

## The National Advisory Council on Indian Education

### ANNUAL REPORT 2011-2012

#### Introduction

The National Advisory Council on Indian Education (NACIE or “the Council”) advises the Secretary of Education concerning the funding and administration of any program with respect to which the Secretary has jurisdiction and that includes Indian children or adults as participants or any program that may benefit Indian children or adults. NACIE submits this Annual Report 2011-2012 to Congress as required by federal law.

In 2011-12 NACIE held public meetings in Portland, Oregon (November 2-3, 2011), by telephone (March 12, 2012), and in Washington, D.C. (May 2-3, 2012). As a result of discussions and information presented to NACIE during the 2011-12 reporting year (July 1, 2011-June 30, 2012), NACIE makes the following recommendations to Congress. These recommendations are ranked according to priority based on their promise to achieve culturally responsive student success and meet the provisions of the Elementary and Secondary Education Act of 1965 (ESEA) and related legislation and policies.

The Council believes that the federal trust responsibility to Native Americans makes it essential that the Department of Education (ED) increase the visibility of Native children in the public education schools in our Indian reservations, urban and rural schools. More than half of Native children attend K-12 schools in our nation’s large urban centers and it is important to recognize the unique needs of the diverse communities where our students attend public education. *This priority—that the federal government must take all possible steps to increase the visibility of Native children—overarches all the recommendation set forth below.*

#### Prioritized recommendations

- 1. That the position of Assistant Secretary of Indian Education be created or reestablished within the Department of Education.**

*Rationale:* During the former administration the position of Assistant Secretary of Indian Education was de-elevated. This was contrary to the recommendations of tribal leaders and Indian education organizations. The previous position facilitated lateral Indian education policy communication with the Department of the Interior and gave a high profile to collaboration within and among the agencies that have the responsibility to address the comprehensive educational needs of students within Indian Country. To serve these fully legitimate purposes of interagency communication and comprehensive, coordinated assistance to Native students the Council sets as its highest priority the creation or reestablishment of the position of Assistant Secretary of Indian Education.

- 2. The following recommendations pertain to the ESEA:**

- a. That the language within the reauthorization of ESEA clarifies the “highly qualified” criteria to include the special and unique talents of Native language teachers and refrain from the use of “highly qualified” statements that have the effect of penalizing Native speakers.**

*Rationale:* There is significant concern that the “highly qualified” criteria may be used to exclude or pose an obstacle to Native language teachers.

- b. That the government support and expand funding for indigenous language acquisition and proficiency by adult tribal members and continue to support language acquisition and proficiency by children through programs including, but not limited to, immersion schools.**

*Rationale:* Successful language acquisition and proficiency by children depends on a community of proficient language speakers to take hold and flourish. Tribes should be encouraged to develop and implement programs appropriate for adult members wishing to learn or deepen their knowledge of traditional languages. In this way, children studying in tribal immersion schools or other educational environments will be able to enhance and reinforce their language-learning at home and in their communities.

- c. Reauthorize Title VII, Indian Education as a distinct and separate program than the BIE Johnson O'Malley.**

*Rationale:* Title VII, Indian Education and the JOM Program are regulated under two different and separate federal regulations with totally different expectations placed on both parents and schools. There is great opposition to eliminating or combining the Johnson-O'Malley Program with Title VII. The JOM Program is a trust responsibility under Interior and not the Department of Education. The attempt to move the JOM Program under ED is a violation of the trust responsibility that is held by the Department of the Interior/BIE. Under the Title VII program Indian parents spend less time in meetings, act only in advisory roles, and never see the details of programs. The federal regulation CFR 25 Part 273, an act of Congress, fully empowers the Indian parents as part of the JOM program. *See Attachment: Findings from Akin Gump.*

**3. The following recommendations pertain to Title VIII, Impact Aid:**

- a. Repeal Section 8009 (Equalization).**

*Rationale:* Currently 3 states are equalized under the provisions of Section 8009: Alaska, Kansas, and New Mexico. Under the present law, American Indian/Alaska Native students are negatively impacted by the application of the equalization provisions as documented in the 2009 National Indian Education Study (NIES). Section 8009 does not take into account the inability of public school districts enrolling 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 rural setting that serve American Indian and Alaska Native students. New Mexico's foundation aid formula is less than the national average which further complicates district funding at a time when school districts are implementing academic reforms thus adds to the already huge inequities in Indian education school systems striving for reform. **Example:** Gallup McKinley County Schools are closing three middle schools located on the Navajo reservation for the 2012-2013 school year due to a lack of funding. Students residing in the Crownpoint, Tohatchi, and Navajo Pine communities will be impacted. Children enrolled in the districts off reservation schools will remain open. If New Mexico was not equalized, Impact Aid funding would be going directly to those children that generate Impact Aid dollars instead of the state as they credit Impact Aid dollars against what Gallup-McKinley would otherwise receive from the state funding formula. The state should treat all students in the state equally no matter where they reside and attend school.

