



To: House Committee on Natural Resources Republican Members
From: Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder
(Ken.Degenfelder@mail.house.gov)
Date: June 27, 2022
Subject: Remote Oversight Hearing on “*Examining the Policies and Priorities of the Bureau of Indian Education*”

The House Committee on Natural Resources’ Subcommittee for Indigenous Peoples, and the Committee on Education and Labor’s Subcommittee on Early Childhood, Elementary, and Secondary Education will hold a joint remote oversight hearing titled “*Examining the Policies and Priorities of the Bureau of Indian Education,*” on **Tuesday, June 28, 2022, at 11:00 a.m.** via Cisco WebEx.

Member offices are requested to notify Ken Degenfelder (Ken.Degenfelder@mail.house.gov) no later than **4:30 p.m. on Monday, June 27, 2022**, if their Member intends to participate in person in the hearing room via his/her laptop or remotely from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- This is a hearing that was originally scheduled for May 24, 2022, which was postponed due to broadcasting technical difficulties. This is an opportunity for members to voice concerns with the continued use of remote hearings by the majority.
- Under the longstanding House Rule X, Indian education is under the primary jurisdiction of the Committee on Education and Labor, not the Committee on Natural Resources.¹ The Committee on Natural Resources has limited legislative authority over the Bureau of Indian Education (BIE) and the Department of Education (DOE), even when their activities impact native students.

¹ See Rules of the House of Representatives, 117th Congress, Rule X, <https://rules.house.gov/sites/democrats.rules.house.gov/files/117-House-Rules-Clerk.pdf>; see also, e.g., HR 2727 (115th Cong.); S 943 (115th Cong.); HR 4744 (114th Cong.); HR 5174 (100th Cong.); H Res 977 (109th Cong.); HR 3273 (99th Cong.); HR 3273 (99th Cong.); HR 5190 (98th Cong.); and HR 9158 (95th Cong.).



- In 2017, the U.S. Government Accountability Office (GAO) included the Bureau of Indian Education (BIE) on its biennial high-risk list of federal programs that are especially vulnerable to waste, fraud, abuse, and mismanagement or that need transformative change.
- In its January 2021 report, the GAO found that while the BIE has made some progress in addressing the recommendations made in 2017, the BIE has only partially made progress in addressing many weaknesses, with 22 recommendations remaining open.
- While Committee Democrats will largely attempt to place blame for BIE's shortcomings on the previous administration, many of the problems that plague the BIE have been lingering for decades.
- Republican members should use this hearing to focus on GAO's remaining open recommendations to the BIE and stress the need for further outside witness testimony on the adequacy of the Indian education system.

II. WITNESSES

- **Mr. Tony Dearman**, Director, Bureau of Indian Education, U.S. Department of the Interior, Washington, D.C.
- **Ms. Beth Sirois**, Assistant Director, Education, Workforce & Income Security, U.S. Government Accountability Office, Washington, D.C.

III. BACKGROUND

The federal government, primarily through the Department of the Interior (DOI) and the Department of Education (DOE), provides financial assistance for children on Indian reservations and Native American children in public schools to ensure they receive an education comparable to their peers.

The history of the federal government's involvement in Indian education began with the Civilization Act of 1819, which provided the first funds to educate Native American students.² In 1921, the Snyder Act officially authorized the activities of the Bureau of Indian Affairs (BIA), including BIA schools.³

Congress later created a separate funding stream through the Johnson O'Malley Act to contract directly with tribes and tribal organizations, as well as states and school districts, to provide cultural education to Native American students.⁴ Additional control over Indian education was given to tribes and tribal organizations through several laws, including the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) and the Tribally Controlled Schools Act.⁵ Ultimately, this piecemeal development of the structure

² Act of March 3, 1819, Ch. 85, 3 Stat. 516.

³ 25 U.S.C. 13.

⁴ 25 U.S.C. 5342 et seq.

⁵ 25 U.S.C. 5301 et seq.; 25 U.S.C. 2501.

of federal Indian education activities has led to confusion over the administration of Indian education at the federal, state, and tribal government levels.⁶

The Office of Indian Education within the Bureau of Indian Affairs (BIA) was created through the Education Amendments of 1978.⁷ This office was moved out of the BIA and renamed the Bureau of Indian Education (BIE) in 2006 as part of a Secretarial order.⁸ The Secretarial action also elevated BIE to parallel status with BIA under the direction of the DOI's Assistant Secretary for Indian Affairs.⁹

The BIE provides education support to about 47,000 students in 23 states through its 169 elementary and secondary schools, including dormitories, located on or near Indian reservations.¹⁰ Of these schools, 130 are operated by tribes through BIE grants, while 53 schools are directly operated by BIE.¹¹ Together, these schools serve approximately 7 percent of the Native American student population.¹²

