

U.S House of Representatives
Committee on Natural Resources

Field Hearing
Indian Education

Testimony Submitted on Behalf of
Sisseton Wahpeton Oyate

Enemy Swim Day School
Tiospa Zina Tribal School



“We can only renew America’s promise when the first Americans are legitimate participants in framing the future of this country.”

**Dr. David Gipp, President United Tribes Technical College
Democratic National Convention, 2008**

Testimony

Thank you for the opportunity to speak today on the educational needs of Tribal Schools. I am Dr. Sherry Johnson and am here representing the Sisseton Wahpeton Oyate and serve as the superintendent of Enemy Swim Day School one of two tribally controlled schools on the Lake Traverse Reservation in North-Eastern South Dakota. With me is Ted Hamilton, the Superintendent of Tiospa Zina Tribal School, the other tribally controlled school on the Lake Traverse Reservation. We would both like to recognize and thank Representative Herseth-Sandlin for her work with this committee to keep Indian Education a priority in Congressional deliberations.

We are waiting.

This upcoming school year our students will recognize the 160th year of formal relations with the United States. In 1851 the Sisseton Wahpeton Oyate made peace with the United States Government by allowing the development of small forts and settlements in what is now Minnesota. Since that time, we have been promised many things, and have given up much more. One thing that has been promised is the provision of a high quality education for our children: an education that allows our children to maintain their cultural values and practices while preparing them to participate fully in American society. Unfortunately, Congress passes legislation that clearly provides for these services and the Federal Administration then fails to fulfill these promises.

In the past eight years we have been living under the No Child Left Behind Act, and in reviewing the Obama Administration Education Blueprint, we see a similar and ongoing thread. The core concept appears that if schools are not effective, they should be reformed and the system changed to be effective. Unfortunately, that reform has not included the very structure that hinders schools from being effective. Today we are asking for significant change in how things are done in Washington, Albuquerque and on the Reservations.

First, we need the House of Representatives to be reformed. Two years ago, during a hearing before this committee, Representative Kildee brought out a copy of the US Constitution and quoted that document to explain the formal sovereign relationship between the United State

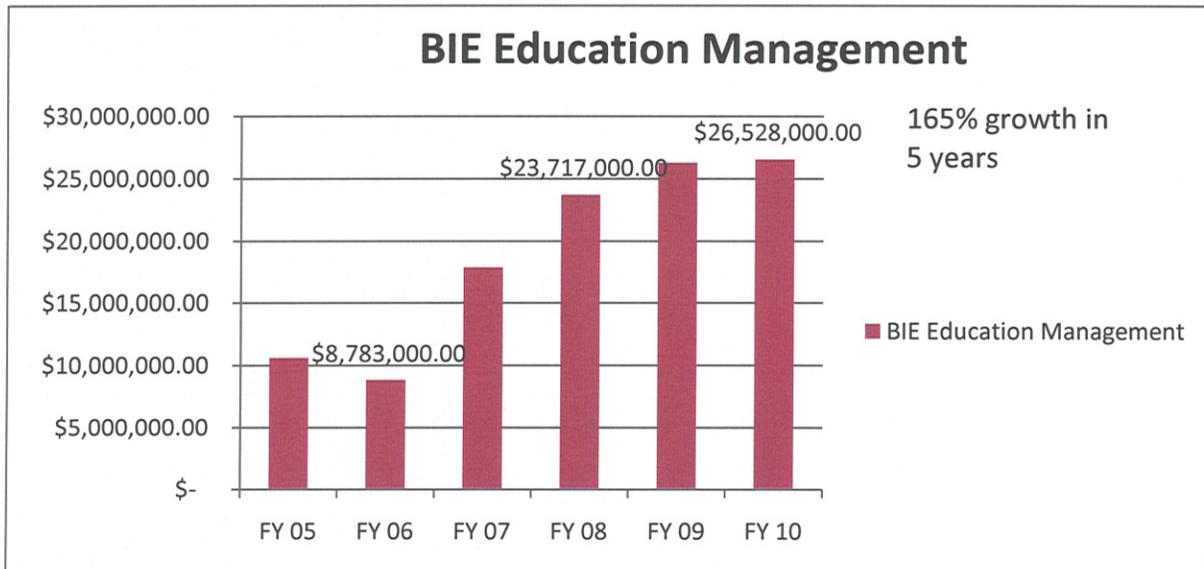
and the Tribes. We use the video tape of that hearing to teach our children and teachers about the relationship between the United States and the Tribes. This relationship is at the center of our need to reform. The U.S.Senate has a standing committee on Indian Affairs; the U.S. House of Representatives places this work in a committee on Natural Resources. This placement allows the bureaucracy to work nearly unimpeded from year to year without significant oversight. Tribes play a waiting game, working hard with Congress to get legislation passed and then waiting for a few years for the bureaucracy to grow and fail to respond to Congressional intent. Then it is back to Congress again to re-write laws that could work if properly administered. It is a dance that has only one victim, children.

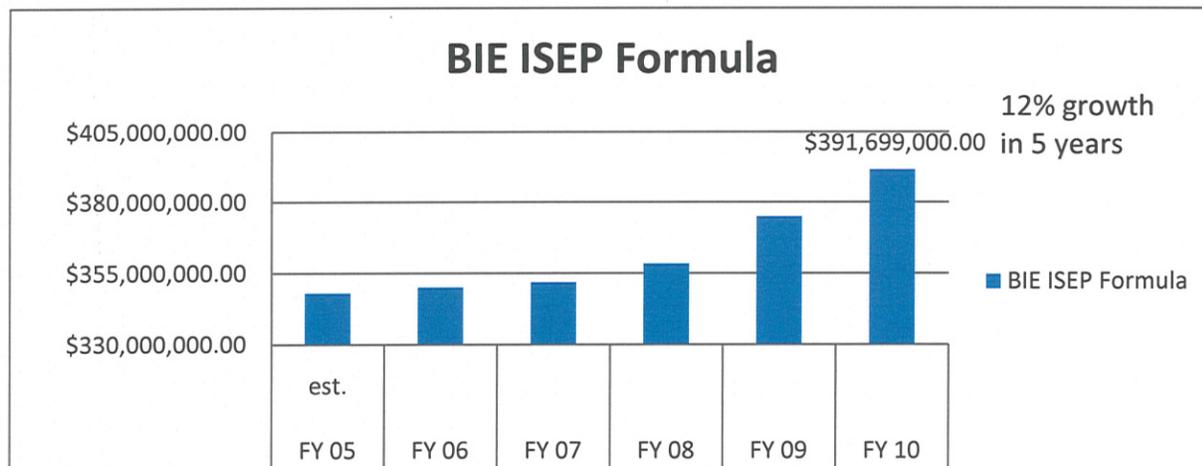
Today we are asking for three things.

1. The House of Representatives acknowledges the importance of working with Tribes by creating a standing committee on Indian Affairs in the House that would have oversight of the Federal Bureaucracy.

The House of Representative Committee on Indian Affairs would hear the same concerns that we have been voicing for years. Attached to this testimony are documents of testimony given to other organizations and arms of the government. They outline the same issues that we continue to have today and can inform you and your staff on the many issues facing our schools.

2. Diminish the size of the BIE bureaucracy to assure fiscal resources are reaching the schools and educators at the school level. It should be clearly reiterated to the Administration that their job is to assure resources are sent to school, not to manage the schools through an ever burdensome and bulging bureaucracy. In the testimony binders there is a testimony submitted to the National Indian Education Association (Attachments: Appendix 1 Page 23) that provides a number of graphs related to Tribal School funding. To explain our frustration we will reproduce two of these graphs:





Since passage of No Child Left Behind, we have seen a growth in base funding to schools that does not keep up with the inflation rate while the expenditures on the Federal Bureaucracy has expanded beyond anyone's expectations.

In particular, we are calling for the closing of the Division of Performance and Accountability in Albuquerque.

3. Fund schools appropriately. Each year the Administration submits a budget to Congress requesting funding for our schools. This budget has not met the needs of the schools. School facilities, administrative costs, and operational costs are "constrained" by the BIE. This word "constrained" is a euphemism for not providing sufficient funds to the schools. A figure is calculated for each school regarding maintenance and administration of that school. In the past five years we have seen schools have to fund their programs and maintain their facilities at 60% of the actual determined cost of those functions. In reality what happens is schools take from funds identified specifically for educational activities and put them into maintenance and heating of facilities. The following recommendations were made in January of 2010 and still apply:

Administrative Cost Grant: The appropriation request should be raised from \$43,737,000.00 to \$69,000,000.00 and schools should receive 100% of the Calculated Need in future years.