- b. Amend the Section 8002 (Federal Property) provision as provided for in both the House and Senate authorizing committee reported bills.**

*Rationale:* The change will improve payment efficiency for all federally connected school districts. The change will remove the subjectivity from the current formula making the program more efficient improving the payment timeline for all districts.

**c. Forward fund the Impact Aid Program.**

*Rationale:* There is nothing in the Impact Aid law that prohibits Impact Aid from being forward funded. Rather, the House and Senate Appropriation Committees simply do not elect to forward fund the program. If the program was forward funded districts would be much better equipped to budget Impact Aid. Currently districts have no any idea what to budget for Impact Aid as they prepare for each school year. Forward funding would provide funding stability for districts as they would know in July what their payments would be for the upcoming school year. Additionally, the Impact Aid program is the only non-competitive education program that is not forward funded in ED.

**d. Avoid sequestration.**

*Rationale:* Sequestration will severely hurt districts educating American Indian and Alaska Native students. It is estimated that Impact Aid payments will be cut by a minimum of 10% resulting in staff layoff and program cutbacks.

**e. Conduct 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 Program if needed.

**4. Legislate that the reauthorization of ESEA include a requirement that all school districts receiving Title I and serving a significant number of AI/AN and Native Hawaiian children or receiving Title VII funding have a rigorous health/physical education program.**

*Rationale:* Indian Country faces a health crisis with childhood Type II diabetes, hypertension, and obesity, among other illnesses, on the rise. The health disparities and distress due to traumatic events of suicide and substance abuse have shown to be great improved be incorporating physical education and well being programs as part of the school day. As stated by former Assistant Secretary – Indian Affairs, Larry Echo Hawk, “Obesity and related diseases affect our communities and children in disproportionate ways that need to be addressed immediately.” (Source: <http://www.bie.edu/cs/groups/xbie/documents/text/idc013149.pdf>) [last visited June 10, 2012].) If ESEA requires rigorous health/physical education programs, it will advance the health and wellbeing of AI/AN and Native Hawaiian children and increase academic achievement. This will increase the participation of AI/AN students in the President’s Achievement Leadership Award as well as partnering with the Substance Abuse and Mental Health Administration that serves the people most in need.

**5. Legislate that the reauthorization of ESEA recognize Tribal Education Departments and Tribal Education Agencies (TEDs/TEAs), State Educational Agencies (SEAs), and Local Educational Agencies (LEAs), and make TEDs/TEAs eligible for state-level formula funding, and authorize tribal-state cooperative agreements to co-administer the ESEA programs and services within tribal geographic territories.**

*Rationale:* TEDs/TEAs coordinate all educational matters of a tribe on and off Indian geographic territories to provide education supports and services. This recommendation is consistent with the furtherance of the trust relationship between the federal government and Indian Country.

**6. Remove the payback requirements which currently exist within the ED Office of Indian Education Teacher Training Grants.**

*Rationale:* Current payback requirements in the Title VII Indian teacher training programs cause many qualified Native students to not take advantage of opportunities available in these programs, because these students fear going deeply into debt if they cannot find teaching jobs in specific locations. The scarcity of teaching jobs everywhere makes it all the more imperative for Congress to facilitate job seeking by Native students. Eliminating the payback requirements would help the federal government fulfill its trust responsibility to support Indian educational attainment and provide educational services to tribal people.

**7. Ensure that federal laws aimed at protecting indigenous peoples' cultures and languages such as the Native American Language Act (PL 101-477) are made applicable to the states and enforced through reviews of SEA and LEA plans with Native American students by ED for such.**

*Rationale:* At the state level, compliance of federal law is not equitably enforced. Increased awareness and state compliance could be achieved by more education and technical assistance or by withholding funds for noncompliance. Special measures to ensure enforcement at the state level are sometimes necessary, as in the case of the Native American Graves Protection and Repatriation Act. The federal Native American Language Act and similar acts aimed at cultural protection should be afforded applicability at the state level, and enforced. Presidential Executive Orders such as EO 13592 and all federal legislative acts should preempt state laws that impair or prohibit the education programs of Native American students and their learning of Native languages and culture (Example: Arizona's English Only law).

