



To: House Committee on Natural Resources Republican Members
From: Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder
(Ken.Degenfelder@mail.house.gov)
Date: May 9, 2022
Subject: Hybrid Legislative Hearing on H.R. 5444

The Subcommittee for Indigenous Peoples will hold a hybrid legislative hearing on one bill: H.R. 5444 (Davids, D-KS), *the Truth and Healing Commission on Indian Boarding School Policies Act*, on **Thursday, May 12, 2022, at 1:00 p.m.** in 1324 Longworth House Office Building and via Cisco WebEx.

Republican members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

Member offices are requested to notify Ken Degenfelder (Ken.Degenfelder@mail.house.gov) no later than **4:30 p.m. on Wednesday, May 11, 2022**, if their Member intends to participate in person in the hearing room or remotely via his/her laptop 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

- Under the longstanding House Rule X, reaffirmed by the Democrats in 2021, 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) or the Department of Education even when they impact native students.
- H.R. 5444 would establish a 10-member commission, appointed by the Executive and Legislative branches of government, to document, investigate, and provide

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.).



recommendations on actions that the federal government can take to address harms brought by Indian boarding school policies.

- To the extent practicable, appointed members would include experts from diverse geographic areas, that possess personal experience with diverse policies in Indian boarding school history, and expertise in truth and healing endeavors that are culturally appropriate.
- Beginning in 1819, the federal government funded education of Indian children as a way to accelerate the assimilation of American Indian and Alaska Natives.
- While an accounting, documentation, and analysis of former boarding school impacts is commendable, it remains unclear whether the mandates contained in this Act are duplicative of ongoing Department of the Interior (DOI) activities regarding former Indian boarding schools.
- Instead of authorizing “such sums as necessary” to carry out H.R. 5444, this will be an opportunity for Republican members to discuss what can be done to improve the state at the remaining Indian boarding schools still in operation and ways to improve the Indian education system as a whole.

II. WITNESSES

PANEL I

- **Dr. Janine Pease**, Founding President and faculty member, Little Big Horn College, Crow Agency, MT [*Republican Witness*]
- **The Hon. Ben Barnes**, Chief, Shawnee Tribe, Miami, OK
- **Ms. Deborah Parker**, Chief Executive Officer, National Boarding School Healing Coalition, Tulalip, WA
- **Mr. James LaBelle Sr.**, First Vice President, National Boarding School Healing Coalition, Anchorage, AK
- **Mr. Matthew War Bonnet**, Citizen of the Oglala Sioux Tribe, Snohomish, WA
- **Dr. Ramona Charette Klein**, Boarding School Director, Citizen of Turtle Mountain Band of Chippewa, Medina, ND

III. BACKGROUND

[H.R. 5444, the Truth and Healing Commission on Indian Boarding School Policies Act \(Rep. Davids\)](#)

Provisions regarding Indian education during the “Formative Years” period of federal Indian policy, date back to the some of the earliest treaties and statutes after the formation of the United States. Beginning with the 1794 treaty with the Oneida, over 150 treaties between tribes and the United States include education provisions.² In 1815, there was a shift in federal Indian policy to that of “Indian removal,” which led to many tribes being relocated westward in order to make areas available for non-native settlement.³ While the intent of the policy at the time was to relocate Indians, an undertone of this policy would be to eventually force the assimilation of Indians into western culture in the latter half of the nineteenth century.

Consistent with the Indian removal policy and assimilation environment, Congress established what is colloquially referred to as the “civilization fund” in 1819, which authorized the executive branch to spend annual appropriations of \$10,000 to employ “capable persons of good moral character, to instruct Indians to provide against further decline and final extinction of the Indian tribes...and to provide for introducing among them the habits and arts of civilization.”⁴ Missionaries, private entities, and religious groups primarily carried out these education services.

Additional treaties with Indian tribes entered into during the nineteenth century continued to include educational provisions for Indians, often promising to build schools and provide one teacher for every 30 school-age children living on agricultural reservations.⁵ Although private and religious boarding schools were a part of many eastern tribes’ experiences in the first half of the nineteenth century, it is the federal boarding schools that have had the greatest impact on Indian education and history.⁶ In 1860, the first Indian boarding school was established on the Yakama Reservation in Washington.⁷

The early curriculums and structure of Indian boarding schools were largely developed by Captain Richard Henry Pratt.⁸ Pratt had been previously successful in Indian assimilation during his tenure supervising a prison camp for captive Native Americans from 1875 to 1878.⁹ In 1879, Pratt opened the Carlisle Industrial School on an abandoned Army base in Carlisle, Pennsylvania.¹⁰ In the 1878 Annual Report of the Commissioner of Indian Affairs,

² E.g., Treaty with the Delawares. 1804, art. 2, 7 Stat. 81; Treaty with the Cherokees. 1835, arts. 10-11, 7 Stat. 478.