Although BIE is responsible for the academics at these schools, BIA is responsible for operations and maintenance, including acquiring curriculum, repairing facilities, and transporting students. The DOI's Deputy Assistant Secretary - Management is also responsible for assisting in operations and maintenance of the schools in addition to its responsibilities over personnel, technical assistance, and financial management.¹³ The division of responsibilities between BIE and BIA has created blurred lines of communication and command.¹⁴

BIE Restructuring Plan

On June 13, 2014, then-Secretary of the Interior Sally Jewel issued Secretarial Order 3334, directing the restructuring of the BIE from a school operating organization to a school improvement organization. Objectives included transitioning some of the school operation functions from the BIA director to the BIE director. The goal was to transition BIE into a role more akin to a state educational agency overseeing the system and providing leadership rather directly operating schools like a school district.

In the President's FY 2020 budget request, the Trump administration separated the BIE budget from the BIA budget.¹⁵ This will ultimately allow the Director of the BIE to have greater flexibility in acting on the responsibilities the DOI owes to Indian country. The

⁶ Govt. Account. Office, *Better Management and Accountability Needed to Improve Indian Education*, at 18, (Sept. 2013) <https://www.gao.gov/assets/660/658071.pdf>.

⁷ Bureau of Indian Edu., <https://www.bia.gov/bie>.

⁸ *Id.*

⁹ *Supra* n. 9, 4.

¹⁰ FY 2020 BIE Budget Justification at BIE-GS-1.

¹¹ Bureau of Indian Edu., *School Directory*, <https://bie.edu/Schools/>.

¹² *Supra* n.9, 5.

¹³ *Id.* at 2.

¹⁴ *Id.* at 2.

¹⁵ Bureau of Indian Affairs, *BIE Budget Priorities Include Fostering Student Success* (March 11, 2019) <https://www.bia.gov/as-ia/opa/online-press-release/president%E2%80%99s-fy-2020-budget-proposes-9363-million-bureau-indian>.

Biden administration has continued this practice in its FY 2022 and FY 2023 budget requests.

BIE on the High-Risk List

At the beginning of every Congress, the Government Accountability Office (GAO) produces a High-Risk List of federal programs that are especially vulnerable to waste, fraud, abuse, and mismanagement or that need transformative change. GAO first added BIE to its High-Risk List in May 2017.¹⁶ Later that month, the GAO released another report highlighting that the DOI “does not have a comprehensive capital asset plan to guide the allocation of funding for school construction projects across its 185 BIE schools.”¹⁷ The GAO further elaborated that the poor, crumbling condition of these facilities pose significant health and safety hazards and have been well documented through several major GAO investigations, and through the efforts of Members of Congress and the House Appropriations Committee’s Subcommittee on the Interior, Environment, and Related Agencies.¹⁸ Lastly, the GAO found that the DOI “has not consistently used accountability measures or conducted sufficient oversight to ensure that BIE school construction projects are completed on time, within budget, and meet schools’ needs.” The BIE has continued to be included on the GAO’s high-risk list.¹⁹ In its 2021 high risk report, the GAO reported that the BIE has made some progress in addressing weaknesses in the areas of leadership commitment, capacity, action plans, monitoring and demonstrated progress but notes that many recommendations have only been partially met.²⁰

The DOI, BIA, and BIE have also had difficulty due to leadership turnover. Since 2000, there have been 14 Assistant Secretaries for Indian Affairs, 11 BIE Directors, and seven BIA Directors. This turnover can be partially attributed to several reorganizations and restructurings of these entities, including reorganizations for BIA in 2004 and 2013 and BIE in 2006 and 2016.²¹

School Construction

BIE has especially struggled to build and maintain adequate facilities for its BIE-funded schools. In November and December 2014, the *Minneapolis Star Tribune* ran a four-part series on BIE schools entitled “Separate and Unequal.”²² The series focused on the

¹⁶ Govt. Account. Office, *Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*. (Feb. 2017) <https://www.gao.gov/assets/gao-17-317.pdf>.

¹⁷ Govt. Account. Office, *Indian Affairs: Actions Needed to Better Manage Indian School Construction Projects* (May 24, 2017), <https://www.gao.gov/products/GAO-17-447>.

¹⁸ *Id.*

¹⁹ Govt. Account. Office, *Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas* (March 2021), <https://www.gao.gov/assets/gao-21-119sp.pdf>.

²⁰ *Id.* at 108.

²¹ *Supra* n. 9, 21-23.