Facilities Operations and Maintenance Operations and Maintenance should be funded at a rate of \$148,000,000 compared to the BIE recommendation of \$107,717,000. O&M should be distributed to the schools at 100% of Calculated Need. Tiospa Zina needs to add to the school due to over-crowding. Funding for new school construction to meet population growth is critical. The current formula that is based on schools previous years enrollment is flawed and needs to be replaced with formulas that take into account population growth and school success.

Base Student Funding The Tribally Controlled Schools Act created the formula funding process for tribal schools. The current BIE recommendation for funding Indian Student Equalization Program (ISEP) is \$364,556,000. The request to meet the needs of the schools should be increased to \$444,000,000.

An example of the inequity of funding can be found on the Lake Traverse Reservation. Citizens of the Sisseton Wahpeton Oyated generally attend one of three schools, Enemy Swim Day School, Tiospa Zina Tribal School and Sisseton Public School. Sisseton Public school is a Federal Impact Aid School and receives considerably more per Native student in revenue than either of the two tribal schools. The table below is a comparison.

Comparison of Basic Funding for Tribal Schools vs State Schools (Based on Comparison of Tiospa Zina Tribal School and Sisseton Public)		
2009-2010	State Funded Per-Student Funding	Tribally Funded Per-Student Funding
State Aid/ISEP	\$4,804.60	\$5,021.00
Small School Adjustment	\$144.14	\$0.00
Federal Impact Aid*	\$5,011.40	\$0.00
Title I*	\$2,112.00	\$2,112.00
Facilities O&M + Admin Cost Grant*		\$2,215.22
Total Per-Student Expenditure	\$12,072.14	\$9,348.22
* Based on Annual Federal Appropriation Funding for Special Education students and other funding sources are equitable depending on the student needs or program needs. Those funding sources include Perkins and Free and Reduced Lunch programs.		

Alternative Assessment Funding NCLB Section 6111 funding for development of assessments and standards need to be increased to 40 million dollars per year . These funds should be sent directly to the tribes and schools developing assessments and standards and not spent on contracts let by the BIE.

As you can see, we are only asking for three things, but those three things have huge impact on our schools. We work hard each year to assure we have the highest quality instructors, solid learning programs and strong partnerships with our parents and communities. Without Tribally Controlled schools, thousands of Native students would not be receiving an education.

In the future we hope to no longer be waiting for initial promises to be fulfilled. We hope to build stronger partnerships with Congress to expand our educational initiatives to address economic growth and sustainable lifestyles on the reservations. We are moving ahead while waiting for our friends in the U.S. Government to catch up. Pidamaya.

Tribal Consultation Meeting
April 28, 2010
Pine Ridge High School



“We can only renew America’s promise when the first Americans are legitimate participants in framing the future of this country.”

**Dr. David Gipp, President United Tribes Technical College
Democratic National Convention, 2008**

**Testimony Submitted by:
Theodore L Hamilton, Superintendent**

Contents

Written Testimony	Section 1
Review of NCLB Requirements	Section 2
School Funding Briefing to Congress NIEA Congressional Summit	Section 3
ARRA BIE Feedback	Section 4

US Department of Education & Department of Interior

Education Policy Discussion

Thank you for the opportunity to speak today on policy level issues facing Tribal Schools. I am currently the superintendent of Tiospa Zina Tribal School on the Lake Traverse Reservation in North-Eastern South Dakota. I drove 500 miles to be here today to talk about one of the most important issues facing our community, the education of our children.

I am sure you are familiar with the history of educational reform in the United States. First the insistence of the founding fathers in the 1700's of an informed electorate. In the 1800's the expansion of the United State across the continent and the creation of locally controlled public schools epitomized in the iconic one-room schoolhouse funded by families in a community through local tax dollars. In the last Century this system changed with the impact of the Civil Rights movement on the creation of the Federal Education Act currently named No Child Left Behind. Throughout 200 years of evolution we have seen our country recognize the importance of education in creating a common language and social values for people immigrating into the United States.

Public education has been the place where the Federal Government has assured that every student in the United States receives a common education, assuring that regardless of where citizens travel, they will encounter people who speak the same language that they speak and have the same understanding of history and social structure that they understand. Federal policy in public education has been focused on homogenization of the country, assuring both social continuity and control. The Federal system has also assured that minority students have access to basic education in an effort to positively impact economic development and equal rights.

For those people coming to the United States, either willingly, because of famine, as political refugees or even as slaves in the storage compartments of ships, the goal has been to

become equal members in a sovereign Nation. A nation based on concepts of equality and fraternity that has grown into a dominant power across the globe. It is then, with no small irony, that the United States is faced with a parallel history of education that has at its core the goal of reducing the sovereignty of a peoples. The parallel educational history of the indigenous people of the United States reads very differently from that of the rest of the country. It is a history of forced oppression, destruction of language, denial of intellect, and most importantly the constant reduction of sovereignty.

It is critically important to recognize the impact of colonization, removal and reduction as part of the genocidal activities of the United States as we talk about education of Native American children. To make the changes necessary to this broken system requires us to recognize the past while working together in the present to create an educational system that is mirrored in the vision statement of Tiospa Zina Tribal School where: **“Learners will retain their own unique culture while being prepared to live in a technological/multi-cultural society”**. This vision is in complete alignment with Congressional intent as defined in section 5202 of the No Child Left Behind Act:

NATIONAL GOAL.—Congress declares that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children—
“(1) to compete and excel in areas of their choice; and
“(2) to achieve the measure of self-determination essential to their social and economic well-being.

At a policy level, the retention of tribal citizenship is remarkably preserved in the present No Child Left Behind Act and other Acts related to Indian Education. Unfortunately, what is mandated by the Legislative Branch or determined by the Judicial Branch is largely ignored by the Administrative Branch of the US Government.

In Section 2 of this briefing document you will see a short review of the implementation of the No Child Left Behind Act as seen from the eyes of a superintendent of a tribal school in South Dakota. As I look at that list of concerns and consider the Obama Administration's "Blueprint for Reform", I am frustrated, furious and faith-filled.

I am frustrated because many of the things in the Blueprint are already in the No Child Left Behind Act. NCLB was a bi-partisan attempt to address the same things the Blueprint addresses: student performance, teacher quality, administrator quality, college readiness, rigorous standards, diversity in assessment and an assurance that tribal people would have a voice in the education of their children.

I am furious because despite an Act that clearly outlines the rights of Tribes to determine their needs, an Act that calls for the Federal Government to be accountable, we have seen an unprecedented growth in Federal Bureaucracy that deals with Indian Education and little growth in the support of the schools that work on a daily basis with the children. The goals of Congress set out in NCLB were largely ignored. Funding for schools has also seriously lagged behind a growth in funding for BIE activities. This is outlined as part of a Congressional Briefing in section 3 of this workbook.

I am concerned that even though there is a hope of change with Mr. Obama's administration, we still have the same people in positions interpreting for us laws that are designed to allow tribes to maintain their sovereignty. There has been a pervasive message sent to us through interaction with the BIE that our ideas are not important, that what we are doing is not important and that whatever planning we do is not honored. A case in point is outlined in Section 4 of this workbook. Section 4 is the documentation that we received at Tiospa Zina

regarding our planning for the use of ARRA (Stimulus Package) funding. We spent a number of weekends in the early fall with stakeholders from our school, community and tribe to develop a plan for the use of the ARRA funding. The BIE gave us no feedback on our forms beyond having us re-submit on new forms and finally approved our plan in March of 2010, nearly one year after the funds were announced.

I am faith-filled because in the Obama Administration I am seeing the first sitting President in his documentation talk about allowing Tribal communities to have a voice in education. The Blueprint has some things that we must support:

1. **Establishment of growth measuring assessments that are developed at the tribal level.** The idea of a National assessment that measures all students is an exercise in hubris. As a nation we can't spend our resources, both human and fiscal, on comparing each other. The only people who benefit from a National Assessment are those who create the National Assessment. For the rest of us, we know if a child is reading, writing or succeeding. What we need to know is how are they growing? We can only assess that if we use language the student and community understand that are based on standards that the community has created. Under NCLB we have seen the BIE withhold the funding and support to assure that tribes have had standards and assessments that help their children succeed. I am faith-filled that the Obama Administration will end this practice.

