust Obligation for JOM and Title VI Indian Education

As a principal recommendation, to fully honor the treaty and trust obligation for the promise of education as a Federal right in exchange for hundreds of millions of acres of ceded Indian lands, Indian education funds appropriated by Congress in fulfillment of this great promise should be advance appropriated, treated as mandatory rather than discretionary funds, and not subject to sequestration restrictions imposed by the Office of Management and Budget. Nor should Indian education funding be impacted by Federal funding uncertainties during budget negotiations or



under continuing resolutions. It is recognized that classification as mandatory funding is a heavy lift to achieve. Indian education funding, therefore, should be immediately advance appropriated to stabilize Indian education funding for both Tribes and school districts.

The following rationale includes justification for advance appropriations for JOM program funding to Tribes and Impact Aid funding to school districts that qualify, but also a general statement that Title VI Indian Education funding to school districts that qualify also be advanced appropriated. Tribes generally manage several fiscal cycles simultaneously such that any delays in Indian education funding require Tribes to advance fund from supplemental Tribal funds to cover for JOM funds not received timely. Given Tribes are not fully funded by the Federal Government, this means Tribes must shift priorities to cover Federal funding shortfalls. Title VI Indian Education and Title VII Impact Aid funds that are interrupted and off cycle puts Indian education programming in a quandary as public schools generally do not have discretionary funds to cover temporary shortfalls. It is important to note that advance appropriations do not increase annual funding, they merely make it predicable for school districts to plan for the fiscal year (which matches a school-year calendar).

NACIE recommends that Congress forward fund the JOM program.

Rationale: The purpose of the JOM program is to meet specialized and unique educational needs of Indian children attending public and some charter schools through supplemental education programs. Designed at the local level under the purview of a local Indian Education Committee where they provide academic support, dropout prevention, the purchase of school supplies, and Native cultural and language enrichment, particularly for students who do not live near Tribal land, JOM funding may be the only way students can access Tribal language and culture programs. Across Indian Country, Indian Tribes administered their JOM program through P.L. 93-638 self-determination contracts, P.L.106-260 self-governance compacts, or P.L. 102-477 employment, training, and related services plans. Unfortunately, administration of JOM programs is routinely disrupted by Federal funding distribution timelines. An April 2020 Government Accountability Office report found that the

“disbursements of JOM funds ... are routinely provided later than expected based on contractors’ past experience. For example, 27 school contractors did not receive a portion of their calendar year 2018 funding until September 2019 ... Further, some of these contractors did not receive any disbursement in the 2019 calendar year until August, months after funds are typically disbursed ... (T)he delay in distribution of funds negatively affects the contractor’s ability to plan their JOM activities and provide timely services for their students.”⁶⁹

Further, the Federal Government routinely operates under continuing resolutions and regular Government shutdowns. The solution to these issues is to appropriate the JOM program in advance, which would achieve several outcomes:

1. provide funding a year in advance of operations;
2. make funds available on July 1 to align with state public school education budget cycles;

⁶⁹ U.S. Government Accountability Office. (2020). *Bureau of Indian Education: Actions needed to improve management of a Supplemental Education Program* (GAO-20-308). <https://www.gao.gov/assets/gao-20-308.pdf>



3. allow Indian Tribes and other contractors to disburse grant funds ahead of the academic year; and
4. shield the grant from Continuing Resolutions and Government shutdowns.

There is precedent in the form of forward funding of Federal Indian education programs, including BIE-funded schools, including P.L. 93-638 and P.L. 100-297 schools (25 U.S.C. §2010). Tribally controlled colleges and universities (25 U.S.C. 1810) are all forward funded.

3.3 Increase Commitment and Funding for the Title VI OIE in Support of the Unique Culturally Related Academic and Linguistic Needs of AIAN Students

NACIE recommends that Congress increase funding for the OIE to support the unique cultural, language, and educational needs of AIAN students.

Rationale: As a result of the Federal trust responsibility, Title VI funding supplements basic school support dollars and other Federal *ESSA* programs. The Title VI, Part A, program is significantly underfunded and does not counter the costs of inflation and sequestration. Since 93 percent of Native students attend public schools and Title VI services supplement those provided for AIAN students in regular school programs, there continues to be a critical need for funding at an appropriate level so that AIAN students have an equal educational opportunity as their non-Native peers. At present levels of funding, the needs of AIAN education can only partly be addressed. The annual funding for Title VI Formula Grants has remained stagnant for the last 10 years. Increasing funding will help ensure the full participation of all eligible AIAN students.

Exhibit 4 summarizes the Title VI, Part A, congressional appropriations for FY 2020 and 2021 and proposed funding for FY 2022.

Exhibit 4: Title VI, Part A – U.S. House and Senate Funds for FY 2020 through FY 2022

Funding Type	FY 2020 ¹	FY 2021 ¹	FY 2022
Formula Grants for Indian Children	\$106,525,000	\$106,525,000	TBD
Special Programs for Indian Children	\$67,993,000	\$67,993,000	\$67,993,000
National Activities	\$7,365,000	\$7,865,000	TBD

¹ Corrected from the previous report.

The President’s proposed budget for FY 2022 includes a \$36.5 billion investment in Title I grants for under-resourced schools and approximately \$20 million in discretionary grants to Tribal educational agencies under the *ESEA* American Rescue Plan – American Indian Resilience in Education program.⁷⁰

Finally, an audit is needed into per-pupil expenditures of Title VI as compared to the per-pupil expenditures of the other *ESSA* Titles. The allocation of funds for Title VI is significantly less than all other Titles. This severely limits the ability of the Title VI, Part A, programs to provide services for AIAN students.

⁷⁰ Office of Management and Budget. (2021). *Budget of the U.S. Government: Fiscal year 2022*. www.whitehouse.gov/wp-content/uploads/2021/05/budget_fy22.pdf



3.4 Increase Funding and Support for Impact Aid, Title VII

A. Advance Appropriations for Indian Education Funding as a Federal Treaty and Trust Obligation for Title VII Impact Aid

NACIE recommends that Congress advance appropriate the Title VII Impact Aid Program.

Rationale: Advance appropriations would provide funding stability for school districts on or near Indian lands, as they would know in July [typical school year budget cycle beginning] what their payments would be for the upcoming school year. There is nothing in the Impact Aid – Title VII legislation that prohibits it from being advance appropriated. If Impact Aid was advance appropriated, school districts receiving those funds would be much better equipped to budget and prepare plans that will positively impact student learning opportunities to better confront the challenges that exist for Indian County and public education in general. Currently, these school districts have no idea what to budget for Impact Aid as they prepare for each school year, especially with a sequester in place. As noted above, schools operate a fiscal year to align with their school calendar, generally from July 1st through June 30th with adjustments after the fall student count (typically the fourth Friday). Budgets are generally approved during school district annual organizational meetings prior to the June 30th deadline. Thus, school district budgets are formulated by no later than April or May for enactment before the end of the fiscal/school calendar year. Advance appropriations for Title VII Impact Aid would ensure much greater precision in budget formulation and planning. Additionally, the Impact Aid Program is the only non-competitive education program that is not forward funded in DoED. This would establish parity with other non-competitive programs.

B. Congress Needs to Provide Effective Oversight of DoED to Monitor Implementation of the Impact Aid, Title VII, Indian Policies and Procedures to Ensure LEA Accountability to Tribal Leaders and Parents of Indian Children

NACIE recommends that Congress provide effective oversight of DoED to monitor implementation of the Impact Aid, Title VII, Indian Policies and Procedures to ensure LEA accountability to Tribal leaders and parents of Indian children.

Rationale: Regulations governing the Title VII Indian Policies and Procedures process as provided for in Section 7004 of the Impact Aid statute were previously amended to be more accountable to greater review and approval from Tribal education departments and Tribal leaders. DoED has been forthright in overseeing the implementation of the regulations to insure meaningful Tribal input. NACIE strongly urges DoED to continue to closely monitor the implementation of the policies and procedures now in place to ensure that Tribal leaders and parents of AIAN children are assured meaningful input into their school's curriculum and student activities and furthermore assure school policies historically resulting in a disproportionate impact on AIAN students, (i.e., behavior management, disciplinary strategies, attendance, and graduation rates) are addressed. NACIE supports the Impact Aid, Title VII, Program Office through their Indian Policies and Procedures review process needs to ensure that school districts provide in written form any and all comments from consultation between a Tribe and the school district. In addition, the Impact Aid, Title VII, Program Office should make every effort to provide technical assistance to both Tribal leaders and LEAs at their request to ensure that the requirements as per the regulations are being followed.



C. Congress Needs to Ensure That All AIAN Children, No Matter Their Educational Settings, Are Provided the Resources That Will Allow for Improved Access to a Quality Education That Supports Effective Learning and Cultural and Language Retention

NACIE recommends that Congress pass H.R. 5255, the Advancing Toward Impact Aid Full Funding Act, and provide increases to the Indian School Equalization Program formula for AIAN children enrolled in tribally controlled schools.

Rationale: Public schools on or near Indian lands are heavily reliant on Federal Impact Aid to replace lost revenue from being located on nontaxable Federal lands. Congress has provided a stable funding level for Section 7003 of the Impact Aid Program over the past 4 years, but the program remains underfunded. In FY 2021, the Impact Aid Program was funded at approximately 60 percent of the amount needed to ensure that all school districts are fully funded. The importance of Impact Aid to school districts can best be underscored when program reductions occur. The reduction in Impact Aid payments during the 2012–13 school year resulted in huge staff layoffs and program cutbacks. The Impact Aid, Title VII, must be shielded from any cuts as the result of any future discretionary spending reductions, and Congress should ensure that the needs-based formula [Learning Opportunity Threshold \(LOT\)](#) percentage payout remains in the 95–100 percent range with the goal being to make certain that future payments exceed a 100 percent LOT payout. NACIE supports H.R. 5255, the *Advancing Toward Impact Aid Full Funding Act*, which authorizes Congress to fully fund the Impact Aid Basic Support formula, fund a proportional increase to the Federal property (Section 7002), and increase funding for federally connected students with disabilities throughout the country.