**8. The following recommendations pertain to higher education:**

**a. Require the Department to better collaborate with community colleges, vocational schools and universities to prepare AI/AN students for attainable careers, and reinstate fellowship programs for Native students.**

*Rationale:* To realize the "cradle to career" concept, achievement must be attainable for AI/AN students in higher education. This recommendation, if accepted, will set the foundation for those graduates to become future teachers at all levels of education.

**b. Maintain or expand funding for the Tribal Colleges and Universities (TCUs).**

*Rationale:* The annual funding for TCUs should reflect the increasing student enrollment and other needs of the institutions. As TCUs continue to increase in enrollment, funding from year to year needs to increase to accommodate the growth and change.

**9. Legislate to encourage the Council of Chief State School Officers and National Governors Association to consider cultural relevancy in the creation of the Common Core State Standards and assessments.**

*Rationale:* This recommendation has been brought forward by NACIE many times and remains a high priority. Native languages must be identified as world languages rather than as "foreign languages" and approved for school credit in that same way that foreign languages do now.

**10. The following recommendations pertain to the BIA Operations and Maintenance Program (O&M):**

- a) Legislate that the Bureau of Indian Affairs Operations and Maintenance Program (O&M) increase its coordination with the Bureau of Indian Education on school construction to increase alignment between the two departments and work to solve the current school construction backlog.**

*Rationale:* BIE presently has the responsibility to ensure that sufficient facilities exist for BIE students, but it has no budgetary control over school construction or facilities improvement. Increased coordination with O&M would allow BIE to have input in the decision making related to school construction budgets. Having the elevated position of Assistant Secretary of Indian Education would be of great benefit in working with the BIA/BIE to coordinate interagency cooperation on concerns such as these.

- (b) Continue to hold the Bureau of Indian Education responsible for seeing that sufficient facilities exist for BIE students, and legislate that the BIE assume responsibility for the O&M budget and control over school construction and facilities improvement, and that the BIE receive the allocation of funds for the management of the O&M, including oversight of the distribution of funds to eligible BIA/BIE programs and facilities.**

*Rationale:* Responsibility for the condition of an educational facility implies the right of and responsibility for control of the funds to correct deficiencies and make improvements to that educational facility. The absence of such control by the BIE over O&M funds is one the main reasons the majority of Indian schools are in poor or sub-standard condition.

**11. Restore the BIE Johnson O'Malley funding in a program distinct and separate from the Title VII, Indian Education program under the Department of Education.**

*Rationale:* The Johnson O'Malley program and Title VII program are regulated under two different federal regulations with totally different expectations placed on parents and schools. NACIE strongly opposes eliminating or combining the Johnson-O'Malley Program with Title VII.

**12. Ensure that NACIE continues to be composed of diverse, well-trained educators and representatives representing the diversity of communities and students throughout Indian country, especially those communities and students who are often neglected in rural and urban communities, as well as those on reservations.**

*Rationale:* Indian students live in highly diverse geographical and social locations. Indeed, 93% of American Indian children attend public schools, many of which are located in urban areas. Accordingly, to fulfill its statutory mission, NACIE must continue to be composed of individuals who are knowledgeable about and able to represent the interests of this broad constituency of students and communities in Indian country, whether in urban, rural, or reservation settings. Accordingly, Congress should continue to ensure that NACIE boards are composed of individuals who possess the diverse educational interests, talents, and years of experience required to provide informed policy recommendations on Indian education at the highest national levels.

## **About NACIE**

NACIE is a Federal Advisory Committee created by Congress. NACIE provides advice to the Secretary concerning the funding and administration of any program, including any program established under Title VII, Part A of the Elementary and Secondary Education Act of 1965, with respect to which the Secretary has jurisdiction and that includes American Indian and Alaska Native (AI/AN) children or adults as participants or that may benefit AI/AN children or adults. NACIE also submits an annual report to Congress not later than June 30 on its activities and may include any recommendations that the Council considers appropriate for the improvement of federal education programs that serve AI/AN children or adults. The findings and recommendations of NACIE do not represent the views of the Department. NACIE is authorized by section 7141 of the ESEA, 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, each of whom is a citizen of a federally recognized Indian tribe. NACIE members are appointed by the President and serve at his pleasure.

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Note: The resignation of one of NACIE's 15 members in 2011-2012 created a vacancy that is anticipated to be filled in 2012-2013.

## APPENDIX

### **Findings from Akin Gump Strauss Hoyer & Feld LLP (“Findings from Akin Gump”)**

The following comments have been slightly edited by NACIE for clarity of expression.

No substantive editing has been performed.