The biggest question that I have yet to hear regarding assessment of students in poverty is; are we measuring the wrong things? *I strongly urge the Department of Education to work with Congress to remove reading and math as major content areas for assessment.*

The result we see over and over again is that standards are used to determine

instruction in our schools. Since the standards are minimums we end up focusing on minimums that do not ultimately help our communities. We need to measure those things that are important in this Century. Examples would be: entrepreneurial capacity, ability to collaborate in a multi-cultural setting, problem solving, and logic. We get what we measure, and we are holding our students back by measuring minimal skills.

2. **Fostering Innovation and Excellence** is a major tenant of the Blueprint. I would ask that you consider part of that Fostering Innovation changing the Federal approach to Indian Education. In NCLB there were paragraphs that called for the funding and support of Tribal Education Departments. These areas of the law were left un-funded and un-supported. What we have seen is a 165% growth in the Federal Bureaucracy and an increasingly centralized system that has historically never worked for Indian people. What is needed is an increase in support for the development of Tribal Education Departments that can continue a Government to Government dialogue on education while providing oversight in the areas of accreditation, standards, assessment, teacher quality and facilities.

There has been a great deal of talk from the Bureau of Indian Education staff about the role BIE plays as the State Education Agency. This concept has been a major source of problems over the past eight years and is not supported in any legislation. The idea that a Federal department can determine and direct the educational needs of a sovereign nation is insulting. The Department of Education has been made duplicitous in this endeavor because they do not understand the political relationship between the Tribes and the US Government. I have placed in your briefing folder a copy of a video taken of Representative Kildee from Michigan who outlines clearly the sovereign role of Tribe

and the often difficult but necessary negotiations between the United States and the Tribes. I strongly urge you to watch this seven minute video as a basic understanding of tribal citizenship. If the language is to remain, we recommend that the next Act be revised to identify Tribal Education Departments as the SEA's for the tribal schools that would then be considered LEA's.

The BIE should be diminished in size and scope, particularly the Division of Performance and Accountability should be disbanded as an inefficient and anachronistic vestige of Federal paternalism. Monitoring of Federal funds can be conducted through the existing Line Office system and resources for school reform can go directly to schools and tribes.

Time and time again we hear how this can't be done and the reasoning we are given revolves around trust. The BIE staff have exhibited a pervasive belief that schools are administered by people who do not know how to teach students. This is an example of institutional racism, made worse because it is perpetrated by Indian people hired by the Bureau.

Throughout the legislation we see that there needs to be consultation with the tribes. What we really need are multiple levels of consultation. At the school level, a stake-holder meeting with the ELO in attendance is a form of consultation. A meeting between the superintendents of a Line Office to direct the Line Office staff is a form of consultation and creation of policy with Federal officials and tribal leaders is a form of consultation. As things stand now, there has been little real dialogue, only dictation related to consultation.

3. College and Career Ready Students

We have some serious challenges to helping students become college and career ready. I have been involved in this area of work for the past eight years as director of the Oceti Sakowin Education Consortium that has written and directed the State GEAR-UP program.

I strongly recommend that the government consider two things to help our students become college bound. First, we need to break down the fiscal barriers to education. Native people are the only group in the United States where education is considered a constitutional right. Since education was written into the treaty obligations of the US Government, the highest level of education necessary to be successful in our society should be the basic benchmark for Native students. ***The Federal Government should provide free public education through the Bachelor's of Arts/Science level to all Native students.*** Some colleges already have free tuition for Native students and we should move beyond that to include housing, books, fees for all Native students wishing to attend colleges and universities. Additionally, the Federal Government should only fund colleges and universities that require recruitment of and mentoring of Native students as a measure of tenure.

The second recommendation I would have is to take a serious look at what Career readiness means. Many of the jobs that we send students to college to do become out-sourced to over-seas markets by the time our students graduate. ***We need to expand what has traditionally been Perkins funded activities that provide stronger vocational and entrepreneurial skills to students.*** In this way, our high schools should become small business incubators for our communities, a critical service in high poverty rural reservations.

4. Teacher and Leader Pathways

Teacher preparation for teachers working successfully with Native students is different than preparation in other areas. Native students expect culturally integrated instructional methodology and content and the majority of teachers coming to our schools don't have a clue.

There must be an increase in funding to our Tribal Colleges to help develop a strong Native teacher corps. Alternative teacher pathways work to some degree if a strong cohort process is in place that moves beyond the undergraduate experience and into the first three to five years of the teaching experience. Unfortunately, we spend a great deal of time re-teaching faculty from State universities because they simply are not prepared to work with students who have a different history, culture and educational experience.

5. Impact Aid

As a superintendent of a school on a reservation I am deeply concerned about how Federal Impact Aid is affecting our school. State Impact Aid schools in South Dakota have not been working directly with tribes on programs for Native students. In my previous job I worked with the Rosebud Sioux Tribe on an MOU between the State of South Dakota and the tribe regarding information about Native students in public schools receiving Impact Aid. At Tiospa Zina I have had many meetings with our tribal council and each time the issue of the public school comes up and students transferring to Tiospa Zina because they are not perceiving fair treatment in the public school. The tribal leaders do not know their rights under Impact Aid.

I recommend that the Department of Education strengthen Tribal oversight of

Impact Aid schools and make assurances that tribal chairpersons and councils are aware of their rights under the Impact Aid legislation. As a superintendent of a Tribal Grant school it is frustrating that our school receives \$ 2,700.00 less per student than the Impact Aid funded public school seven miles from our front door. It is also an indication of the failure of public schools that Tiospa Zina has 630 students.

Tiospa Zina Tribal School is unique in South Dakota as it is the only Tribally Controlled School that did not start as a BIA funded day-school. It was founded by families who determined that the public education system was not appropriate for their children. That in a twenty year period the school has grown from twenty students to 630 speaks volumes to the failure of public education to meet the needs of our children. It is also a testament to the families that our children are being educated for thousands of dollars less per child than the public school up the road.

As you go back to Washington DC and consider all that you have heard I ask that you remember a quote used by former Vice President Al Gore. We need change in the bureaucracy in Washington and Albuquerque and to get that change we will need to ask hard questions about the growth and expansion of central government control. Keep in mind Mr. Gores quote as you listen to the voices of the bureaucracy:

“It is difficult to change a man’s mind when his job depends on him not changing his mind”

An Inconvenient Truth

Section 2 Review of NCLB Requirements

Since 2002 NCLB clearly outlined objectives of Interior related to Indian Education. The Bureau of Indian Education has failed to meet all the objectives outlined in NCLB. In addition, other sections of the law that are administered by the US Department of Education have been problematic. Below is a list of sections and associated concerns.

1. Section 1003 of NCLB clearly describes a System of Technical Support that is to be put in place by the BIE to assist schools. This system requires:

ALLOCATION.—A State educational agency that receives a grant under this subsection shall allocate at least 95 percent of the grant funds directly to local educational agencies for schools identified for school improvement, corrective action, or restructuring to carry out activities under section 1116(b),

It is our understanding that the BIE has used the funds to build a System of Support program that requires schools to utilize only BIE “approved” consultants (at a cost of \$ 2,300 per day plus travel expenses) and that the program focuses only on K-3 interventions. There has been little to no real collaboration with LEA’s to determine what is needed but changes have been dictated to our schools.

2. Section 1111 requires the BIE to develop an accountability document. The accountability document developed by the BIE has not been approved by the tribes through the consultation process and has not been consistently followed by the BIE.

The BIE accountability workbook outlines how BIE funded and operated schools will determine AYP. This has proven ineffective as schools follow their State guidelines and then are told that they do not make AYP based on the BIE accountability workbook which calls for them to follow their State workbook. We ran into this in a big way related to Safe Harbor provisions concerning AYP.

The biggest issue with the accountability determination process has been a consistent lack of communication between schools and the BIE. Schools will contact the BIE and get no response, we have seen this at our sister-school Enemy Swim Day School regarding AYP determination appeals.