³ Cohen’s Handbook of Federal Handbook of Federal Indian Law. 2012 edition. §1.03[4][a].

⁴ Act of March 3, 1819. Ch. 85, 3 Stat. 516.

⁵ Andrea A. Curcio, Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses, 4 Hastings Race & Poverty L.J. 45, 52 (2006).
https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1035&context=hastings_race_poverty_law_journal.At 54.

⁶ History and Foundation of American Indian Education. Stan Juneau, Walter Fleming, and Lance Foster.
https://opi.mt.gov/Portals/182/Page%20Files/Indian%20Education/Indian%20Education%20101/History_FoundationAmindianEd.pdf. At 19.

⁷ https://www.yakimaherald.com/news/local/it-happened-here-indian-boarding-school-established-at-fort-simcoe/article_c062dddc-3269-11e9-b45c-132b57505e66.html

⁸ Andrea A. Curcio, Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses, 4 Hastings Race & Poverty L.J. 45, 52 (2006).
https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1035&context=hastings_race_poverty_law_journal at 54.

⁹ *Id.* at 55.

¹⁰ *Id.* at 54.

it was argued that the only way to “educate” and “civilize” Indian children was to have them “removed from the examples of their parents.”¹¹ In that same report, Pratt noted, that the schoolchildren could be held as “hostages for good behavior of [their] parents.”¹² Pratt also later expanded that what would need to be accomplished was “kill the Indian in him, and save the man.”¹³

Over the next few decades, boarding schools were established all over the U.S., both on Indian reservations at other locations including the Chemawa Indian School in Oregon (1880), Haskell Institute in Kansas (1884) and Chilocco Indian School in Oklahoma (1884). Advocates today hold that there were approximately 367 boarding schools in total that were opened over the last 150 years, with 15 still in operation today.¹⁴

Indian boarding school environment

In concurrence with assimilation policies during the nineteenth century, the boarding school curriculums subjected Indian children to forced school attendance, inadequate living conditions, and deprivation of their culture. In 1891, Congress authorized the U.S. Commissioner of Indian affairs to “make and enforce... such rules and regulations as will secure the attendance of Indian children of suitable age and health at schools established and maintained for their benefit.”¹⁵ In 1893, Congress authorized the Bureau of Indian Affairs to “withhold rations, clothing and other annuities from Indian parents or guardians who refuse or neglect to send and keep their children of proper school age in some school a reasonable portion of each year.”¹⁶

While living conditions at Indian boarding schools often varied, a 1928 government study, the Meriam Report, described many inadequacies, including: buildings with poor ventilation; inadequate light and air; and fire hazards in buildings, including locked fire escapes and nailed windows.¹⁷

Indian children were also stripped of their American Indian clothing and belongings - all things that connected them to their homes and families - and were given uniforms to teach them the values of “sameness, regularity and order.”¹⁸

¹¹ *Id* at 54.

¹² *Id.* at 54.

¹³ *Id.* at 54.

¹⁴ American Indian Boarding Schools by State, National Native American Boarding School Healing Coalition, <https://secureservercdn.net/198.71.233.187/ee8.a33.myftpupload.com/wp-content/uploads/2021/06/NABS-Boarding-school-list-2021-acc.pdf>.

¹⁵ Act of Mar. 3, 1891, Ch. 543, 26 Stat. 989, 1014.

¹⁶ Act of Mar. 3, 1893, Ch. 209, 27 Stat. 612, 635.

¹⁷ Institute for Government Research, The Problem of Indian Administration. Lewis Meriam, (1928), https://narf.org/nill/documents/merriam/b_merriam_letter.pdf.

¹⁸ Andrea A. Curcio, Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses, 4 Hastings Race & Poverty L.J. 45, 52 (2006).

https://repository.uhastings.edu/cgi/viewcontent.cgi?article=1035&context=hastings_race_poverty_law_journal, at 59.

Bureau of Indian Education

In 1921, the Snyder Act (Pub. L. 93-638)¹⁹ officially authorized the activities of the Bureau of Indian Affairs (BIA), including BIA schools.