With more than 92–93 percent of AIAN children attending public school districts across the country, it is inevitable that including Impact Aid, Title VII, funding in any future appropriation bills continues to remain in the 95–100 percent range. NACIE applauds Congress for funding the Impact Aid Program at just over 100 percent LOT in FY 2020. With the passage of H.R. 5255, it would establish a standard that will ensure that the LOT percentage payout will continue to climb above 100 percent maximum payout to where it should be—full funding. Moreover, the uncertainty of funding and timely payments has added to the existing challenges around recruitment and retention of highly qualified teachers and administrators. The staff and teacher layoffs contribute to larger class sizes and overcrowding, which further adds to the prevailing challenges for Indian Country and society as a whole by negatively impacting student learning opportunities.

NACIE also strongly urges the Congress to fully fund the BIE Indian Student Equalization Program formula to ensure that tribally controlled schools have the resources to provide AIAN children with a quality educational program. No matter the educational setting, NACIE supports and encourages Congress to fund both Impact Aid and the Indian School Equalization Program at a level that will provide AIAN children the resources necessary to be successful in today’s highly technical world while at the same time retaining their Native identities through Native languages and culturally relevant teaching and learning.

D. Repeal Section 7009 (Equalization) of Impact Aid, Title VII

NACIE recommends that Congress repeal Section 7009 of the Impact Aid legislation.

Rationale: Under the present Impact Aid, AIAN students are negatively impacted by the application of Section 7009 (equalization provisions) as documented in the 2009 NIES. Section



7009 does not take into account the inability of public school districts enrolling Native children residing on trust/treaty or lands claimed under the *Alaska Native Claims Settlement Act* to generate local revenue due to the lack of taxable land, nor does it recognize the high per-pupil cost associated with districts in remote and isolated, rural school settings that serve AIAN students.

Inequities resulting from Section 7009 continue to exist. Although New Mexico's State 8 formula has failed to meet the Section 7009 requirements for equalization and the Alaska formula is currently in question, Kansas remains equalized. Impact Aid students are affected adversely by not being able to attend school when all other public schools remain open. Equalization does not allow Impact Aid funding to go directly to benefit AIAN students because equalized states consider Impact Aid a state resource, thereby reducing what a school district would receive under the state funding formula. The Impact Aid formula is designed to allow states with federally connected students such as those on Indian lands to equalize up to the level of Federal impact. Alaska and Kansas treat all their students equally, no matter where they reside and attend school, which presents a great inequity for AIAN students.

E. Address Construction and Renovation of Facilities in Title VII, Section 7007

NACIE recommends that Congress secure additional funds to help alleviate the backlog of Title VII, Section 7007, school construction and renovation needs, including the passage of a facilities infrastructure bill that would provide much-needed infrastructure funding for Impact Aid schools, including teacher housing.

Rationale: Impact Aid, Title VII, students deserve the same high-quality facilities as non-impacted students. Impact Aid school districts have very little or no avenues to pursue construction funding due to the inability to secure construction bonds. Consequently, there is a backlog of Title VII, Section 7007, facilities' needs. The \$17 million as provided each year under Section 7007 is totally insufficient when one considers that the estimated need ranges between \$750 million (a conservative estimate) to over \$2 billion. Congress needs to address the facility needs of Impact Aid districts through passage of an Indian lands public school construction bill that includes Indian land school districts on or near AIAN lands.

Although the BIE-funded schools will receive minimal infrastructure funds from the recently passed *H.R. 3684 Infrastructure Investment and Jobs Act*, NACIE finds the deletion of Impact Aid infrastructure funding from the November 15, 2021, infrastructure law unacceptable given the inability for Impact Aid schools to secure funds to meet the facility needs as follows:

The [National Indian Impacted Schools Association](#) conducted a recent survey of 205 buildings in 66 school districts serving students attending school districts on Indian lands and found that 56 percent of the buildings were in poor or fair condition; 33 percent reported safety code violations; 44 percent had capacity issues; and 40 percent reported internet capacity or connectivity issues. Teacher housing conditions were reported as poor in 38.5 percent of the districts. The total cost of addressing the needs of the schools surveyed was just under \$1 billion.⁷¹

⁷¹ Gish, B. (2018). *Condition of school facilities in Indian Country: The need for a Federal investment*. National Indian Impacted Schools Association. <https://niisaindianlands.org/wp-content/uploads/2018/11/LINK-Condition-of-School-facilities-in-Indian-Country-Final-Report.pdf>



F. Establish an Impact Aid Study

NACIE recommends that Congress fund a study on the effect of Impact Aid on both rural and urban schools.

Rationale: The findings will help determine policy changes in the Impact Aid, Title VII, program, if needed, due to meaningful differences between rural and urban environments. Additionally, these findings highlight the discrepancies in infrastructure needs for Native schools and will help Congress become more aware of the differences and similarities between Impact Aid-funded schools and the much larger percentage of Native students who attend public schools as compared to other schools that serve Native students. In the current infrastructure bill, there were no funds targeting Impact Aid and public schools.

3.5 Expand Funding for TCUs to Lessen College Loan Burdens of AIAN Students Who Have a Unique Federal Right to an Education

NACIE recommends that Congress continue to promote the unique role and responsibilities of TCUs in fulfilling the treaty and trust obligation and increase current levels of funding where increasing student enrollment and other needs of the institutions are demonstrated.

Rationale: As noted above, while 62 percent of the general student population who graduate high school enter college, the comparable statistic for AIANs is just 17 percent.⁷² There are 37 TCUs serving more than 160,000 AIAN students and other rural residents each year through a wide variety of academic and community-based programs. TCUs are seeing AIAN enrollment increases at disproportionately higher rates than general institutions of higher education. TCUs provide a significant number of AIAN students the opportunity to pursue an education ranging from Adult Basic Education and certification to associate, bachelor's, and increasing graduate degree programs. It is important for Congress to recognize and act on the need for parity in funding and resources so the Tribal colleges' purpose of bringing education, social, and economic opportunities to AIAN students and their communities can be achieved.

The *Tribally Controlled Colleges and Universities Assistance Act* provides funding for Tribal colleges and resources for the majority of the general operating budgets. Funding received by TCUs is based primarily on “beneficiary” students who are members of a federally recognized Tribe or are at least one-fourth-degree Indian blood descendant of a member of an Indian Tribe. TCUs have enrolled an increasing proportion of “non-beneficiary” students for which proportionate levels of funding do not follow. While this bodes well for demand to attend TCUs whether Tribal or not, this creates a budget shortfall to educate non-beneficiary students who make up 10–30 percent or more of student enrollment. Many of the TCUs are in rural and remote communities, where affordable access to a higher education is limited. TCUs play an invaluable role in providing an affordable higher education opportunity—sometimes the only local opportunity—for non-beneficiary students in these communities.

NACIE supports the permanent reauthorization of the *Higher Education Act* Title III F, Strengthening Institutions – Tribal Colleges and Universities Program, administered by DoED, at a minimum level of \$35 million annually and encourages Congress to work to secure permanent funding with annual increases reflecting increasing AIAN students and enrollment and other

⁷² Martinez, D. (2014). School culture and American Indian educational outcomes. *Procedia - Social and Behavioral Sciences*, 116(21), 199.



needs of these institutions. As TCUs continue to increase in enrollment, funding from year to year should keep pace to accommodate the growth and change.

With First Lady Dr. Jill Biden’s experience as a community college faculty and her recent visits to the Diné Navajo Nation, Saginaw Chippewa Tribe, and the Cherokee Nation, including touring these Nation’s respective Tribal colleges, an increased national attention and commitment are likely to result. Hopefully, this will translate into much-needed increased funding for TCUs. While the *Build Back Better Act* draft legislation was approved by the U.S. House of Representatives on November 19, 2021, and included several recommendations for increased funding to TCUs, the votes did not materialize in the Senate. Thus, consideration of other legislative vehicles to honor the treaty and trust obligation for higher education through TCUs is sought.

3.6 Improve Data Collection, Funding, and Understanding of Retention and Matriculation Through to Graduation of AIAN Students Attending Non-Native-Serving Institutions

NACIE recommends Congress support a Federal Annual Progress Report Card on the AIAN experience in higher education. Data collection and analyses should include factors that significantly impact AIAN retention and matriculation through to college graduation. Data-driven retention strategies should be fashioned to ameliorate adverse factors and support positive interventions.

Rationale: Upon admission to institutes of higher education, AIAN students’ education pursuits should be supported as a treaty and trust obligation. Just 13.4 percent of AIAN people have a Bachelor of Arts compared to the national averages of 21.3 percent.⁷³ As previously noted, an accurate operationalization of the study of Native student retention is complex. Native students are less likely to have family members who have attended college, making them first-generation college students. In 2017, 21 percent of Native children under 18 years of age lived in a household with a parent who completed a bachelor’s degree or higher compared to 52 percent of White households. Many institutions and their policies simply ignore the unique needs of AIAN students who continue to be represented as first-generation and/or disadvantage populations.

Data-Driven Retention Services

An Annual Progress Report Card developed in partnership with AIAN researchers and in consultation with Tribal Nations should ensure appropriate measurement and data collection. Data-driven retention strategies should be fashioned to ameliorate adverse factors and support positive interventions, including increasing gift assistance, lessening loan burdens, and substantively addressing factors that influence educational outcomes.

On a national level, higher education student data must be transparent across institutes of higher education to ultimately advance policies that facilitate an increase in AIAN student degree completion. A restated recommitment to AIAN education through various Presidential directives rings hollow without an Annual Progress Report Card. By extension of the Federal treaty and trust obligation, institutes of higher education have a responsibility to honor the treaty and trust obligation for Indian education.

⁷³ American Council on Education. (2019). *Race and ethnicity in higher education: A status report*. [Race-and-Ethnicity-in-Higher-Education.pdf \(netdna-ssl.com\)](https://www.netdna-ssl.com/race-and-ethnicity-in-higher-education.pdf)



Annual Progress Report Card

Colleges and universities across the nation should be accountable for providing annual reports that address AIAN students' college profile, including:

1. number of AIAN students enrolled differentiated and stratified by members of federally recognized Tribes, descendants therein, and self-reported figures;
2. recruitment and retention efforts;
3. dedicated resources and space specified for AIAN students;
4. number of AIAN faculty and staff differentiated and stratified by members of federally recognized Tribes, descendants therein, and self-reported figures;
5. degree attainment and length to attain degree;
6. systems of evaluation and assessment; and
7. financial resources dedicated to AIAN students, including estimated shortfalls.