A second issue with Accountability has been the determination of a school attendance center. The BIE DPA staff have refused to allow tribal schools to identify attendance centers within their school. As an example, Little Wounds School is comprised of an elementary, middle and high school. The entire K-12 school system is used to determine AYP instead of allowing the LEA (Little Wound School) to divide into three parts. This means that improvement efforts are spread across the entire K-12 system rather than pinpointed to the area that is at greatest risk.

The issues of attendance centers may be unique to South Dakota as the South Dakota State Accountability workbook that has been approved by DOE provides for LEA's to identify attendance centers. This has been an issue with our schools and the BIE because we are told to follow the State Accountability Workbook but may not do so regarding attendance centers.

3. Section 1111 requires notice to schools of AYP status by the start of each new school year. The BIE has not been successful in meeting this deadline once.
4. Section 1112 requires LEAs to create and submit school improvement plans and that the plans will be reviewed. The Education Line Officers who best know the schools have not been given time or resources to review and approve the plans. The plans have been sent to DPA where they disappear.

The Section 1112 requirement provides for an opportunity for the BIE to have Line Officers work directly with schools to understand the needs of the schools. This has largely been ignored by the system. The goal of education plan review should be to understand school needs and open a dialogue. The word review should NOT be misinterpreted to mean "approve". The goal should be to gain understanding of the unique needs of each school.

5. Section 1116 describes the status of schools in the LEA process.

The School Improvement process that determines school status also comes with specific supports. Among these supports are assistance to the LEA's from the BIE. It is frustrating that the restructuring technical support documentation describes a BIE Operated school and does not describe how a grant school should conduct restructuring. This is a typical problem with the BIE, technical support documentation and activities are focused on BIE Operated schools, even though BIE Operated schools only make up 1/3 of the schools in the system.

As a person who has worked directly with schools across South Dakota, the BIE has not provided significant technical support for schools in restructuring.

6. Section 1116 also requires the BIE to publicize the AYP status of each school.

This was not done until 2007 and is now done entirely on the BIE website.

Also under section 116 the BIE is to support the development of Alternative AYP specific to tribal interests. The BIE has not fully supported the development of Alternative AYP processes and has actively ignored the requirement of the law as set forth in a Government Accountability Office finding in June of 2008. (See Attached)

BIE has used the Department of Education as a reason that Alternative AYP programs

that include development of alternative standards and assessments are unable to be developed or are too expensive to be developed. This is contrary to the NCLB Act.

7. Section 1117 describes the School support and recognition program

As was described in section 1003, the BIE has established a SOS program that does not “assist the school in developing recommendations for improving student performance in that school”. The SOS process has been one dictated to schools without collaboration with the schools. Additionally, the SOS program has not made bi-annual reports to the school stakeholder groups as identified in the law.

8. Section 1129A Fiscal Requirements

Recently during the inclusion of ARRA (Stimulus Package) funding the BIE directed schools in school improvement to replace budgeted travel funds from the SOS/BIE Reads program with ARRA funding. Tiospa Zina worked to not do this as it might be considered a form of supplanting one Federal fund with another Federal fund.

9. Section 2131 of NCLB provides a mechanism for funding Higher Education partners in providing School Administration degrees. This has become a concern as a number of programs have been funded through State systems and the Higher Education partners are providing degrees without preparation in working at BIE Operated or Funded schools. There should be some assurance that in any preparation program that the Federal system is studied along with the State system.

10. Section 2411 State and Local Technology Grants

The BIE receives $\frac{3}{4}$ of 1% of the appropriation for funding technology programs at Tribal Schools. The BIE technology program has been fraught with problems and is not reliable. The network administrators seek to control local schools and dictate network technologies to the schools. The greatest challenge is the tendency toward centralization of computing. At this point in time the BIE’s technology infrastructure is at least fifteen years behind the rest of the world.

It is interesting that the week we have this conference that BIE sends out faxes about technology. One of the interesting faxes that was sent at 10:32 on Monday was a fax that told us that this meeting was happening. Typical of the BIE is to disseminate information about a meeting two days before it happens.

It is also of interest that on the same day a fax was sent regarding transition to the centralized data center in Albuquerque. It is interesting to note that schools are being advised to centralize electronic services which should be disseminated to the schools. A central technology standard is the ability of students to run and maintain networks. At Tiospa Zina we are moving to a Career and Technical Education process that includes

students building and managing the school technology infrastructure. This allows students to have real-time hands on learning about the technologies central to their lives. It is frustrating that the BIE has such a major control issue to not see this.

11. Section 4412 Safe and Drug Free Schools

Reporting for Safe and Drug Free Schools funding by the BIE goes beyond the reporting mandated by the Act. Schools are asked to submit information that is available in other reports or are asked for information that is not necessary to meet the substance or spirit of the law.

12 Section 6111 Grants for State Assessments

Annually the BIE is allocated funding through the 6111 section to develop appropriate assessments. In response to a Congressional Delegation letter, the BIE indicated that the Department of Education approved the use of these funds for development and maintenance of the Native American Student Information System, a student attendance accounting program. This was done because the then Office of Indian Education Programs indicated there were no tribes interested in development of assessment tools, which was not true at the time and is still not the case today. A number of tribes are interested in developing assessments for alternative AYP processes but the BIE has refused to release these funds or to explain how these funds are utilized.

13. Section 7135 Grants for Education Administrative Planning and Development

This section provides for funding for support of Tribal Education Departments and has not been budgeted since the start of NCLB. This section is critical in supporting tribal input into the education process and the lack of funding by previous administrations. The Obama Administration could significantly improve Indian Education by fully funding development of Tribal Education Departments by keeping this provision in any new legislation and assuring budgets include funding of this provision.

14. Section 7141 National Advisory Council on Indian Education

Who are these people?

Title X Repeals, Redesignations, and Amendments to other Statutes

15. Sec 725 . Homeless Education

There is a significant need for the Department of Education, Interior and Housing and Urban Development to get together and fix this on Indian Reservations. In the Dakota culture it is unthinkable that someone would be homeless. Regardless of how big a house is, if a family member or members are without a place to stay, room is made for them to sleep, eat and live. As a result of this strong cultural trait, significant number of children are being raised in single family dwellings that are inhabited by multiple families.

It is not uncommon for a single family home on the Lake Traverse Reservation to have three generations living in the house. Some students have as many as 20 people living in a three bedroom home. The result of this is that students do not get sufficient sleep at night, are often put into position to do baby-sitting for relatives and have no place to do homework. When asked about their housing situation, students and parents do not discuss their situation because to report the number of people in a house is to put their housing at risk. HUD rules are such that the housing programs remove people who are not registered for the house, so there becomes a catch 22. Students could receive funding to assist them because they are homeless, but to tell that they are homeless they will lose funding.

16. Part B Bureau of Indian Affairs Programs

Sec 1121. Accreditation for the Basic Education of Indian Children

The law calls for the Secretary to be responsible to conduct and submit a feasibility study to review and acknowledge the accreditation standards for Bureau Funded Schools.

“establish accreditation procedures to facilitate the application, review of the standards and review process, and recognition of qualified and credible tribal departments of education as accrediting bodies serving tribal schools”.

Where is the study and where is the funding to assure tribal education departments can become accrediting bodies for their schools?

17. Adequacy of funding.

“(g) GENERAL USE OF FUNDS.—Funds received by Bureau-funded schools from the Bureau of Indian Affairs, and under any program from the Department of Education or any other Federal agency, for the purpose of providing education or related services may be used for schoolwide projects to improve the educational program for all Indian students.

“(h) STUDY ON ADEQUACY OF FUNDS AND FORMULAS.—

“(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the adequacy of funding, and formulas used by the Bureau to determine funding, for programs operated by Bureau-funded schools, taking into account unique circumstances applicable to Bureau-funded schools. The study shall analyze existing information gathered and contained in germane studies that have been conducted or are currently being conducted with regard to Bureau-funded schools.

“(2) ACTION.—Upon completion of the study, the Secretary of the Interior shall take such action as necessary to ensure distribution of the findings of the study to all affected Indian tribes, local school boards, and associations of local school boards

When asked about this study, Keven Skennadore, then acting director of BIE informed a law-suit working group in Rapid City, SD that the Bureau had conducted a study of the Hopi Indians and that was used to determine funding for the school needs. At the time there was a blizzard outside and the temperature was – 5 degrees. Two conditions that do rarely exist in the Southwest.