1. Designate a current ED department with specific responsibilities for Urban Native children – this will provide a needed “focus” for urban kids and a place that educators who are working with Urban Native children can seek support and information.
2. Develop a data system that reflects an accurate number of both reservation-based and off reservation/urban native students in grades K-12 as well as achievement levels disaggregated for both groups.
3. Insure that the identification of eligible Indian students for Title VII grant funding allows for the greatest number to be eligible and that the new census classification of students does not negatively impact a student’s eligibility to be included in the Title VII count.
4. Include in the ESEA Reauthorization a plan to help improve the equity in funding for Native Students who attend public school both on and off reservation. This will include a “weighted” formula that would increase the Title VII per pupil allowance for students (who meet the JOM definition of an eligible Indian) attending urban schools who are not receiving JOM funding. NIEA believes that providing equitable funding for Native students is in line with meeting the trust responsibilities for the education of all eligible Native Students.
5. Work with tribal leadership to insure that urban Native students’ needs are included in the agendas that are brought before tribal leadership in the consultation process.
6. Ensure that schools who receive both Title I and Title VII will include in their Title I plans the needs of Native Students and will collaborate with the Title VII Indian Education Programs in developing the plans and services for eligible Urban Native Students.
7. Continue the Parent Committee participation in the Title VII Indian Education Programs, which has been a very successful strategy in empowering parents to be more involved in the education of their children.
8. Summarize the Urban Listening Sessions from 2011 to identify common priorities of the 4 listening sessions.
9. Enforce that the Office of Indian Education communicate in writing the mandates of each grantee. (Many Indian Ed Directors, including myself, complain that OIE will never email or send a letter about issues you communicate with them. They only like to talk on the phone, we are assuming so that it is not in writing or documented. Many of the urban Indian Ed programs are very large and we need the written support from OIE to provide to our school districts. Some examples include travel: OIE should mandate that all Title VII grantees attend their professional development and training days and school districts should allow Title VII staff to travel.)



10. ED should support Native American culture as ways to prevent drop out, increase attendance and build cultural and self-esteem that translate to a better student. (Many of our urban kids do not know much about their tribe or cultural ways. The Title VII and JOM programs usually are the link to culture that these kids have. OIE needs to do a better job at validating cultural programs AND allow certain cultural programming as an allowable cost.)

11. ED should allow Educators who work with urban Indian youth time to speak at consultation and listening sessions along with Tribal Leaders. (The people who know most about our urban Indian students are those that work with them every day. Not so say our tribal leaders, but many times tribal leaders don't know the specific stories or issues that affect those urban areas.)

12. ED should provide an avenue for those working with urban Indian students to find out what is being done that is successful from other schools and programs, i.e., what programs, ideas, etc. work for other urban Indian students.

13. Provide a network system for tribes, IHS, and other agencies to provide needed services for urban Indian students. Indian students living away from their tribal jurisdiction areas are not served.

14. Provide that teachers and administrators must receive professional development when working with Native students.

15. Include appropriate cultural curriculum to be taught in the schools. Include Native educators, teachers and curriculum specialists at the district and state levels.



	<b>JOHNSON O'MALLEY</b> 20 U.S.C. § 452-457	<b>TITLE VII</b> Indian Ed. Act 20 U.S.C. § 7401 <i>et seq.</i>
Purpose:	Financial assistance for programs to meet the specialized and unique educational needs of eligible Indian students, including programs to maintain established State educational standards. 25 C.F.R. § 273.1(a).	Programs to assist eligible Indian students in meeting state academic content and state academic achievement standards. 25 U.S.C. § 7421.
Eligible Recipients:	Any State, school district, tribal organization or Indian corporation. 25 C.F.R. § 273.11(a).	Formula Grants: LEAs and Indian tribes.  Demonstration Grants: State Educational Agencies (SEA), LEAs, certain BIA schools, and Indian tribes.