Mitigating the Expense of Higher Education

While all students enjoy an equal protection right to an education through the U.S. Constitution, AIANs have a direct Federal right to an education per the treaty and trust obligation. Congress is advised to support the higher education of AIAN students attending public institutions by reinstating the Federal fellowship program for qualified AIANs and increasing Pell Grant awards and other Federal financial aid gift assistance, which lessen loan burdens for AIAN students. Further, higher education funding should follow AIAN students wherever they choose to pursue their educational pursuits, including vocational technical training, certification, and apprenticeships. Congress should increase the current levels of financial support for Native American-serving and non-Native institutions where significant numbers of AIAN students attend.

Importance of Pell Grants at All Institutes of Higher Education That Serve AIAN Students

As most enter college with first-generation status, AIAN students are typically economically disadvantaged. It is not only the Federal Government's perpetual treaty and trust obligation to provide an education, but also an ethical duty to ameliorate the economic conditions that were forced upon Native people. As noted previously, 17 percent of Native students enter college versus 62 percent for the general population. Lack of financial resources and expected loan burdens are believed to play a critical role in why Native high school graduates simply do not matriculate to the college level. Not surprisingly, nearly half of all Native college students qualify and use the Pell Grant program to attend college. Pell Grants are based on an individual's need calculated by the Free Application for Federal Student Aid®. The persisting eligibility for more than half of all Native students corrects the notion that Indian gaming has solved the forced economic conditions of Tribes. While Pell Grants play a key role in providing opportunity for AIAN students, the share of college costs covered by the grant is at an all-time low. Thus, Pell Grant recipients continue to bear greater student debt burdens than their higher-income peers.

In 2021, Senator Hirono (D-HI) introduced the *Pell Grant Preservation and Expansion Act* to make long-overdue and critically needed investments in the Pell Grant program by doubling the maximum award, permanently indexing the grant to inflation, and shifting the program fully to mandatory funding. The Act would increase the current maximum Pell Grant from \$6,495 by \$1,475 for the 2022–23 award year and double the maximum Pell Grant over a period of 5 years



thereafter, restoring the relative value of the award. President Biden's *Build Back Better Act* proposed to take a step in the right direction by increasing the Pell Grant by \$550 annually and making it tax exempt. Any legislation going forward with respect to higher education should include such provisions to ensure affordability of higher education for all students but especially for those with a Federal treaty right to an education.

Understanding AIAN College Student Needs

Research on college student retention shows that higher education institutions should foster AIAN students' sense of belonging throughout their campus environments. A survey of general student retention literature shows the student attrition model and theories of undergraduate socialization that explain environmental conditions, challenges, and disadvantages students face upon entering and matriculating through higher education institutions. Further, models of student departure, including Tinto's Model of Institutional Departure, explain a student's challenges in adapting to campus culture, which leads to attrition.⁷⁴ Add to this the unique challenges for AIAN students' adaptation from their Tribal or cultural environments to campus life as explained through cultural discontinuity. Environmental perspectives of college socialization suggest that offering campus socialization activities to adapt to college life may lead to increased retention.⁷⁵ For AIAN students, specifically addressing issues of cultural discontinuity through programming and retention services adapted to the profile of AIAN students may be the necessary connection that leads to graduation.

A neglected invisibility and a sink-or-swim approach on college campuses is a modern form of privilege and elitism or racism as it ignores the first-generation and/or disadvantage status of most AIAN students and the environmental factors for which many AIAN students enter from an inequitable position. A lack of culturally specific interventions leads to the current AIAN college dropout rates. When Native students are invisible and services are not suited to their unique needs, their academic and social needs are simply not met. This leads to students feeling alone, disconnected, and alienated, resulting in dropout status. Conversely, specifically addressing the unique needs of AIAN student may lead to higher rates of college graduation.

IV. Improve Lifelong and Comprehensive Education

4.1 Identify and Disseminate Promising Practices

NACIE recommends that Congress expand Title VI legislation to support the programs within OIE so that OIE can more broadly disseminate information on promising practices within discretionary and Formula Grant programs that can be replicated elsewhere in Indian Country.

⁷⁴ Schutz, G. (2007). *The impact of educational experience on student persistence at six public universities*. (Doctoral dissertation, Tennessee State University). Retrieved from Proquest (Accession No. 3259043); Spady, W. G. (1970). Dropouts from higher education: An interdisciplinary review and synthesis. *Interchange*, 1(1), 64–85; Spady, W. G. (1971). Dropouts from higher education: Toward an empirical model. *Interchange*, 2(3), 38–62.

⁷⁵ Astin, A. W. (1984). Student involvement: A developmental theory for higher education. *Journal of College Student Personnel*, 25, 297–308; Schmidtke, C. (2008). *Success factors for American Indian students at a baccalaureate technical college*. (Doctoral dissertation). Oklahoma State University. Retrieved from Proquest Dissertations and Thesis Database (3324748).



Rationale: This recommendation stems from the principle of Tribal self-determination embraced in the *Indian Self-Determination and Education Act*. NACIE commends Congress for taking actions consistent with this legislation that have resulted in progress on disseminating promising practices. Still, much work remains to be done in this area. While communities currently receive grants and may develop successful and innovative programs, there are limited funds and insufficient information sharing. In addition, adequate resources are needed for data collection about what works well in those programs. Information on the successful practices should be more widely distributed so other programs can learn from and replicate them. This recommendation also requires funds for technical assistance at both the state and local levels.

4.2 Improve and Expand Early Childhood Education for AIAN Students

NACIE recommends that Congress support lifelong learning for AIAN students from early childhood through adulthood. There is a tremendous need for quality childcare, empowering parents, raising the bar for early learning, and reforming and expanding Head Start and Early Head Start. Congress should recommend Native language programs be directed specifically to AIAN students, especially programs aimed to educate children and families in Native language revitalization.

Rationale: To build community support for AIAN children and families, culturally responsive policies and practices must build on educational pedagogy and curriculum that incorporates Native children’s rich heritage, language, culture, and Native ways of knowing. The success of Native children is vital to our sustainability and nation building within Native communities and society. Therefore, Congress must work to ensure equitable access to early childhood education.

The 2015 study, *Transforming the Workforce for Children Birth Through Age 8: A Unifying Foundation*, maintains that children are already learning at birth, and they develop and learn at a rapid pace in their early years.⁷⁶ This provides a critical foundation for lifelong progress. The adults who provide for the care and the education of young Native children bear a great responsibility for AIAN health, development, and learning. Despite the fact that they share the same objective—to nurture young children and secure their future success—the various practitioners who contribute to the care and the education of Native children from birth through age 8 are not acknowledged as a workforce unified by the common knowledge and competencies needed to do their jobs well. Young children thrive and learn best when they have secure, positive relationships with adults who are knowledgeable about how to support their development and learning and are responsive to their individual progress. *Transforming the Workforce for Children Birth Through Age 8* offers guidance on system changes to improve the quality of professional practice; specific actions to improve professional learning systems and workforce development; and research to continue to build the knowledge base in ways that will directly advance and inform future actions.

⁷⁶ Institute of Medicine & National Research Council. (2015). *Transforming the workforce for children birth through age 8: A unifying foundation*. The National Academies Press. <https://www.nap.edu/read/19401/chapter/1>



It is imperative that such practices be considered in making needed improvements in the quality of care and education that children receive to ultimately improve outcomes for children. NACIE affirms that “school readiness” is not merely determining that a Native child is ready to succeed in school. It also means that schools and communities are ready to support that success by working collaboratively with families, teachers, and Tribal communities to create a sustainable, culturally responsive, educational environment to support transition into kindergarten and beyond.

Early childhood education must support the holistic needs of children, including their social, health, environmental, and educational needs. This includes but is not limited to prenatal health, childcare, Head Start, migrant education, public and private preschool, faith-based and home and center-based day care programs, special education, teen parenting, parent education, homeless children care, and foster care.

Positive Impact of Parent Engagement

Title VI staff and parents were not given a clear explanation by the Race, Equity, and Social Justice (RESJ) Director why Indian Education had been removed from the Funded Programs department. Another point of contention was that the RESJ Director was demoting the Title VI Director position to a manager level.

Portland Public Schools (PPS) Title VI parents refused to accept these major changes and enlisted the support of the Portland Native Community to stand in unison with them. With additional assistance from two former PPS Indian Education Directors, PPS Native staff, and other local professional Native educators, parents were recruited to elect an official Indian Parent Committee per Title VI guidelines that replaced the interim parent board.

The full story available in on page 49.

4.3 Expand Resources to Increase and Support Native Parent Engagement

NACIE recommends that Congress provide additional funds for technical assistance and support for parents of AIAN students. Though programs such as JOM, Title VI, Title I, and other Titles in ESEA may contain the establishment of parent committees, there is an ongoing need to help restore the skills and knowledge of Native parents, especially in how they can reinforce school learning.

Rationale: Historically, AIAN education was used by the Federal Government as a weapon to estrange Native children from their cultures, their parents, and their communities. Education was an intentional act of intellectual genocide and was actualized by sending AIAN students thousands of miles from their home communities to attend boarding schools. Though this practice is no longer the norm, the scars of this shameful legacy remain as historical trauma. As a result, just as much attention needs to be placed on restoring the integral role of Native parents in education.

According to research, parent participation in almost any meaningful form positively impacts student behavior, achievement, attendance, and attitudes about self and school in general. Achievement gains are most significant and long-lasting when parents are an integral part of the



teaching-learning process from preschool through high school. Gains in basic student skills are reported when parents directly teach their children and when they are involved in supporting and reinforcing teachers and school learning. Surfacing as one of the most universal themes, improving Native parent participation provides one of the greatest opportunities for success in Native educational endeavors. It also requires strong administrative commitment, greater financial resources, significant staff training, and a variety of options to ensure that participation is meaningful. This recommendation requires a significant investment in technical assistance at both the state and local levels.

4.4 Study and Improve the Availability of Technology Use in Indian Country

NACIE recommends that DoED’s school support and technology programs and technical assistance programs identify current technical assistance regarding the use and availability of technology and how it is being targeted specifically to serve AIAN students, especially in light of circumstances exacerbated by the pandemic.

Rationale: Once NACIE is informed of existing technical assistance programming and support, it can make suitable recommendations for how to focus technical assistance more strategically, especially in addressing the unique needs created by COVID-19 and its impact on rural Indian reservations and remote Alaska Native villages.