Section 3
School Funding Briefing to Congress
NIEA Congressional Summit
February 10, 2010

Greetings:

Thank you for the time to review some of our concerns about funding and implementation for Tiospa Zina Tribal School. We are concerned about the future of our students and their education is of vital importance to us. The Bureau of Indian Education has failed to fulfill the treaty obligations related to education and that the current situation concerning education is in critical condition. Attached to this is a briefing document that outlines funding and program implementation concerns.

In order to assist in simplifying a complex situation, we make the following recommendations based on the data we have collected about our school:

Administrative Cost Grant: The appropriation request should be raised from \$43,737,000.00 to \$69,000,000.00 and schools should receive 100% of the Calculated Need.

Facilities Operations and Maintenance Operations and Maintenance should be funded at a rate of \$ 148,000,000 compared to the BIE recommendation of \$ 107,717,000. O&M should be distributed to the schools at 100% of Calculated Need. Tiospa Zina needs to add to the school due to over-crowding. Funding for new school construction to meet population growth is critical.

Alternative Assessment Funding NCLB Section 6111 funding for development of assessments and standards be increased to 40 million dollars per year .

Base Student Funding The Tribally Controlled Schools Act created the formula funding process for tribal schools. The current BIE recommendation for funding Indian Student Equalization Program (ISEP) is \$ 364,556,000. The request to meet the needs of the schools should be increased to \$ 444,000,000.

Reduction in BIE Bureaucracy Congress should reduce the size of the BIE bureaucracy by limiting the funding to that bureaucracy.

At this time, Congress and the Administration are asking for changes to improve education. The challenges facing our school is that the Bureau of Indian Education has been creating a situation where we are slowly starved for resources, allowing the Bureau employees to point to the school as failing rather than look at how their policies and processes have created that failure. We need your support on the issues above over the next budget and reauthorization cycles.

Thanks for your help:

Ted Hamilton, Superintendent

Todd Kampeska, Board Chair

Tiospa Zina Tribal School
Congressional Briefing

In 2002 Congress passed the No Child Left Behind Act. This Act provided an opportunity to address the needs of tribal schools in general and Tiospa Zina specifically. Unfortunately, the Bureau of Indian Education's implementation of the No Child Left Behind Act has fallen woefully short of meeting both the letter and spirit of the Act and that the Act has actually been used to usurp over forty years of Congressional intent to support Tribes in determining the educational future of their children.

The purpose of this briefing is to address some issues facing Tiospa Zina Tribal School in particular and Tribal Grant schools in general. The document considers funding, accountability and implementation of the treaty obligated supports to tribes over the past eight years. Each section below will address those issues and make recommendations for changes to address concerns raised by those issues.

Funding

Tribal Grant Schools are funded through three major educational funding streams. The first is the Indian Student Equalization Program (ISEP) that establishes base funding for schools and was first defined under the Tribally Controlled Schools Act. The second stream of funding comes from the No Child Left Behind Act which makes up for approximately 1/3 of tribal school funding while the third stream of funding comes from the Individuals with Disability Act (IDEA) that accounts for funding for special needs students. The Tribally Controlled Grant schools also receive funding through facilities and operations of the Bureau of Indian Affairs and an Administrative Cost Grant that provides funding for school business offices expenditures. The figures below were compiled by the Association of Contract and Tribal Schools (ACTS) and were taken from Federal budget documents.

The graphs below describe how funding for tribal schools has been distributed under the past administration:

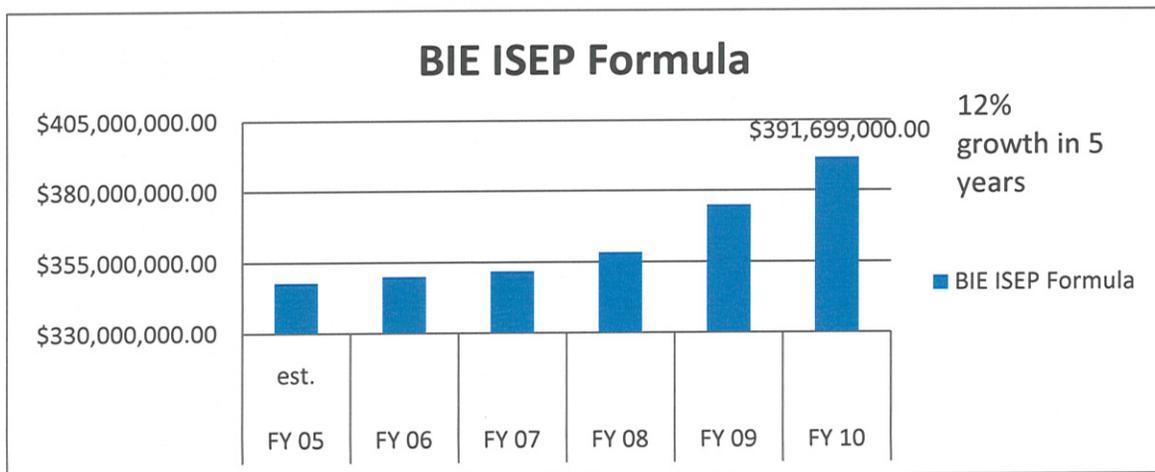


Table 1

Base funding for tribal schools has maintained an average growth of 2.4% while the National Annual Inflation Rate as reported by Inflationdata.com has determined the annual inflation rate of 3.3%. This means that although BIE schools have seen a rise in funding, the relative purchase power of that funding has declined steadily an average of nearly 1% point per year. Over the past year the “real” funding impact has meant a **decline of 5%**.

Each year the BIE provides an Administrative Cost Grant to each school for administration of that school. During the past five years the funding for tribal schools has diminished in both funding amounts and inflation adjusted figures. The table below (Table 2) shows the decrease in dollar amount funding of 3% while the **decrease adjusted to inflation is closer to 15%**.

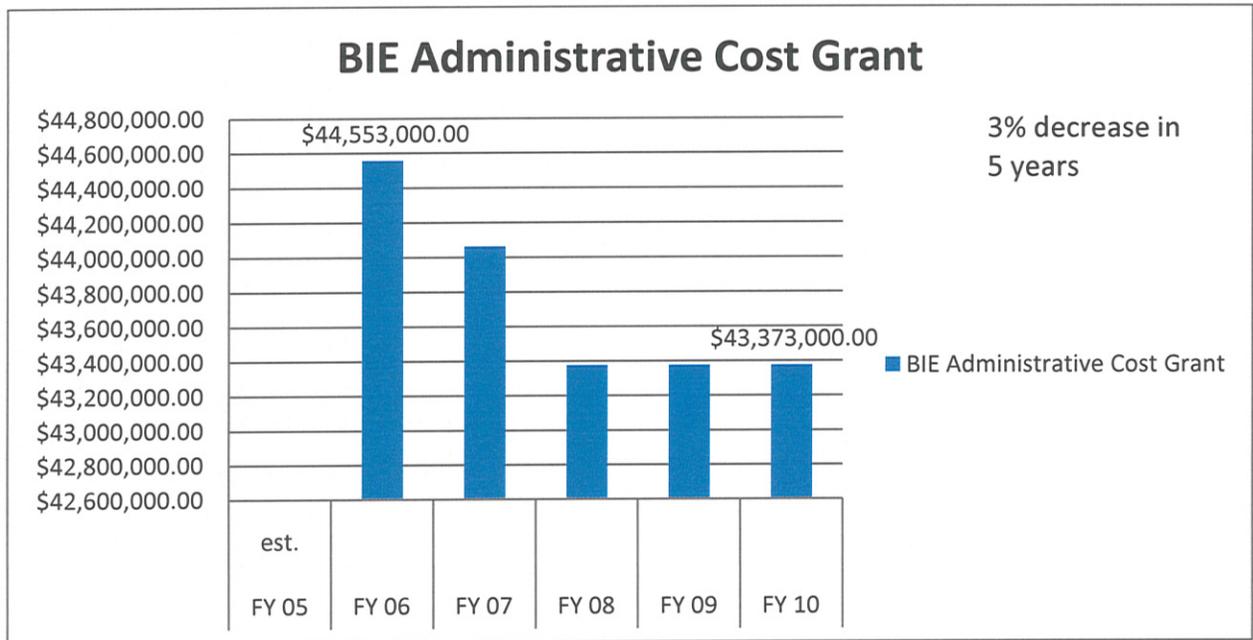


Table 2

Funding for facilities and operations have also been diminished over the past five years. The real dollar decreases have meant that schools have seen a 10% drop in maintenance funding over the past 3 years and a 6% drop in operation money adjusted to inflation. Added to this drop in funding has been a BIE practice of constraining funding to the schools. This means that at Tiospa Zina, even though Congress has appropriated the resources for the schools, get only 60% or less of those resources reach our school. Table 3 and 4 shows the Calculated Need for Administrative Cost Grant and Operations & Maintenance over the past three years at Tiospa Zina and the actual distribution of funds. Tables 5 and 6 indicate the National appropriations supporting the BIE schools.