²² Minneapolis Star Tribune Editorial Board, *Separate and Unequal*, <https://www.startribune.com/special-project-separate-and-unequal/298498951/>.

dilapidated state of BIE school buildings and argued that decrepit conditions are common throughout the BIE system and neglected by the federal government.²³

A November 2014 GAO report found that, as of the end of the 2012-2013 school year, about one-third of BIE schools were in poor condition. For comparison, an estimated 3 percent of public-school buildings nationwide were in poor condition after the same school year. Further, more than 25 percent of BIE buildings were over 40 years old, resulting in antiquated construction, poor or nonworking heating and ventilation systems, and other safety concerns.²⁴

BIE operates three separate school facilities programs. First, the Facilities Operations program funds the operation of all BIE-funded educational facilities, which may include expenses such as utilities, supplies, equipment, custodians, trash removal, maintenance of school grounds, minor repairs, and other on-going operating costs. Second, the Facilities Maintenance program funds preventative, routine, and unscheduled maintenance for all BIE-funded school buildings, equipment, utility systems, and ground structures. Third, the Education Construction program replaces and repairs school facilities and addresses deferred maintenance needs in the BIE school system. At the direction of the House Committee on Appropriations Subcommittee on the Interior, Environment, and Related Agencies, BIE produced a list in 2016 of 10 schools in need of full replacement. Progress addressing the needs outlined on the list has been slow, but BIE claimed in its FY 2023 budget justifications that the agency expects to fully fund the replacement of all 10 schools with existing funding.²⁵

Separate from these three programs, the BIA operates the Site Assessment and Capital Investment (SACI) Program that supports school replacements and renovations.²⁶ The SACI Program follows formalized procedures that respect Tribal sovereignty and self-determination and result in consensus agreements with schools, Tribes, and BIA for major renovations and new construction projects. BIA claims that the SACI program will result in a long-term facilities plan that is continuously updated and adjusts to changes in education construction funding and evaluation or selection criteria.

Role of the Department of Education

The DOE is involved with BIE through funding set-asides in DOE administered programs and through oversight of those programs.²⁷ The BIE receives approximately \$270 million each year through DOE funding streams.²⁸ As recipients of federal education funding, BIE-

²³ *Id.*

²⁴ Govt. Account. Office, *Bureau of Indian Education Needs to Improve Oversight of School Spending*, (Nov. 13, 2014) <http://www.gao.gov/assets/670/666890.pdf>.

²⁵ BIE FY 2023 Budget Justification. At BIE-ES-5. <https://www.bia.gov/sites/default/files/dup/assets/as-ia/obpm/fy2023-bie-greenbook.pdf>.

²⁶ Bureau of Indian Affairs, *Site Assessment-Capital Investment Project*, <https://www.bia.gov/as-ia/ofpsm/dfmc/site-assessment-capital-investment-project>.

²⁷ *Supra* n. 27, BIE-OIEP-6.

²⁸ *Supra* n. 27, BIE-OIEP-16.

funded schools must comply with applicable federal civil rights laws such as Title IX of the Education Amendments of 1972²⁹ and section 504 of the Rehabilitation Act of 1973³⁰ in the same way that states and school districts must comply. BIE-funded schools are also responsible for providing special education students a free, appropriate, public education under the Individuals with Disabilities Education Act (IDEA)³¹ and for carrying out the requirements for academic standards, testing, accountability, and school improvement under the Elementary and Secondary Education Act (ESEA).³²

The DOE is also involved in Indian education more broadly. The approximately 45,000 students served in BIE schools represent approximately 7 percent of the Native American student population. The vast majority of remaining Native American students are educated in public schools. Public schools receive DOE funding to educate those students through broader programs such as Title I of the ESEA and Part B of the IDEA. They also receive more targeted funding through the Impact Aid and Indian Education programs under ESEA.

Republican Messaging

As several GAO reports have detailed, much work remains to be done to improve BIE schools. In hearings over the past several Congresses, witnesses described the deplorable conditions Indian children today endure and illustrated a bungling federal bureaucracy that is failing to provide a safe and healthy place for Native American students to learn. The GAO has reported that efforts to restructure and streamline the federal bureaucracy are behind schedule.³³ In addition, members should press the administration on the open GAO recommendations and the steps need to be taken by the agency to address continued deficiencies.

While inclusion of the GAO as a witness for this hearing is a step in the right direction to conduct proper oversight of the BIE, further outside witness testimony on the BIE system would aid Congress determining whether legislative initiatives are warranted to help native students succeed. Democrats have failed to seize an opportunity to provide a forum for non-governmental witnesses to honestly discuss the real-world impacts of the BIE's failings and practical solutions to change the status quo for the benefit of Indian students across the nation. Continued oversight of the BIE must occur to ensure native students are receiving an adequate education in a safe environment.

²⁹ 20 U.S.C. 1681 et seq.

³⁰ 29 U.S.C. 701 et seq.

³¹ 20 USC 1400 et seq.

³² 20 USC 6301 et seq.

³³ Govt. Account. Office, *Improving Federal Management of Programs that Serve Tribes and Their Members* (last accessed June 23, 2022)

https://www.gao.gov/highrisk/improving_federal_management_serve_tribes/why_did_study.