Broadband Connectivity to Tribal Communities is Critical

Limited broadband access in Native communities hampered efforts to provide effective virtual culture-based education options for Native students throughout the pandemic, particularly those who attend BIE and tribally controlled schools. In 2017, NCES reported that 37 percent of Native students nationwide did not have internet access in their homes compared to 12 percent of White students and 14 percent of students nationwide.⁷⁷ A 2019 report from the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis further clarified that this discrepancy is more pronounced on Tribal lands, where only 61 percent of households have broadband access compared to the 70 percent average in the county that overlaps a reservation and the 69 percent nationwide average.⁷⁸ Due to lack of internet access at home, BIE-funded schools serving students on and near Tribal lands have struggled to implement virtual education options during the COVID-19 outbreak.

The 2021 implementation of the \$1 billion for broadband grants is in the process of implementation with a minimum of \$500,000 per Tribe and another \$2 billion for broadband included in the *H.R. 3684 Infrastructure Investment and Jobs Act* signed into law on November 15, 2021. The additional \$2 billion will help, but based on the justifications of up to \$5 billion, it will fall short. Thus, much more is needed for AIAN education to keep pace with changing technology. With statewide assessments, online assessments, and virtual preparation sessions, it is long past time to stop ignoring minimal technology needs critical to a child’s education in the 21st century. The worst-of-the-worst educational outcomes are exacerbated by the lack of

⁷⁷ McFarland, J., Hussar, B., Zhang, J., Wang, X., Wang, K., Hein, S., Diliberti, M., Forrest Cataldi, E., Bullock Mann, F., & Barmer, A. (2019). *The condition of education 2019* (NCES 2019-144). U.S. Department of Education, National Center for Education Statistics. <https://nces.ed.gov/pubs2019/2019144.pdf>

⁷⁸ Feir, D. L., Todd, R. M., & Weyrauch, K. (2019). *The digital divide in Indian Country: Reservations’ broadband access rates vary widely, but lag national averages*. Federal Reserve Bank of Minneapolis. <https://www.minneapolisfed.org/article/2019/the-digital-divide-in-indian-country>



adequate resources. The disparity of access for certain AIAN communities is a social justice and civil rights matter that must no longer be ignored for any population let alone those with a Federal treaty right to an education.

Many schools lacked infrastructure required for timely distribution of technological devices to all students that was appropriate for grade levels. Without adequate devices and equipment it would be impossible to access daily instruction and other necessary supports provided by schools. Lastly, many devices utilized required ongoing repairs and upkeep to function at optimal levels that was often hampered by staffing and on-site capabilities. Lessons learned during the intense periods of all-remote learning should be gleaned to ensure students have proper technological devices needed in future remote learning situations.

With advancements in computer hardware, software, and internet-based shareware, increasingly assessment materials for student performance including standardized and required state assessments are implemented virtually. In some Tribal communities, students have to be bussed for several hours to testing sites. This puts an undue burden on both school districts and students who then have to perform on assessments while suffering from a level of fatigue from long bussing trips. Obviously, this issue represents a challenge for all school districts and all students. However, AIAN students have Federal right to an education such that the Federal Government holds an additional responsibility to understand the depth of this challenge and a duty to ameliorate technology shortcomings. Thus, an investigation is warranted to determine the impact of the digital divide exacerbated by a lack of technology access for AIAN students.

4.5 Improve School Climate for Native Students

NACIE recommends that Congress fund a study to explore strategies and target resources to improve school climates in AIAN schools.

Rationale: There are many strategies that can be identified and implemented to improve the climate in schools. Some of the things to document in the study are the degree and quality of Native parent engagement; use of culturally and linguistically relevant curriculum; social-emotional learning supports; teacher and staff quality, as well as opportunities for professional development; disciplinary practices; strategies used to address historical trauma; wraparound services and coordination with other community agencies; attendance improvement strategies; and other unique practices that are making a difference in AIAN student outcomes. It is important to identify these best practices and fund technical assistance and pilot sites to implement them. NACIE is asking Congress to fund a study to explore strategies and target resources to improve school climates in AIAN schools.

Many historical and contemporary experiences from students and parents point to the need to address the use of Native imagery in schools serving AIAN students. The presence of Native mascots and stereotypical imagery in thousands of public schools in the United States impacts the psychological development and identity of Native children and produces a negative learning environment for all children.

The need to correct this imagery is fundamental to improving school climates where often diverse Native students intersect with non-Native students and professionals. To achieve this, a research study should identify each Native mascot in K–16 schools in each state and the correlating data on Native student academic performance and disciplinary data. The study should also provide a comparative analysis of mascot imagery affecting other groups (Blacks, Latinos,



Asians). We anticipate the study will determine massive negative overrepresentation of Native imagery at educational institutions targeted at the AIAN population. We recommend that geographic information system mapping be used to identify the problem and allow for a comparative visual analysis. The study should also provide case studies of those states that have eliminated Native mascots to provide a pathway forward. Lastly, the study should include recommendations and strategies for engaging with Tribal Nations and communities around renaming and repairing relations.



About NACIE

NACIE submits an annual report to Congress on its activities and may include any recommendations that NACIE considers appropriate for the improvement of Federal education programs that serve AIAN children or adults. NACIE's findings and recommendations do not represent the views of the DoED. As noted previously, it is the policy recommendation of NACIE to encourage the DoED to request annual congressional testimony to ensure that the U.S. Senate Committee on Indian Affairs, the U.S. House Committee on Natural Resources, and any additional congressional committees of jurisdiction animate this report through requesting testimony, which should establish oversight in fulfilling the treaty and trust obligation for education.

NACIE is authorized by Section 7141 of the *ESEA* as amended, 20 U.S.C. 7471, and governed by the provisions of the *Federal Advisory Committee Act*, 5 U.S.C. App. II. Pursuant to Federal law, NACIE consists of 15 members who are American Indian, including Alaska Native, and are appointed by the President from lists of nominees furnished, from time to time, by Indian Tribes and Native organizations. The 15 members represent different geographic areas of the United States. NACIE members serve as special Government employees and provide advice and recommendations based on the members' judgment formed by their expertise and experience.

Due to the worldwide pandemic, NACIE has not met in person for some time. In 2019, NACIE met on April 25–26 for a face-to-face meeting in Washington, D.C., with online and teleconference participation availability for those members unable to attend in person. The meeting, including the online and teleconference options, was open to the public. A second face-to-face meeting took place on September 11–12, 2019, in Washington, D.C., with online and teleconference options. The last in-person meeting was held February 13–14, 2020, at the National Museum of the American Indian. The meeting had both teleconference participation and was open to the public. Subsequent NACIE meetings have been held virtually and in full compliance with notification in the *Federal Register* and open to the public.

The Designated Federal Official for NACIE is Angela Hernandez, Education Program Specialist with the OIE. The Alternate Designated Federal Official is Donna Sabis-Burns, Ph.D., Discretionary Group Leader with the OIE. The OIE Director is Julian Guerrero, Jr. From the last reporting period the Executive Director for the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities⁷⁹ was filled.

There remain five NACIE vacancies. A list of current NACIE members is provided on the final page of the report. Currently, there exists no elected Tribal Leadership nor youth representation on NACIE. Additionally, with one-third of the NACIE seats yet to be filled, it is difficult to establish a quorum. Finally, President Biden has the opportunity to crystalize his commitment to Indian education as established in the several EOs, Presidential memoranda, and Presidential proclamation by making five new appointments to ensure his agenda is fulfilled.

⁷⁹ Formally Executive Director, White House Initiative on American Indian and Alaska Native Education.



APPENDIX A: Systemic Reform of American Indian Education:

The San Carlos Unified School District Story – Striving to Shilgozhóó

Dr. Deborah Dennison and Mrs. Sarah Curd

San Carlos, AZ

July 29, 2022

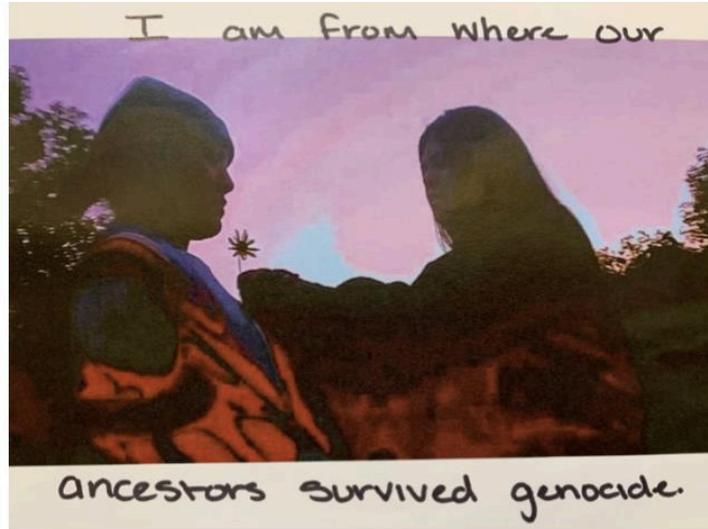
“Formal Indian education stretches all the way from reservation pre-schools in rural communities to prestigious urban universities lying far away from Indian cultural centers. The educational journey of modern Indian people is one spanning two distinct value systems and world views. It is an adventure in which the Native American sacred view must inevitably encounter the material and pragmatic focus of the larger society. In that meeting ground lies the opportunity for the two cultures to both teach and learn from one another.”

—Vine Deloria, Jr. Power and Place: Indian Education in America

Like all American Indian Tribes across the country, the San Carlos Apache people experienced a long history of conflict with the U.S. Government, and the Apaches are said to be the last Tribe to have surrendered. To stop the Apache from raiding American and Mexican settlements, the U.S. Government established the San Carlos Indian Reservation in 1871. The adjustment to the confined reservation life was traumatic, but by 1890 all Apache groups had submitted to the Government’s reservation policy.

As part of the assimilation era, in 1900 the U.S. Government opened a boarding school on the San Carlos Apache Reservation. Apache children were taken away from their families and forced to attend this school. Children were forced to speak English only and were not allowed to speak their Apache language or practice their traditional cultural ways of life. According to the Meriam Report of 1928 and re-emphasized again in the Kennedy Report of 1969, the way in which American Indian children were being educated, by forced assimilation across the country, was a failure. In so many ways, this experiment along with other adverse colonization efforts in education continue even today as history repeats itself with American Indian students; schools on reservations are continuously among the lowest performing nationwide.

When confronting the brutal facts of the purpose of education since the inception for Tribes across the U.S., it can be concluded that the system of education was weaponized against American Indian Tribes and their children. Today we have long-standing scars that still impact the here and now of education.



In 1965, the San Carlos Unified School District (San Carlos) was established as a state public school system. Throughout the years, the school district continued to struggle and was consistently among the lowest-performing school districts in Arizona.