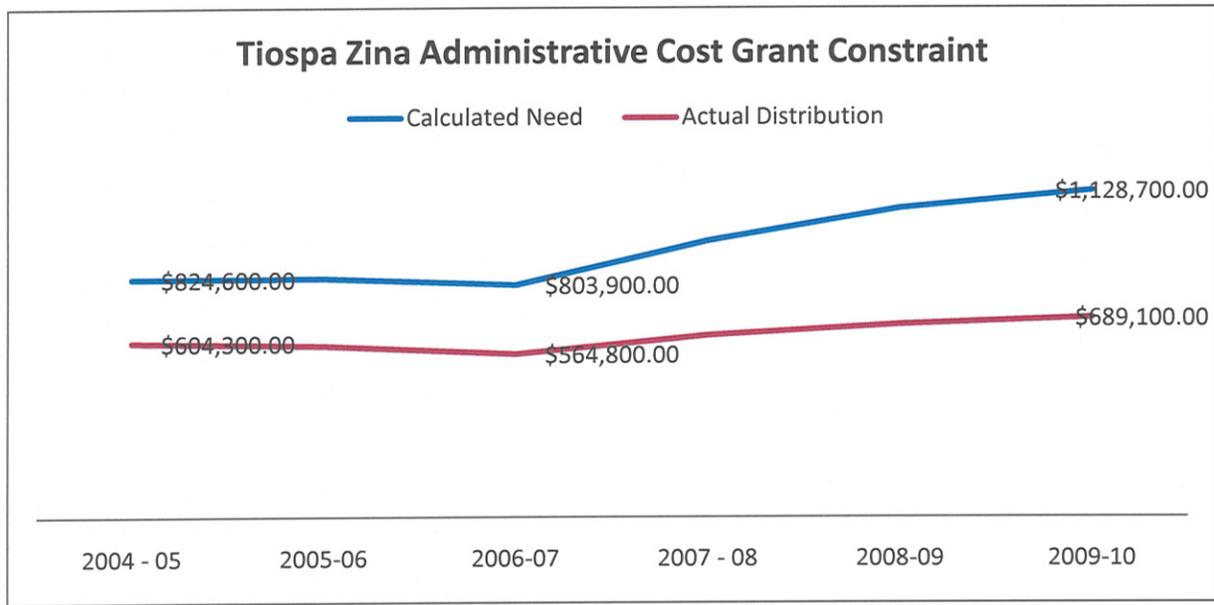


Table 3

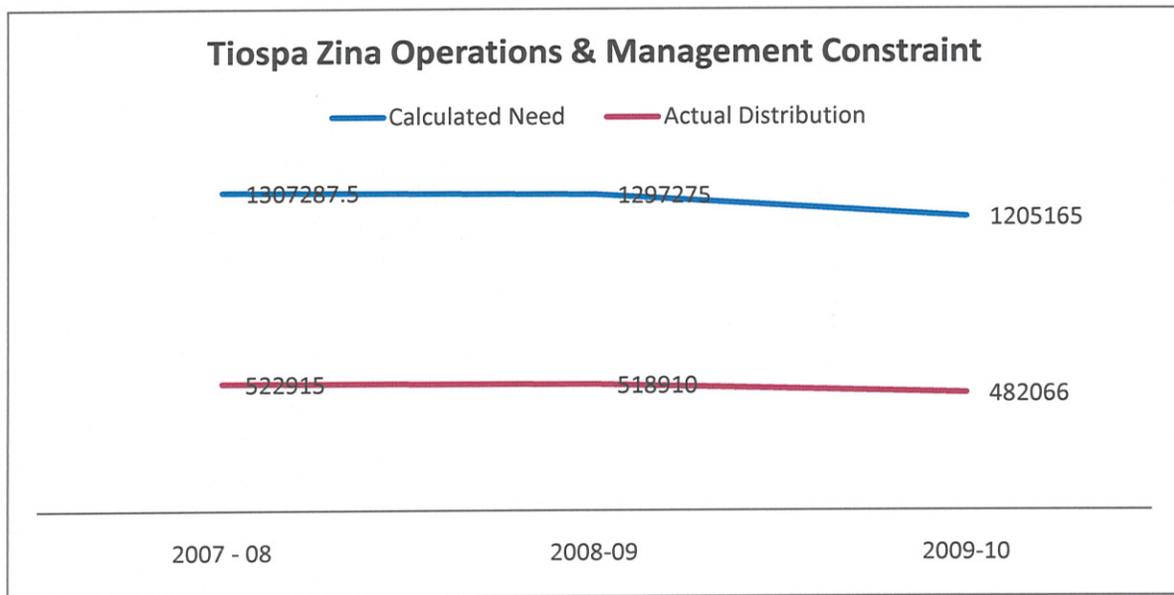


Table 4

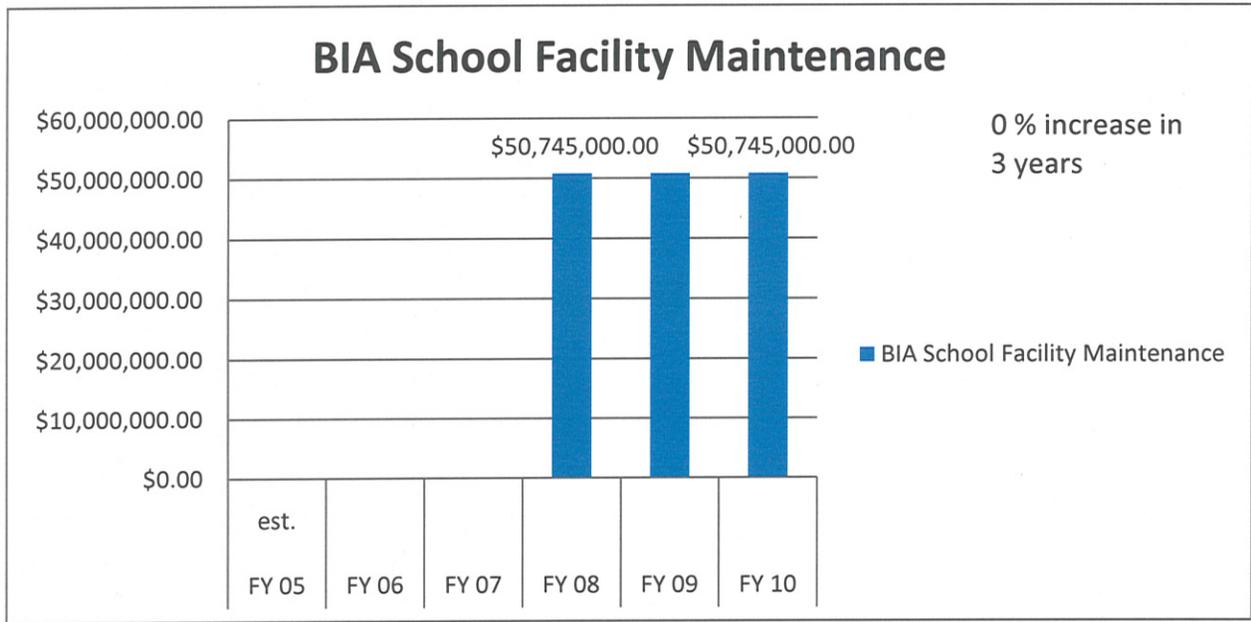


Table 5

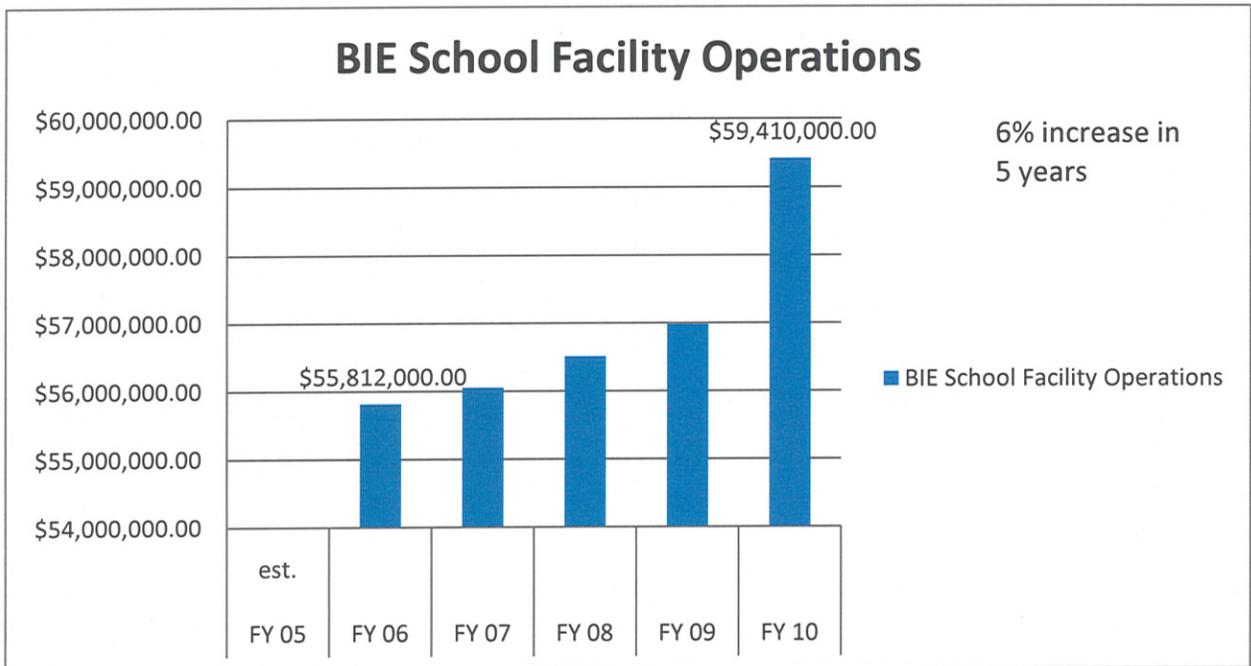


Table 6

During the past five years the only area of real growth in budget has been the explosion of positions funded for the Federal bureaucracy in the Division of Performance and Accountability in Albuquerque, New Mexico and in Washington, DC. Table 7 shows the 165% increase in Federal

expenditure that goes to those offices. Using the same inflation rate process, funding for BIE Education Management has increased by 150% over the past four years.

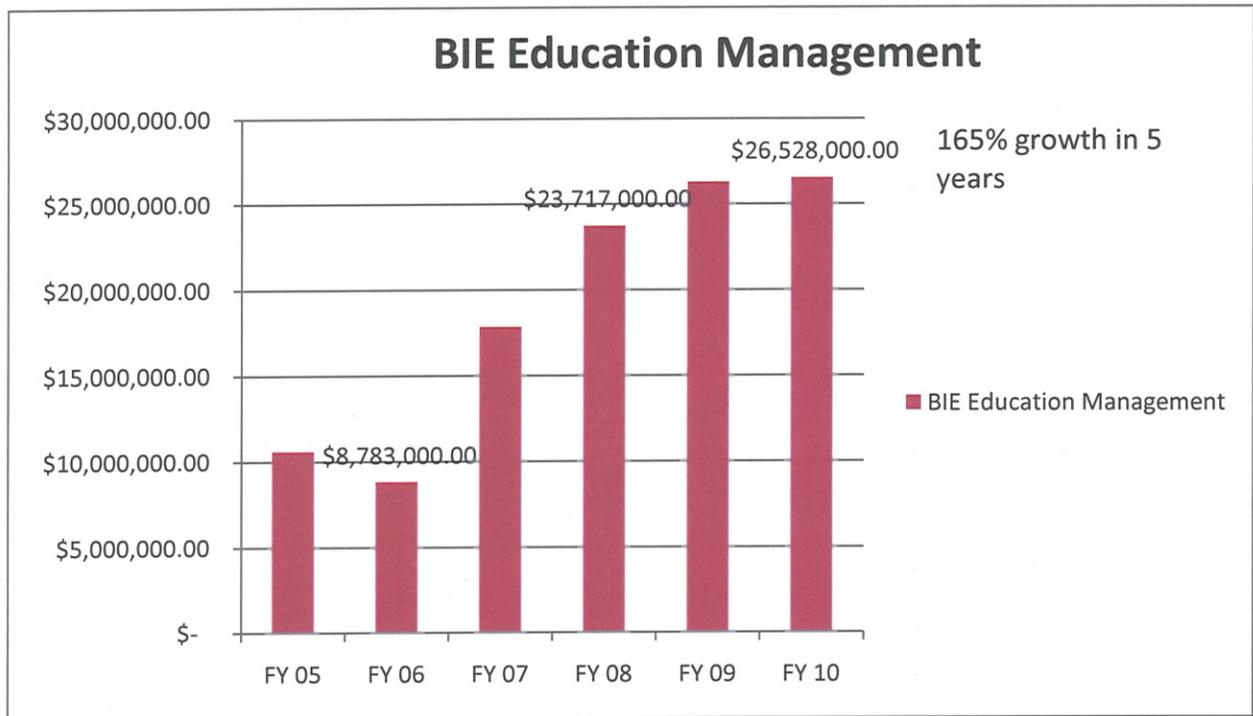


Table 7

Put quite simply, from a funding perspective, the BIE has been slowly starving the schools of resources while building a “state” infrastructure. Part of the justification for this has been the No Child Left Behind Act itself and the insistence on the part of Federal Bureaucrats that NCLB allows the BIE to become the State Education Agency (SEA) for the tribes. This has been done through an MOU between the BIE and the Department of Education. The MOU was put in place without consultation with the tribes as part of a process that included the “restructuring” of the BIE. A Federal judge determined that the consultation process was not followed yet the BIE moved forward in expanding the bureaucracy despite this finding.

Funding for Tribal Grant Schools is different than funding for public schools on reservations. South Dakota is currently gearing up for a new governor. One of the activities related to the race is helping the new State leadership understanding the funding differences between Tribal and Public Schools. The table below shows the funding disparity between Public and Tribal Schools on the Lake Traverse Reservation. Put simply, the Impact Aid funding for tribal schools allow the State Public Schools a significantly higher per-pupil expenditure than what is available to Tiospa Zina.