Committees:	<p>Indian Education Committee (“IEC”) develops, approves, implements and evaluates the JOM program. If local school board is not composed of a majority of Indians, then an IEC is elected among the parents of eligible Indian students.</p>	<p>Formula Grant LEAs must have developed the program with the written participation of an Indian Committee. The Committee is composed of and selected by parents of Indian children, teachers, and, if appropriate, an Indian student attending the school. A majority of the Committee must be parents of Indian children. Before applying for a Formula Grant, the LEA must submit the plan to the SEA for comment.</p> <p>Demonstration Grants – Committee not required</p>
General Programs:	<p>Authorizes funding for two types of programs – operational support and supplemental programs.</p> <p><b><u>Supplemental Programs:</u></b></p> <p>Any program that meets criteria in 25 C.F.R. § 273.2(t), which specifies that programs must “meet the specialized and unique educational needs of eligible Indian students which may have resulted from socio-economic conditions of the parents, from cultural or language differences or other factors, and as provided by Sec. 273.34(b).”</p> <p><b><u>Operational Support:</u></b></p> <p>For “school operational costs in order to meet established State educational standards or State-wide requirements.” 25 C.F.R. § 273.2(l); 273.33.</p>	<p>Title VII authorizes and funds 3 main programs:</p> <p><b><u>Formula Grants to LEAs:</u></b> Programs to help Indian students meet state educational standards.</p> <p><b><u>Demonstration Grants:</u></b> Includes professional development grant, to prepare and train Indians to serve as teachers and school administrators.</p> <p><b><u>National Activities:</u></b> Funds research, evaluation, and data collection to identify effective educational practices for Indian students.</p>
Types of Project Activities:	<ul style="list-style-type: none"> <li>• Tutoring</li> <li>• Counseling</li> <li>• Math or Reading Improvement</li> <li>• Indian Studies Program</li> <li>• Career or Job Information</li> <li>• Headstart/Kindergarten Enrichment</li> <li>• Summer youth educational camps</li> <li>• Nutrition and Fitness programs</li> <li>• Classroom Aides</li> </ul>	<ul style="list-style-type: none"> <li>• Tutoring</li> <li>• Counseling</li> <li>• Math or Reading Improvement</li> <li>• Cultural enrichment activities; Native language studies</li> <li>• Career &amp; post-secondary training</li> <li>• Early Childhood Programs</li> </ul>

<p>Examples of Project Activities:</p>	<p><b><u>Career Counseling</u></b></p> <p>Career Day; Resume writing workshop; computer classes;</p> <p><b><u>School Supplies</u></b></p> <p>Tablets; pencils; shop supplies; instrument rental for band or orchestra; sewing materials; test fees; graduation gowns; Native American club; drama; speech; honor society;</p> <p><b><u>Indian Cultural Programs</u></b></p> <p>Cultural presentations by guest speakers, elders, etc; field trips to historical and Indian cultural sites, to other tribes; and local colleges; Native American Dance Performances; Native American Language classes; Regalia making workshops; Native American Foods Day pot luck; Native American murals and posters for display; High School students develop research reports on relatives, ancestors and Indian figures; Students poems and stories of Native American traditions; art projects on Native American cultures, ancestors and events; Native American Dress Day; community newsletter of articles written by Indian students; Indian games; School Native American Club; Indian jewelry making classes ; student-generated radio shows with cultural content and sound effects.</p> <p><b><u>Incentives for Indian Students who have excelled</u></b></p> <p>T-shirts; sports bags; field trips to museums and theaters; award banquet.</p>	<p><b><u>San Juan School District, UT</u></b></p> <p>Incorporates Navajo language and traditional culture in language, math and science curriculum to help students in K-8 meet state standards.</p> <p><b><u>Native American Early Learning Project</u></b></p> <p>NAELP prepares 3-4 year-olds for entry into kindergarten, focusing on early language and communication development, cognitive skills, conceptual knowledge, and social development</p> <p><b><u>Phoenix Union High School District, AZ</u></b></p> <p>Incorporates native culture and math to achieve state standards. For example, students are assigned culturally relevant research projects requiring secondary research or interviews with their elders or family.</p> <p><b><u>Native American Success in Mathematics and Science (NASIMS)</u></b></p> <p>Assists Indian students in grades 9-12 with mathematics and science to prepare for college. NASIMS also works with students experiencing difficulty attending school, and attempts to build relationships between parents, teachers, and counselors. [funded by the Office of Indian Education, Discretionary Grant Program]</p> <p><b><u>Santo Domingo Indian Reservation, NM</u></b></p> <p>Native American students study the history of farming through a lesson that compares farming in eighteenth-century New England to current-day practices in the Midwest. The lesson uses literature and the study of various farming tools and products to illuminate the changes that have taken place in the industry over time and in different parts of the country. The lesson includes group activity and discussion.</p> <p><b><u>Skokomish Reservation, WA</u></b></p> <p>Students study and connect with literature related to the Native American boarding school</p>
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		<p>program through community involvement and self-examination. Students use Shirley Sterling's novel <u>My Name Is Seepeetza</u> and the poetry of Laura Tohe as the lenses through which they explore topics of their choosing. The class visits the Skokomish Tribal Center to interview tribal elders about the impact of the residential boarding program on the community. The author visits the class and answers student questions related to her novel, her life, and their personal research topics.</p>
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