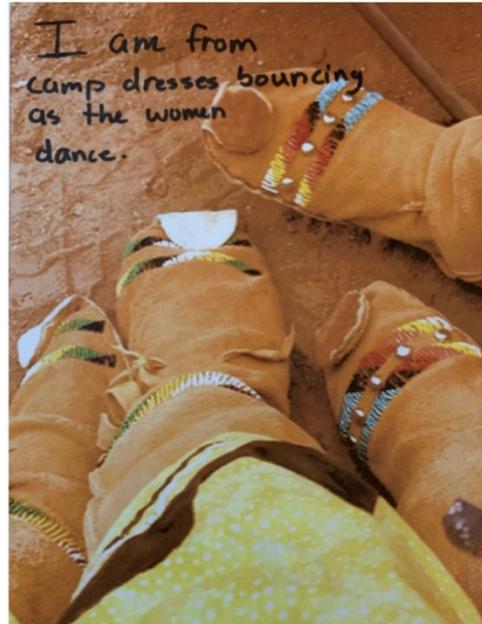
In 2016, San Carlos began a comprehensive systemic reform journey under the new leadership of Superintendent Dr. Deborah Dennison and her leadership team. Since 2002, Dr. Dennison, an enrolled member of the Diné (Navajo) nation, a woman educational leader and superintendent, has successfully developed and implemented her expertise with research-based systemic reforms at other Indian reservation public schools in Arizona, which has resulted in community-wide positive growth and academic improvements. Similar to those school districts demographically, San Carlos Unified School District, now a pre-K–12 public school district located on the San Carlos Apache Indian reservation, serves approximately 1,500 students who are 99.1 percent enrolled members of the San Carlos Apache Tribe.

San Carlos has had a long history of underperformance academically in accordance with the various performance measures implemented under the Arizona Department of Education. Therefore, the expertise of Superintendent Dennison along with her team started the reform process using a research-based survey instrument she designed to bring forth input from the grassroots school community stakeholders. These stakeholders include parents, grandparents, family members, traditional elders, and Tribal leaders, most of whom have historically never been asked what they want a San Carlos graduate to know and be able to do once they graduate. They have never been included in any school improvement initiatives in the past. With grassroots stakeholder input, this comprehensive process allows for integrating and correlating the cultural and historical relevancy to all aspects of the systemic reform process, and for San Carlos, the development of the district’s vision, mission, and strategic plan called “Empowering Our Nínee People the Brave Way” came about. Encompassing the strategic plan is the important work to become a trauma-informed and trauma-sensitive school system. This journey of passion has become known as Shiłgozhóó, which in Apache means, “I am balanced, I am in harmony, I am at peace, I am happy.” In essence, “I am ready to learn.”

In research terms the state of Shiłgozhóó parallels with Maslow’s Hierarchy of Needs. It is the leadership’s philosophy that “Maslow’s Hierarchy of Needs” must come before “Bloom’s Taxonomy” within reforming school systems that predominately serve American Indian



students. As stated by Superintendent Dennison, “We as a school system must be able to heal our people, our students, especially if we expect them to learn new knowledge.” The premise of Superintendent Dennison’s research on Indian education reform is that “the system must meet the needs of the students and their school community being served.” Furthermore, as American Indian people, “we must ask our elders and forefathers what they want our children to know and be able to do upon completion of school at San Carlos.” Without asking, the disconnect continues to exist between the two worlds with the continuous low performance to be expected, as the education system remains foreign and continues to teach using irrelevant concepts to the way of life for American Indian students and their communities.



**“There’s a crack in everything, that’s how the light gets in.”
An “I Am From” Poem by Aneisha Reede, English 10**

*I am from where doing good also makes you look bad.
I am from where the flower doesn’t bloom.
I am from where impeccability doesn’t exist.
I am from where the past is keeping me from moving forward.
I am from where my thoughts only flow through the pages.
I am from where the grass doesn’t grow.
I am from where only love fades, never the pain.
I am from where there’s always beauty in simplicity.
I am from a fertile ground where seeds are continuously being planted.*

Since 2016, the district has experienced positive changes under the Systemic Reform Plan and Accountability Model. But like so many schools across the country, the COVID-19 pandemic only exasperated the social and emotional ills and traumas that have always affected Tribal communities. Although San Carlos’s journey to become trauma-informed was still at the early stages of implementation, student needs were more successfully addressed throughout the year and a half of the school being closed. Prior to COVID-19’s interruptions to school, the one-to-one laptop initiative was implemented, allowing learning to continue at home. In addition, the school district partnered with the local San Carlos Apache Tribal utility company to help ensure connectivity for those students without internet. Still, for the students without electricity and



running water, a location for them to come with their laptops was made available. Bandwidth issues continue to hinder learning at home, but through resiliency and determination, school during COVID-19 continued. Through becoming trauma-informed, San Carlos was able to identify success coaches to work with those students who struggled with the situation at hand, whether academically or socially, on a daily basis.

As described by Mrs. Sarah Curd, SCHS tenth-grade English Teacher/Success Coach:

“One of my favorite aspects of our online school year from 2020–2021 was my connection with one of my success coach students. During that year, she was rewarded as student of the month and had all A’s and B’s in her classes. I later found out from our social worker in the care center that this student had really struggled at school before the pandemic; she was always in and out of the care center due to behavior issues. She really responded well to having someone check in with her on a consistent basis and tutor her with assignments, provide a listening ear, etc. This is a great example of the success coaching program in action!”

The process San Carlos established and continues to use in order to be trauma-informed starts with recognizing and understanding that certain behaviors are related to traumatic experiences. San Carlos uses this recognition and understanding to drive a new set of practices at school with young people who exhibit these sets of behaviors. The school district has shifted from a model that asks, “What is wrong with you?” to one that asks, “What happened to you?” and “How can I shift the school environment and classroom practices to respond more effectively to your needs?”

Other successful highlights and changes to the overall system to support being trauma-informed include ensuring schools are social and emotional learning centered and partnering with and forming relationships with local agencies, including the San Carlos Apache Tribal entities and the San Carlos Apache Health Care Corporation. Through a memorandum of understanding with the San Carlos Apache Health Care Corporation, the hospital is able to provide school nurses and therapists at each school in the district. San Carlos is also working to provide both dental and eye care services within the student health clinics at each school.

Prior to the COVID-19 pandemic, another important aspect of striving for *Shilgozhóó* was successfully implemented in partnership between the district and the San Carlos Apache Tribe Department of Health and Human Services’ Wellness Center providers to provide equine-assisted therapy. Utilizing Centers for Disease Control and Prevention funding, the Wellness Center therapists developed and provided equine-assisted therapy for San Carlos students to meet their personal goals using trauma-informed experiential individual and group interventions. By using the horse, a spiritual animal to the Apache people, and learning or just hearing the spiritual horse songs, the students are better able to connect with their therapist, who can help with mental health healing, as compared to an office setting. This partnership continues between San Carlos schools and the San Carlos Apache Tribe Department of Health and Human Services using other grant opportunities and bringing in key Tribal wisdom holders to help students within the schools and in after-school efforts.



Additionally, San Carlos has experienced much success by creating a Student Care Center with the many other components of being trauma-informed such as providing haircuts, toiletries, and other necessities to help students feel better about themselves at each of the school sites. Adding parent educators at each school has helped tremendously with breaking down the barriers between community, parents, and the school that have historically existed. The parent educators help connect to the community and offer training to parents in a variety of areas. Once a week, the parent educators host a parent's night and have key Tribal wisdom holders and medicine people come to teach about the San Carlos Apache way of life.



With the positive impact of the success coaches over the COVID-19 pandemic, the district has now implemented the cultural success coaching system at each school site. Much like the parent educator program, the cultural success coaches use a student-centered, holistic approach that focuses on student needs in the areas of educational, personal, social, and family life. They work to provide a wide range of support services to help students engage in learning and positive experiences that further their academic goals.

The program also uses a community-based learning experience to connect students to their local community resources. They aim to cultivate skills that enhance academic performance and prepare students for lifelong learning. This holistic approach promotes a healthy mental, physical, and social well-being and helps overcome personal challenges.

Success coaching is an interactive process following the concept of Shiłgozhóó in which coaches focus on helping students overcome personal challenges, embrace cultural knowledge, explore self-identity, generate interests, identify meaningful goals, and reach their potential. Among other initiatives is the development and implementation of the instructional program called the “Evidence of Shiłgozhóó,” which includes a data walkthrough observation and a teacher and administrator evaluation designed to hold everyone accountable to ensuring Shiłgozhóó with students, staff, and community.

San Carlos schools (especially San Carlos High School) have experienced a rise in test scores, a rise in graduation rates, and has decreased the dropout rate steadily since 2017 (see graphs below).



Graduation Rate 2017–2020

Year	SCHS	State	Native Americans
2017	78.95%	80.04%	70.97%
2018	87.93%	79.27%	68.99%
2019	96.15%	78.22%	68.99%
2020	93.06%	78.16%	67%

Dropout Rate 2017–2020

Year	SCHS	State	Native Americans
2017	10.22%	5.19%	8.78%
2018	11.64%	3.89%	7.74%
2019	2%	3.91%	6.72%
2020	2.28%	3.29%	5.04%

Note: San Carlos High School graduation and dropout rates have steadily improved and are doing better than both the state and the American Indian state population.

Most importantly, student mindsets have shifted to a growth (and not so fixed) mindset. The discipline rate has decreased by 62 percent districtwide. Students take pride in being San Carlos Apache. Young boys have started drumming groups at each school. As a result, today one can see students wearing traditional clothing, speaking their Native language, and simply being proud of where they come from. Attendance has improved and community involvement has tripled with the inclusion of the parent educators, the cultural success coaches, the care centers, and the student clinics in each school and through strong and supportive partnerships and positive relationships with the local San Carlos Apache Tribal agencies and community.

The school district’s efforts have been featured on the *Arizona Republic* front page (April 16, 2021) and acknowledged by the Arizona Department of Education as an example of promising initiatives regarding success coaches (January 2021 report to the ASBE). Finally, the school district was also featured in a podcast by NPR KJZZ in Phoenix for trauma-informed initiatives (January 29, 2021).