Comparison of Basic Funding for Tribal Schools vs State Schools (Based on Comparison of Tiospa Zina Tribal School and Sisseton Public)		
2009-2010	State Funded Per-Student Funding	Tribally Funded Per-Student Funding
State Aid/ISEP	\$4,804.60	\$5,021.00
Small School Adjustment	\$144.14	\$0.00
Federal Impact Aid*	\$5,011.40	\$0.00
Title I*	\$2,112.00	\$2,112.00
Facilities O&M + Admin Cost Grant*		\$2,215.22
Total Per-Student Expenditure	\$12,072.14	\$9,348.22
* Based on Annual Federal Appropriation		
Funding for Special Education students and other funding sources are equitable depending on the student needs or program needs. Those funding sources include Perkins and Free and Reduced Lunch programs.		

Accountability

A great deal has been said about accountability regarding education in general and Indian education in particular. The No Child Left Behind Act and the Code of Federal Regulations outline specific activities that the BIE is supposed to do for the schools to assure that Congress fully understands the needs of the schools and can work with Tribes to meet those needs. The activities below are outlined as responsibilities of the BIE regarding education and how those responsibilities have been met.

Determination of School Needs: No Child Left Behind clearly calls for the BIE to determine the needs of schools in corrective action and restructuring and to report those needs to the administration and Congress. This has not been done. Mr. Kevin Skennadore, in a Dakota Working Group meeting in Rapid City, South Dakota in October of 2009 said that the BIE had conducted a study of Hopi schools and based their needs requests on that study. This is in direct contradiction to the requirements set forth in 25 CFR, Part 36, Sec 36.50 which requires an annual needs assessment for schools and describes how every school shall identify their needs to the BIE.