Congress later created a separate funding stream to contract directly with tribes and tribal organizations, as well as States and school districts, to provide cultural education to Native American students.²⁰ Additional control over Indian education was given to tribes and tribal organizations through several bills, including the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA)²¹ and the Tribally Controlled Schools Act.²² Ultimately, this piecemeal development of organization and structure has led to confusion over the administration of Indian education at the federal, state, and tribal government level.²³

The Office of Indian Education within the BIA was created through the Education Amendments of 1978.²⁴ This office was moved out of the BIA and renamed the Bureau of Indian Education (BIE) in 2006 as part of a Secretarial order. The Secretarial action also elevated BIE to parallel status with BIA under the direction of the DOI's Assistant Secretary for Indian Affairs.²⁵ The BIE provides education support to about 45,000 students in 23 states through its 183 elementary and secondary schools located on or near Indian reservations.²⁶ Of these schools, the majority (130) are operated by tribes through BIE grants, while 53 schools are directly operated by BIE.²⁷ Together, these schools serve approximately 7 percent of the Native American student population.²⁸

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 for 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.²⁹ The division of responsibilities between BIE and BIA has created blurred lines of communication and command.³⁰

The DOI, BIA, and BIE have had difficulties in recent years due to leadership turnover. Since 2000, there have been 14 Assistant Secretaries for Indian Affairs, 11 BIE Directors,

¹⁹ 25 U.S.C. 13.

²⁰ 25 U.S.C. 5342 et seq. Johnson O'Malley Act.

²¹ 25 U.S.C. 5301 et seq.

²² 25 U.S.C. 2501.

²³ GAO, Better Management and Accountability Needed to Improve Indian Education. at 18, (Sept. 2013), <https://www.gao.gov/assets/660/658071.pdf>.

²⁴ 25 U.S.C. 2008; Bureau of Indian Affairs, Bureau of Indian Education, <https://www.bia.gov/bie>.

²⁵ *Supra* n. 25, at 4.

²⁶ FY 2023 BIE Budget Justification at BIE-GS-1, <https://www.bia.gov/sites/default/files/dup/assets/as-ja/obpm/fy2023-bie-greenbook.pdf>.

²⁷ Bureau of Indian Education, Schools, <https://bie.edu/Schools/>.

²⁸ *Supra* n. 25, at 5.

²⁹ *Id.* at 2.

³⁰ *Id.* at 2.

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 2016.³¹

Current Indian boarding school initiatives

In May 2021, anthropologist Sarah Beaulieu conducted an experiment using ground-penetrating radar to determine whether, as local Indigenous lore alleged, hundreds of children were buried near the former Kamloops Indian Residential School in British Columbia, Canada. In her study, she located possible remains of over 215 children.³² While the results of the study have been questioned by other scientists,³³ the publication resulted in national attention both in the U.S. and Canada over unmarked graves at former boarding schools.

In June 2021, Secretary Deb Haaland announced a plan for a boarding school initiative³⁴ in which the DOI would investigate the loss of life and consequences of Indian boarding schools, with the goal to identify boarding school facilities and sites; the location of known and possible student burial sites located at or near school facilities; and the identities and Tribal affiliations of children interred at such locations. The DOI will collect relevant information and conduct tribal consultation. Given the existence of the DOI initiative, it is unclear to what extent H.R. 5444 is duplicative of current efforts.

Republican Messaging

Indian boarding school policies during the nineteenth and early twentieth centuries had a drastic impact on American Indian families. Today, this is viewed as a failure in federal policy. The hearing will be an opportunity to discuss whether the establishment of a commission is the correct solution.

In addition, as countless reports detail, 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 blamed a bungling federal bureaucracy for failing to provide a safe and healthy place for these students to learn. The GAO has reported that efforts to restructure and streamline the federal bureaucracy are behind schedule.³⁵

³¹ *Supra* n. 25, at 21, 23.

³² Amanda Coletta, *Remains of 215 Indigenous Children Discovered at Former Canadian Residential School Site*, (May 28, 2021), WASH. POST, <https://www.washingtonpost.com/world/2021/05/28/canada-mass-grave-residential-school/>.

³³ Christian Schneider, *Some Professors Work to Debunk "Native Genocide" Narrative*, (Jan. 21, 2022) The College Fix, <https://www.thecollegefix.com/some-professors-work-to-debunk-native-children-genocide-narrative/>.

³⁴ Federal Indian Boarding School Initiative letter from Secretary Haaland (June 22, 2021), <https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf>.

³⁵ https://www.gao.gov/highrisk/improving_federal_management_serve_tribes/why_did_study

In the President's FY 2020 budget request, the Trump administration separated the BIE budget from the BIA budget.³⁶ This will ultimately allow the Director of the BIE to have greater flexibility in acting on the responsibilities the Department owes to Indian country. The Biden administration has continued this practice in FY 2022 and FY 2023.