The most positive change came with the students who created the Shilgozhóó logo (**Exhibit 5**). The level of research that went into the development and interpretation of each element they learned from the sacred wisdom holders, elders, and medicine men truly depict the integration of western knowledge with cultural wisdom at the highest level of Bloom’s Taxonomy. Having students create and interpret to other students and community members what San Carlos Unified School District stands for in reconciling western knowledge with the wisdom of the Apache people is very rewarding. The logo was created by the following Class of 2022 students: Lorena Cosen, Kaden Phillips, Maria Garibay, and Jeremiah Ailak.





Exhibit 5: Shilgozhóo Logo Created by the Students of the Class of 2022





APPENDIX B: Positive Impact of Title VI Parent Engagement

Noreen Smokey Smith

Washoe, NV

July 8, 2022

Portland Public Schools (PPS) has had an Indian Education program since the mid-1970s. In the mid-1980s, the Indian Education Coordinator successfully advocated for three full-time-equivalent staff positions from the school district's General Fund. For nearly three decades PPS has supported the Indian Education Coordinator/Title VI Director position as well as both the Administrative Assistant and Student Support Specialist positions. PPS Indian Education program enrollment averaged around 1,100 students who were spread throughout over 100 elementary, middle, and high schools. Program student enrollment began to decline during a period of gentrification in the late 2010s when many low-income families moved to suburbs with more affordable housing. Today approximately 400 students are enrolled in the PPS Title VI Indian Education program, representing approximately 100 federally recognized AIAN Tribes/nations/bands from preschool through Grade 12.

In January 2022, chaos erupted following the resignation of the former Title VI Director who accepted another position outside Portland. PPS Title VI was left in a vulnerable position with no elected Indian Parent Committee to support and help guide the program, no Administrative Assistant, and only two staff members. Within 3 weeks of the resignation, the PPS Race, Equity, and Social Justice (RESJ) Director took control of the Title VI program apparently with the support of the PPS Superintendent. The RESJ Director established an interim parent "board" comprised of four parents of Title VI enrolled students and began scheduling meetings that were open to the Portland Native Community. Title VI staff and parents were not given a clear explanation by the RESJ Director why Indian Education had been removed from the Funded Programs department and placed under the supervision of RESJ other than it was the Superintendent's purview to make decisions as he saw fit. Another point of contention was that the RESJ Director was demoting the Title VI Director position to a Manager level.

PPS Title VI parents refused to accept these major changes and enlisted the support of the Portland Native Community to stand in unison with them. With additional assistance from two former PPS Indian Education Directors, PPS Native staff, and other local professional Native educators, parents were recruited to elect an official Indian Parent Committee per Title VI guidelines that replaced the interim parent board. The elder former Indian Education Director volunteered to address these issues before the PPS School Board. Her scathing virtual 3-minute public comment stated that these significant changes to the Indian Education program were done without consultation with local Tribes or parents of PPS Title VI students, and she demanded these changes be reversed. It got the attention of the PPS Superintendent and School Board members. A follow-up letter from the Portland Native Community was then sent to the Superintendent demanding that Title VI Indian Education be placed back under the supervision of Funded Programs and that the Director position remain. The letter also requested a listening session with both the Superintendent and School Board members.



Nearly 3 weeks after the community letter was sent, the first of two listening sessions was attended by the PPS Superintendent and Chief of Staff, three School Board members, the Indian Parent Committee, and approximately 50 Portland Native Community members including elders. Native participants spoke eloquently about the positive impacts the Indian Education program has had on them and their families over many years. Their impassioned testimony was enthralling.

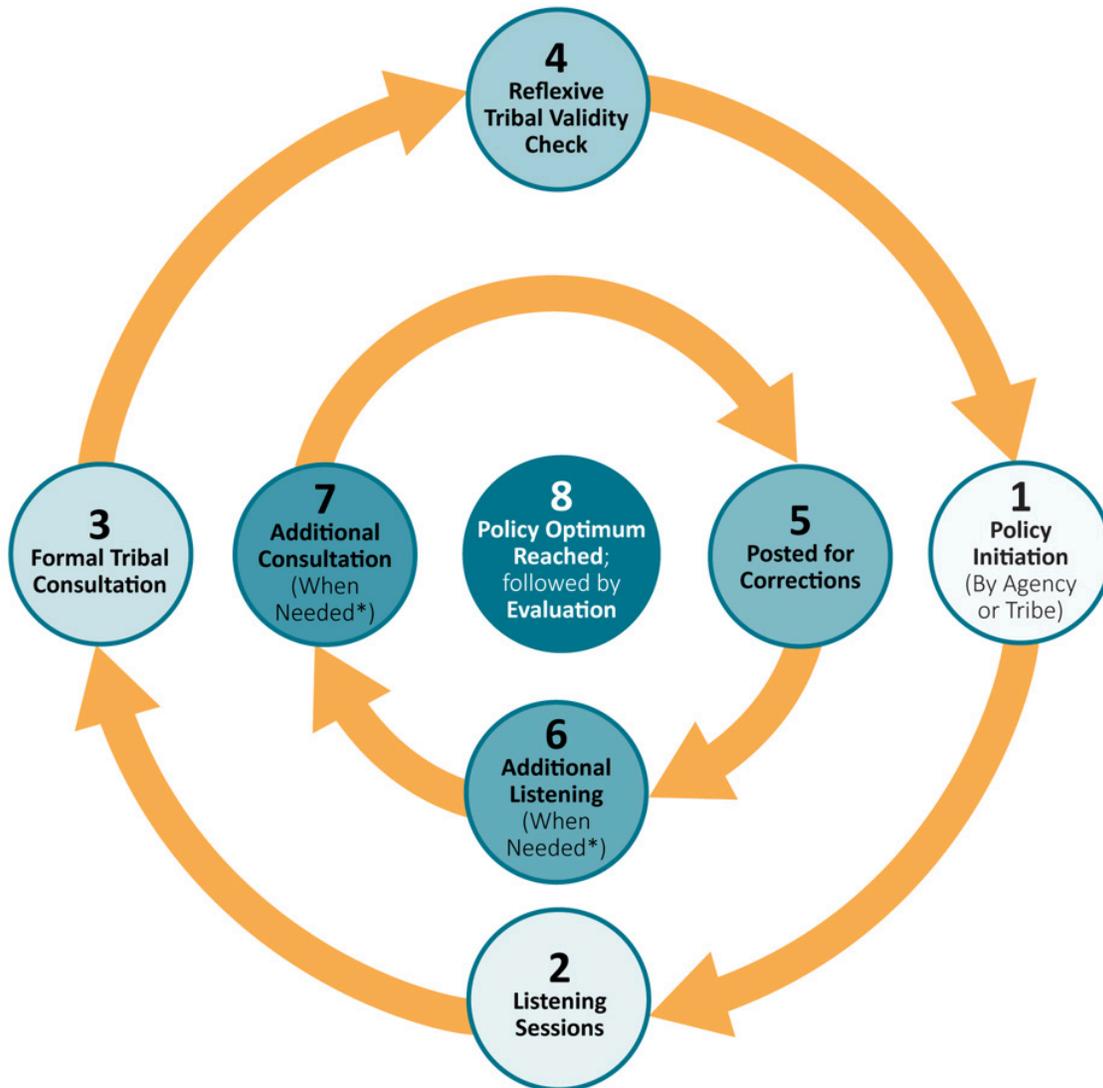
The next day the PPS Superintendent met with the Indian Parent Committee Chairperson to inform her he was returning Indian Education back to Funded Programs, and the Director title would remain. In addition, the Superintendent wrote a full-page letter to the Indian Parent Committee acknowledging that an administrative decision had been made without prior consultation and that Indian Education would remain under Title Funded Programs. Additionally, the leadership of the Title VI program would be sustained as a Director-level position. The powerful collective voice of the Portland Native Community was integral to the success of this effort.



APPENDIX C: Tribal Consultations Conceptual Framework

Exhibit 6 presents the Reflexive Consultation Conceptual Framework as summarized by Dr. Aaron A. Payment, NACIE Member since 2016 and former Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians who participated in over 40 consultation sessions with the Federal Government following President Biden’s January 2021 Presidential memorandum calling for consultation with specific Federal agency and department deadlines.

Exhibit 6: Reflexive Consultation Conceptual Framework



* As identified by the Agency or as requested by Tribes

The concept of consultation can represent a “chicken and egg” challenge with the question “at what point is it appropriate to engage Tribal consultation”? To avoid a paternalistic approach of presenting preconceived outcomes, policy initiation should occur as soon as a problem or challenge (issue) arises or when requested by Tribe(s). The above conceptual framework is intended to be reflexive throughout like a feedback loop and to be a guide rather than a regimented series of steps. While sequential, steps should allow for reflexively returning to an earlier stage if Tribal agreement on substance or consensus is not reached (**Exhibit 7**). This



makes for a more deliberative process and will likely build trust and buy-in by Tribal governments.

Exhibit 7: Steps for Supporting the Reflexive Consultation Conceptual Framework

Step 1:	Once an issue presents itself, either the Federal Government or a Tribal representative initiates a request to begin Tribal consultation.
Step 2:	To flesh out and to gain an exhaustive understanding of the issue, listening sessions should be held. Notice should go to Tribal leaders, but expect administrative representatives and subject experts to participate. Some level of agreement should be sought to determine if consultation is necessary. Tribes should play the key role in making this determination.
Step 3:	Formal notice of consultation (no less than a 30-day notice) with the Tribal leaders should occur with the highest-ranking agency official possible. National and regional Native organizations should be engaged to assist in preparing Tribes for a full scope of understanding of the policy issue and possible solutions.
Steps 4 & 5:	The full unedited or unfiltered results should be posted along a “notice and comment” approach. This step should allow for Tribes to correct, make revisions, or provide addendums to provide a validity check and ensure substantive agreement.
Steps 6 & 7:	If substantive disagreement exists, to gain clarity, or if requested by Tribes, these steps allow for fuller integration of the Tribal perspective(s). If needed, this may necessitate cycling back to Step 1 on the area(s) in need of clarification or consensus.
Step 8:	Policy or Pareto Optimal is a state so as to make any one individual or preference criterion better off without making at least one individual or preference criterion worse off. This is an idealized state and may not be reached, but true and meaningful consultation with Tribes warrants a process that invites and integrates the very individuals for whom a proposed solution is intended to benefit.