Determination of AYP: No Child Left Behind clearly calls for all schools to identify their school status and the results of their annual yearly progress calculations prior to the start of the school year. In the past eight years, the BIE has never met the basic requirement of providing AYP determinations to the schools. The earliest they have been able to complete this task is October. This means that parents who might have choices for

school enrollment have not been informed per the law. The BIE has even gone as far as to claim parents on reservations do not have choices which is not true in South Dakota.

Determination of Standards: In 25 CFR, the BIE is required to assure that curriculum that is taught to students is developed locally. To quote 25 CFR, Sec 36.13

(a) Each school shall implement an organized program of curriculum development involving certified and non-certified staff and shall provide the opportunity for involvement by members of the local community.

(b) Curriculum development program activities shall be based on an analysis of school programs and shall be related to needs assessment and evaluation.

(c) Each school shall involve staff and provide the opportunity for involvement by the tribal community in planning programs, objectives, and activities which meet student/teacher needs.

At the core of curriculum is standards development. The BIE has not fully supported the development of tribal standards, despite a Government Accountability Study and Hearings before the US House of Representatives Committee, and is now currently working with an organization to develop a National assessment of Native students through standards that are not tribally developed. CFR 25, part 38, sec 36.20 paragraph 2 goes further to require content to be tribally approved:

2) The school program shall include aspects of the native culture in all curriculum areas. Content shall meet local tribal approval.

This requirement remains largely ignored by the BIE. **Adoption of State or National standards without approval of local tribes runs contrary to the spirit and letter of the Federal law and the treaty obligations of the US Government to tribes in general and the Sisseton Wahpeton Oyate in particular.**

Facilities

Facilities needs for Tiospa Zina are similar to most tribal schools. The school building is full of children and space is at a premium. There is a simple reason for this, the BIE and BIA continue to use a formula for determining space needs that is based on a formula for failure. Tribal schools in general and Tiospa Zina in particular represent a growing demographic in the United States. The US Census Bureau indicates that in the US 24% of the population is under the age of 18 while the Sisseton Wahpeton Oyate figures nearly double that number. In simple terms, this means that contrary to other groups, the population of child-bearing age people is growing on reservations across South Dakota.

In practical terms this means that when Tiospa Zina's building was constructed the BIE/BIA used a formula that based building size on the previous five years enrollment. The building was expected to house between 350 and 400 students. Seven years later the enrollment reaches 600 students in the Spring term. The facilities formulas for maintenance, operation and construction are based on significantly lower population rates.

In the past 100 years of Indian Education, Indian students have failed to complete high school at a terrible rate. The reduction in students from the Freshman year to the Senior year runs as high as 40% (50% in public schools). The current facilities funding formula reinforces this trend by limiting the size of building with the expectation that students will drop-out at a 40% rate. In addition, tribal schools often find themselves in a position where special needs students congregate because their program and philosophies are inclusive of special needs students. At Tiospa Zina 20% of the student body falls under the special needs categories, a situation that is not considered in facilities planning.

Implementation

Implementation of Indian Education over the past eight years has been an example of increased centralization of power in the BIE and a decrease in support to Tiospa Zina and other tribal schools. The tribal schools have been required to submit to increasing amounts of regulation and oversight that is often redundant and unnecessary. There have been some specific actions taken by the BIE that have resulted in a diminishment of effective educational practice in school.

The BIE has determined, without appropriate tribal consultation or approval, that they will take on the role of the State Education Agency for the tribal schools. This has allowed them to work with the Department of Education to build a management infrastructure that seeks to micro-manage the local schools without being held accountable for that management. This has been done through funding controls that include increasing conditions on grant funds that are not approved by Congress or through negotiated rule-making.

One example of this has been the development of the System of Support (SOS) program identified in the No Child Left Behind Act. State SOS programs that are designed according to the NCLB guidelines provide a mechanism to determine the needs of the schools based on adequate yearly progress (AYP) reports. Schools in South Dakota are determined to make AYP based on reading, math, attendance and graduation rates. Educational administrators know that these measures reflect a number of issues facing a school. As a result, most SOS programs provide a local approach to providing support to school, utilizing local and regional cooperatives and including local and regional institutions of Higher Education to assist schools in improvement.

The BIE's approach to the SOS program has to focus on a reading intervention program initially called "BIE Reads" and designed as a K-3 intervention. This program is based in large part on the Reading First program first funded through NCLB at a National Level. Reading First was found to simply not work as a method of improving scores on standardized tests and has been abandoned. Unfortunately, SOS for Federally funded schools has been a top-down approach to school reform, a practice largely abandoned by nearly every state in the United States, except the BIE. When asked about this, the BIE response is to provide data that is based on the program that is being implemented and not on criterion referenced exams. Additionally, the BIE tells schools that they must follow the SOS program if they are to receive funding. As is indicated in the funding section above, schools that are slowly being starved of resources will end up being forced to adopt mediocre programs from the BIE to access needed resources for their children.

In a recent BIE training in San Diego (a short distance from Agency Village) the BIE consultants spent a day outlining how schools should record and report data from teachers to their principals to the Education Line Officer to the Associate Deputy Director. At no point did the presenters discuss how this should be done with local school boards, superintendents or tribal education departments. When questioned, the response was, this is a voluntary system. Unfortunately, the BIE has also withheld funding for programs until assurances were signed by the schools submitting to direct BIE control of the

schools, so the use of “voluntary” is inaccurate. Tiospa Zina Tribal School and Enemy Swim Day School had funding withheld for three four months this past year regarding direct BIE control of programs. The schools were required to work with a lawyer to receive the funding they deserved because the BIE had increased grant conditions without consultation or congressional approval. The BIE continues to put into practice requirements that are tied to funding while growing a centralized bureaucracies that soaks up money that should be in place to help children but is being spent on large consultant contracts and trips to locations across the United States that are far-removed from the reservations being served.

The major challenge with implementation of NCLB or any education program under the BIE has been the consistent view that the BIE is a monolithic organization in the same way that a State Education Agency is. This is not the case. As a result of this the BIE creates national contracts that are three to four times more expensive than working with regional organizations to provide training to schools. This inefficiency is part of the bloated bureaucracy that is eating up resources for our children.

Recommendations

Administrative Cost Grant: The appropriation request should be raised from \$43,737,000.00 to \$69,000,000.00 and schools should receive 100% of the Calculated Need.

Facilities Operations and Maintenance The ACTS and NISBA organizations have determined that O&M funding for 2010-2011 should be at a rate of \$ 148,000,000 compared to the BIE recommendation of \$ 107,717,000. O&M should be distributed to the schools at 100% of Calculated Need.

Alternative Assessment Funding NCLB Section 6111 funding for development of assessments and standards be increased to 40 million dollars per year . Tribe should be able to work directly with the Department of Education on approval of Standards and Assessments using 6111 funding and bypass BIE which has proven inept at assuring this important work be completed.

Base Student Funding The Tribally Controlled Schools Act created the formula funding process for tribal schools. The current BIE recommendation for funding Indian Student Equalization Program (ISEP) is \$ 364,556,000. The request to meet the needs of the schools should be increased to \$ 444,000,000.

An idea that has been circulating among Tribal School Superintendent is for ISEP to be increased by 30% above the \$ 444,000 request, allowing funding of tribal schools to fall completely under the Tribally Controlled Schools Act which provides for Tribal control of curriculum, faculty and assessment rather than splitting funding between the Tribally Controlled Schools Act and No Child Left Behind. The recent growth of the BIE bureaucracy has resulted from the manipulation of NCLB to allow greater Federal control of Tribal schools.

Reduction in BIE Bureaucracy Congress should reduce the size of the BIE bureaucracy by limiting the funding to that bureaucracy. This can be done in two ways. First, in the revision of NCLB diminish funding to the BIE for administrative cost from 5% to 1%, requiring the

rest of the dollars to be sent directly to schools. Second, to develop a process with the Department of Education to provide assurances and incentives for regional colleges and universities, including tribal colleges and universities, to develop partnerships with the tribal schools in improving those schools.