APPENDIX D: Executive Order Blueprint

Presidential Memo on Consultation

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

Proclamation on Indigenous Peoples' Day

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/08/a-proclamation-indigenous-peoples-day-2021/>

EO on White House Indian Education Initiative

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/11/executive-order-on-the-white-house-initiative-on-advancing-educational-equity-excellence-and-economic-opportunity-for-native-americans-and-strengthening-tribal-colleges-and-universities/>

EO 13175, Consultation and Coordination with Indian Tribal Governments

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

NCAI Biden Transition Plan Document

https://www.ncai.org/attachments/Resolution_KTvNwQsHnrFjTxNhVRWLulVxUXYueZfITMKlFmZrGtrfTPpgYfz_PDX-20-054%20&%20Plan.pdf

<https://www.doi.gov/pressreleases/interior-department-federal-partners-commit-protect-tribal-treaty-rights#:~:text=The%20Memorandum%20of%20Understanding%20%28MOU%29%20affirms%20the%20federal,and%20to%20fully%20implement%20federal%20government%20treaty%20obligations>



APPENDIX E: National School Mascots Tracking Database

NCAI developed a comprehensive national tracking database of Native “themed” school mascots (K–12 level), updating it regularly through real-time Google Alert notifications and direct and ongoing engagement with many of the schools. The most recent school mascot changes are listed in **Exhibit 8**.

Exhibit 8: Recent School Mascot Changes – July 2020–July 2022 (Last Updated July 2022)⁸⁰

School Name (State)	Mascot	Decision	Date
J.W. Sexton HS (MI)	“BIG REDS”	District announced change via statement	07/07/22
Chamberlain HS (FL)	“CHIEFS”	School Board voted to retire mascot	06/21/22
Waterloo HS (NY)	“INDIANS”	School Board voted to adopt new mascot	06/13/22
Chief Moses MS (WA)	“BRAVES”	School Board voted to retire mascot	06/09/22
Arrowhead MS (KS)	“APACHES”	School Board voted to adopt new mascot	05/31/22
Lamar HS (CO)	“S*V*GES”	School Board voted to adopt new mascot	05/19/22
Sandusky Jr./Sr. HS (MI)	“R*DSK*NS”	School Board voted to retire mascot	04/18/22
Montville HS (CT)	“INDIANS”	School Board voted to retire mascot	03/15/22
Sanford Jr./Sr. HS (CO)	“INDIANS”	District announced change via letter	01/03/22
Yuma HS (CO)	“INDIANS”	School Board voted to retire mascot	02/28/22
Mountain Valley School (CO)	“INDIANS”	School Board voted to replace mascot	02/15/22
Conard HS (CT)	“CHIEFTAINS”	School Board voted to retire moniker	02/01/22
Hall HS (CT)	“WARRIORS”	School Board voted to retire moniker	02/01/22
Montrose HS (CO)	“INDIANS”	School Board voted to adopt new mascot	01/25/22
Clover Park HS (WA)	“WARRIORS”	School announced new mascot	01/14/22
Morris HS (IL)	“R*DSK*NS”	School Board voted to retire mascot	01/10/22

⁸⁰ National Congress of American Indians. (2022). *National school mascot tracking database: The current numbers*. https://www.ncai.org/NCAI_School_Mascot_Tracking_Database_-_Overview_and_Numbers.pdf



Glossary of Terms

Term	Definition
Administration for Native Americans (ANA)	<p>Established in 1974 through the <i>Native American Programs Act (NAPA)</i>, the ANA promotes self-sufficiency for Native American communities by providing financial assistance, capacity building, gathering and sharing of data, and advocating for improved policies within the U.S. Department of Health and Human Services (HHS) and across the Federal Government.</p> <p><i>Source:</i> https://www.acf.hhs.gov/ana/</p>
American Indian Higher Education Consortium (AIHEC)	<p>Established in 1972, the AIHEC represents the interests of TCUs, which are controlled and operated by American Indian Nations. AIHEC’s membership consists of 36 TCUs in the United States and one in Canada.</p> <p><i>Source:</i> http://www.aihec.org/who-we-are/index.htm</p>
Bureau of Indian Affairs (BIA)	<p>Established in 1824, the BIA is an agency within the U.S. Department of the Interior that is responsible for implementing Federal laws and policies related to 1.9 million AIANs and administering and managing over 55.7 million acres of land held in trust by the Federal Government for Indian Tribes.</p> <p><i>Source:</i> https://www.bia.gov/bia</p>
Bureau of Indian Education (BIE)	<p>The BIE is a division of the BIA under the U.S. Department of the Interior that provides culturally relevant educational services and support to BIE-funded schools. As of 2020, the BIE provides education services to 47,000 students in 23 states. The BIE school system consists of 183 elementary and secondary schools located on 64 reservations. Of these, 53 are operated by the BIE and 130 are directly controlled by Tribes and Tribal school boards under contracts or grants with the BIE. The BIE also provides funding to 33 colleges, universities, and postsecondary schools.</p> <p><i>Source:</i> https://www.bie.edu/topic-page/bureau-indian-education</p>
Culturally Responsive Instruction	<p>Culturally responsive instruction is “a pedagogy that empowers students intellectually, socially, emotionally, and politically by using cultural referents to impart knowledge, skills, and attitudes.” As an example of the form this type of instruction may take in the specific context of Indian education, the state of Montana requires “recognition of the distinct and unique cultural heritage of American Indians and a commitment in our educational goals to preserve their cultural heritage. Every Montanan, whether Indian or non-Indian, should be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner. The Office of Public Instruction Indian Education for All (IEFA) Unit works with districts, Tribes, and other entities to ensure all schools have the knowledge, tools, and resources necessary to honor the IEFA requirement and integrate it into their teaching materials and methods.”</p> <p><i>Source 1: The Dreamkeepers (1994) Dr. Gloria Ladson-Billings</i></p>



Term	Definition
	<i>Source 2:</i> https://opi.mt.gov/Educators/Teaching-Learning/Indian-Education
Elementary and Secondary Education Act of 1965 (ESEA)	Enacted in 1965, <i>ESEA</i> allocates Federal funding for primary and secondary school education and forms the establishment of a national curriculum. Prior to this Act becoming law, the Federal Government had very little involvement in education, opting to leave it as a state and local matter. <i>ESEA</i> also provided a mechanism to hold schools accountable and to increase equality in education nationally. Children of low-income families, particularly rural, Native American, neglected, migrant, homeless, and English language learners, are the primary target of its provisions. <i>Source:</i> https://education.laws.com/elementary-and-secondary-education-act
Equality	In education, equality centers on similarity or sameness rather than fairness, which is the focus of equity. Equality in education thus means that every student receives the same resources and opportunities. This could entail ensuring that all schools receive the same level of funding, the same quality of and abundance of materials and facilities, and/or the same quality of instruction. <i>Source:</i> https://www.nshss.org/blog/equity-vs-equality-in-education-why-both-are-essential-in-today-s-classrooms/
Equity	In education, equity centers on fairness rather than focusing on sameness as equality does. Equity in education thus means that every student receives the types of opportunities and resources they need depending on their specific situation. The goal is to ensure that all students reach the same positive outcomes regardless of their respective starting points or unique challenges. In practical terms, this requires educators to take account of each student’s situation, including, for example, cultural differences. Educators who operate classrooms equitably understand that their students will not all respond in the same way to the same instruction. <i>Source:</i> https://www.nshss.org/blog/equity-vs-equality-in-education-why-both-are-essential-in-today-s-classrooms/
Esther Martinez Native American Languages Preservation Act (ANA, HHS)	Enacted in 2006, this bill amended the <i>NAPA</i> of 1974 to provide for the revitalization of Native American languages through Native language immersion and restoration programs. The resulting grant program is administered by the ANA at the HHS. Congress has reauthorized the legislation through FY 2024. <i>Source:</i> https://www.acf.hhs.gov/ana/programs/native-language-preservation-maintenance/about
Every Student Succeeds Act (ESSA)	Enacted in 2015, <i>ESSA</i> reauthorized the <i>ESEA</i> of 1965. It also replaced and updated the 2002 <i>No Child Left Behind Act</i> .



Term	Definition
	<i>Source:</i> www.everystudentsucceedsact.org/
Indian Education Act of 1972	<p>The <i>Indian Education Act</i> established the OIE and NACIE and provides Federal funds for AIAN education at all grade levels. It also empowers AIAN parents to form advisory boards for federally operated boarding schools and for public schools that have programs for American Indian students.</p> <p><i>Source:</i> www.nlm.nih.gov/nativevoices/timeline/530.html</p>
Indian Land Schools/Impact Aid	<p>Many local school districts across the U.S. include areas of land that are owned by the Federal Government or that have been removed from the local tax rolls by the Federal Government, including Indian lands. Congress has provided financial assistance to these local school districts since 1950 through the Impact Aid Program. The Impact Aid law (now Title VII of <i>ESEA</i>) provides assistance to local school districts with concentrations of children residing on Indian lands, military bases, low-rent housing properties, or other Federal properties and, to a lesser extent, concentrations of children who have parents in the uniformed services or employed on eligible Federal properties who do not live on Federal property.</p> <p><i>Source:</i> https://oese.ed.gov/offices/office-of-formula-grants/impact-aid-program/</p>
Johnson-O'Malley (JOM) Act	<p>The <i>JOM Act</i> authorizes the Secretary of the Interior, through the BIE, to enter into contracts with Tribes, Tribal organizations, states, schools, and private non-sectarian organizations to address the education needs of Indian students.</p> <p><i>Source:</i> /www.bia.gov/as-ia/raca/regulations-development-andor-under-review/JOM</p>
Johnson-O'Malley (JOM) Program	<p>JOM is a Federal program whose primary purpose is to ensure Indian children receive educational opportunities that would not otherwise be provided through the public school system. JOM is a supplemental program providing special services to Indian students based on the needs of individual communities.</p> <p><i>Source:</i> https://www.azed.gov/oie/johnson-omalley-jom-program</p>
Learning Opportunity Threshold (LOT)	<p>For school districts that are funded below full funding under Impact Aid, the LOT percentage provides a mechanism for distributing funds to these districts. The general principle is that “more heavily impacted” LEAs will receive higher percentages of their maximum Impact Aid payments than less impacted districts. LOT is calculated by adding the percentage of an LEA’s average daily attendance that is comprised of federally connected children and the percentage of an LEA’s total current expenditures that is comprised of Section 7003(b) payments.</p>



Term	Definition
	<i>Source:</i> https://sgp.fas.org/crs/misc/R45400.pdf
Migrant Education Program – Title I, Part C	<p>The Migrant Education Program provides funding to support high-quality education programs for migratory children. It also helps to ensure that migratory children are not penalized by disparities in curriculum, graduation requirements, and academic standards across different states and that they are provided with the services and opportunities appropriate to address their unique needs and meet the same challenging state academic standards that all children are expected to meet.</p> <p><i>Source:</i> https://oese.ed.gov/offices/office-of-migrant-education/migrant-education-program/</p>
Native American Languages Act of 1990 (NALA)	<p><i>NALA</i> was enacted by the United States Congress on October 30, 1990. The law gave historical importance as repudiating past policies of eradicating Indian languages by declaring as policy that Native Americans were entitled to use their own languages. The fundamental basis of the policy’s declaration was that the United States “declares to preserve, protect and promote the rights and freedom of Native Americans to use practice and develop Native American Languages.”</p> <p><i>Source:</i> https://www.congress.gov/bill/101st-congress/senate-bill/2167</p>
Native American Programs Act of 1974 (NAPA)	<p><i>NAPA</i> promotes the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives.</p> <p><i>Source:</i> https://www.hhs.gov/about/agencies/staff-divisions/iea/tribal-affairs/about-icnaa/napa/index.html</p>
Native American-Serving Nontribal Institutions (NASNTI)	<p>The NASNTI Program provides grants and technical assistance to Native American-serving, nontribal institutions to enable such institutions to improve and expand their capacity to serve Native Americans and low-income individuals. Institutions use these grants to plan, develop, or implement activities that strengthen the institution.</p> <p><i>Source:</i> https://www2.ed.gov/programs/nasnti/faq.html</p>
National Congress of American Indians (NCAI)	<p>NCAI is a nonprofit social welfare organization that advocates for the protection of treaty rights, inherent rights, and other rights guaranteed to Tribes through agreements with the United States and under Federal law to promote the common welfare of AIANs and to promote a better understanding of Indian peoples.</p> <p><i>Source:</i> https://ncai.org/</p>
National Indian Education Association (NIEA)	<p>Founded in 1969, educators and advocates have fought to ensure students receive an equitable and quality education that is afforded to many of their peers. By advocating for immersion programs, professional development of teachers, and increased funds for school buildings, NIEA has continued to be an important part of crafting policy at the state and Federal levels.</p>



Term	Definition
	<p>NIEA membership remains the driving force behind NIEA’s work, passing resolutions and electing board members that guide NIEA’s mission.</p> <p><i>Source: https://www.niea.org/</i></p>
<p>National Indian Education Study (NIES)</p>	<p>NIES is designed to describe the condition of education for AIAN students in the United States. The study samples AIAN students in public, private, U.S. Department of Defense, and BIE-funded schools. Conducted in 2005, 2007, 2009, 2011, 2015, and 2019, the study provides educators, policymakers, and the public with information about the academic achievement in reading and mathematics of AIAN fourth and eighth graders. NIES is conducted under the direction of the NCES through the National Assessment of Educational Progress on behalf of the DoED and OIE.</p> <p><i>Source: https://nces.ed.gov/nationsreportcard/nies/</i></p>
<p>National Indian Impacted Schools Association (NIISA)</p>	<p>Established in 1983, NIISA is a nonprofit that represents and advocates on behalf of nearly 600 Indian land school districts serving over a million students. Eligible districts receive Impact Aid as compensation for lost taxing authority as a result of Federal action to establish Indian treaty lands, Alaska settlement lands, and Federal trust lands. In total, these school districts received in excess of \$500,000,000 in operational (general funds/non categorical) funds annually. In addition to seeking full funding of the Impact Aid Program, NIISA is working diligently with the Impact Aid Coalitions in the House of Representatives and Senate to address the backlog of facility needs in impacted districts.</p> <p><i>Source: https://niisaindianlands.org/</i></p>
<p>Tribal Consultation</p>	<p>Per President Barack Obama’s Presidential memorandum issued on November 5, 2009, all Federal Government agencies are required to engage in regular and meaningful consultation and collaboration with Tribal officials. This Tribal consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. To establish and maintain a positive government-to-government relationship, communication and consultation must occur on an ongoing basis so that Tribes have an opportunity to provide meaningful and timely input on issues that may have a substantial direct effect on them.</p> <p><i>Source: https://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/Consultation</i></p>
<p>Tribal Sovereignty</p>	<p>Tribal sovereignty is the authority of indigenous Tribes to govern themselves within the borders of the United States. The U.S. Constitution recognizes Indian Tribes as distinct governments, and they have, with a few exceptions, the same powers as Federal and state governments to</p>



Term	Definition
	<p>regulate their internal affairs. Sovereignty for Tribes includes the right to establish their own form of government, determine membership requirements, enact legislation, and establish law enforcement and court systems. The Constitution gives authority in Indian affairs to the Federal Government, not to the state governments. Just as the United States deals with states as governments, it also deals with Indian Tribes as governments. There are 574 federally recognized AIAN nations.</p> <p><i>Source:</i> https://www.ncsl.org/legislators-staff/legislators/quad-caucus/an-issue-of-sovereignty.aspx</p> <p><i>Source 2:</i> https://www.ncai.org/about-tribes</p>
ESEA Title I	<p>Title I provide the necessary provisions to allocate funding to elementary schools with more than 40 percent of its students (between Grades 1 to 6) classified as low income by the Federal Government. The purpose of the funding is to increase test scores and encourage academic development.</p> <p><i>Source:</i> https://education.laws.com/elementary-and-secondary-education-act</p>
ESEA Title II	<p>Title II provides Federal funding to states and districts for activities that strengthen instructional leadership and teacher quality in all schools, especially those with a high proportion of children in poverty. Funding can be used to support a wide array of activities, including interventions for teacher professional development, so long as the activities are grounded in scientifically based research.</p> <p><i>Source:</i> http://www.doe.virginia.gov/federal_programs/esea/title2/index.shtml</p>
ESEA Title III Language Instruction for English Learners and Immigrant Students	<p>Title III helps ensure English learners attain English language proficiency and meet state academic standards. It provides for Federal funding to bilingual education and specialized programs for the advancement of Native Hawaiians, Alaskans, and Native Americans. The most important legacy of the <i>Bilingual Education Act</i> was the establishment of separate bilingual classes for English-language-limited students, acknowledging that educating them alongside proficient students was detrimental to their long-term development and education.</p> <p><i>Source:</i> https://education.laws.com/elementary-and-secondary-education-act</p>
Title IV	<p>Title IV of the <i>Higher Education Act</i> contains nine parts that authorize a broad array of programs and provisions to assist students and their families in gaining access to and financing postsecondary education. The programs authorized under this Title are the primary sources of Federal aid to support postsecondary education.</p> <p><i>Source:</i> https://sgp.fas.org/crs/misc/R43351.pdf</p>
Title VI Indian Education	<p>Title VI, Part A, of the <i>ESEA</i> establishes policies and provides financial and technical assistance for supporting LEAs, Indian Tribes and organizations, postsecondary institutions, and other entities in meeting the special educational and cultural-related academic needs of AIAN.</p>



Term	Definition
	<p><i>Source:</i> https://oese.ed.gov/offices/office-of-indian-education/</p>
<p>Title VII of ESEA (Formerly Impact Aid)</p>	<p>Title VII compensates LEAs for the “substantial and continuing financial burden” resulting from Federal activities. These activities include Federal ownership of certain lands, as well as the enrollments in LEAs of children of parents who work and/or live on Federal land (e.g., children of parents in the military and children living on Indian lands). The Federal Government provides compensation via Impact Aid for lost tax revenue because these activities deprive LEAs of the ability to collect property or other taxes from these individuals (e.g., members of the Armed Forces living on military bases) even though the LEAs are obligated to provide free public education to their children.</p> <p><i>Source:</i> https://sgp.fas.org/crs/misc/R45977.pdf</p>
<p>Tribal Colleges and Universities (TCUs)</p>	<p>TCUs are distinguished by being controlled and operated by federally recognized American Indian Tribes. There are 32 fully accredited TCUs in the United States that service 30,000 full- and part-time students.</p> <p><i>Source:</i> https://www.collegerecruiter.com/blog/2020/10/19/list-of-tcus/</p>
<p>Tribal Education Departments National Assembly (TEDNA)</p>	<p>TEDNA is a nonprofit that seeks to provide ongoing resources for professional development and provide technical assistance to Tribal education departments looking to craft more comprehensive educational systems. Specifically, TEDNA seeks to assemble and collectively represent sovereign nations’ education departments. TEDNA accomplishes this by fostering effective relationships with government agencies, education agencies, and organizations, in addition to providing support and encouragement for each Tribe’s right to define and achieve its own education goals specific to their community. TEDNA represents Tribal Nations reclaiming sovereignty in education through the empowerment of establishing Tribal education departments or the re-establishment of the Tribal education departments.</p> <p><i>Source:</i> https://tedna.org/</p>
<p>Tribal Leaders (Elected)</p>	<p>Contemporary Tribal governments are usually, but not always, modeled upon the Federal system of the three branches: Legislative, Executive, and Judicial. Within this organizational system, the chief executive presides over the Tribe’s legislative body and executive branch. The Tribal council generally acts as any other legislative body in creating laws, authorizing expenditures, appropriating funds, and conducting oversight of activities carried out by the chief executive and Tribal government employees. An elected Tribal council and chief executive, recognized as such by the U.S. Secretary of the Interior, have authority to speak and act for the Tribe and to represent it in negotiations with Federal, state, and local governments.</p> <p><i>Source:</i> www.bia.gov/frequently-asked-questions</p>



Term	Definition
Trust Obligation/ Responsibility	<p>A legal principle that the Supreme Court noted in <i>United States v. Mitchell</i> (1983) is “the undisputed existence of a general trust relationship between the United States and the Indian people.” It is a legally enforceable fiduciary obligation on the part of the United States to protect Tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of Federal law with respect to AIAN Tribes and villages.</p> <p><i>Source:</i> https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-trust-responsibility</p>
White House Initiative on American Indian and Alaska Native Education (WHIAIANE)	<p>The WHIAIANE, located within the DoED, seeks to support activities that will strengthen the nation by expanding education opportunities and improving education outcomes for all AIAN students. It is committed to furthering Tribal self-determination and ensuring AIAN students, at all levels of education, have an opportunity to learn their Native languages and histories and receive complete and competitive educations, preparing them for college, careers, and productive and satisfying lives.</p> <p><i>Source:</i> https://sites.ed.gov/whiaiane/</p>



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