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IV. MAJOR PROVISIONS & ANALYSIS

H.R. 5444, the Truth and Healing Commission on Indian Boarding School Policies Act (Rep. Davids)

Sec.1. *Short Title.*

Sec.2. *Findings.*

Sec.3. *Purposes.*

Sec.4. *Definitions.*

Sec.5. *Truth and Healing Commission on Indian Boarding School Policies in the United States.*

Subsection (a). *Establishment.* Establishes the Commission.

Subsection (b). *Membership.* Provides that the President shall appoint two members; two members shall be appointed by the President pro tempore of the Senate, on the recommendation of the majority leader of the Senate; two members shall be appointed by the President pro tempore of the Senate, on the recommendation of the minority leader of the Senate; two members appointed by the Speaker of the House; and two members appointed by the minority leader of the House.

Requires that to the maximum extent practicable, appointed members would include experts from diverse geographic areas, that possess personal experience with diverse policy experience in Indian boarding school history, that possess expertise in truth and healing endeavors that are culturally appropriate.

The President shall make member appointments to the commission in coordination with the Secretary of the Interior and the Director of Bureau of Indian Education. Commission members shall be appointed within 120 days after enactment and the term of a member shall be five years.

³⁶ <https://www.bia.gov/as-ia/opa/online-press-release/president%E2%80%99s-fy-2020-budget-proposes-9363-million-bureau-indian>

Subsection (c). *Meetings*. Requires that the Commission shall meet as soon as practicable after the date of enactment. Subsequent meetings are at the call of the Chairperson. Meetings can be conducted in-person, virtually, or via phone.

Subsection (e). *Chairperson and Vice Chairperson*. Commission members shall select a chair and vice chair.

Subsection (f). *Commission Personnel Matters*. A member of the Commission who is not employed by or an officer of the Federal government shall be compensated at rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule during which the member is engaged in performance of the duties of the Commission.

Members of the Commission shall be allowed travel expenses at the same rates authorized for federal employees.

Subsection (g). *Truth and Healing Advisory Committee*. Establishes an advisory committee composed of:

- 1 representative from:
 - The National Native American Boarding School Healing Coalition
 - The National Congress of the American Indians
 - The National Indian Education Association
 - The National Indian Welfare Association
 - The Alaska Federation of Natives
 - The Office of Hawaiian Affairs
- The Director of the Bureau of Indian Education;
- The Director of the Office of Indian Education of the Department of Education;
- The Commissioner of the Administration for Native Americans of the Office of the Administration for Children and Families of the Department of Health and Human Services;
- not fewer than—
 - 5 members of different Indian Tribes from diverse geographic areas, to be selected from among nominations submitted by Indian tribes;
 - 1 member representing Alaska Natives, to be selected by the Alaska Federation of Natives;
 - 1 member representing Native Hawaiians, to be selected by a process administered by the Office of Hawaiian Affairs;
 - 2 health care or mental health practitioners, Native healers, counselors, or providers with experience in working with former students, or descendants of former students, of Indian boarding schools, to be selected from among nominations of Tribal chairs or elected Tribal leadership local to the region in which the practitioner, counselor, or provider works, in order to ensure that the Commission considers culturally responsive supports for victims, families, and communities;
 - 3 members of different national American Indian, Alaska Native, or Native Hawaiian organizations, regional American Indian, Alaska Native, or Native

Hawaiian organizations, or urban Indian organizations that are focused on, or have relevant expertise studying, the history and systemic and ongoing trauma associated with the Indian Boarding School Policies;

- 2 family members of students who attended Indian boarding schools, who shall represent diverse regions of the United States;(vii) 4 alumni who attended a Bureau of Indian Education-operated school, tribally controlled boarding school, State public boarding school, private nonprofit boarding school formerly operated by the Federal Government, parochial boarding school, or Bureau of Indian Education-operated college or university;
- 2 current teachers who teach at an Indian boarding school;
- 2 students who, as of the date of enactment of this Act, attend an Indian boarding school;
- 1 representative of the International Indian Treaty Council or the Association on American Indian Affairs; and
- 1 trained archivist who has experience working with educational or church records.

Duties of the advisory committee are to serve as an advisory body for the Commission and provide to the Commission advice and recommendations, and submit to the Commission, materials, documents, testimony, and such other information as the Commission determines necessary.

The Advisory Committee shall create a Survivors subcommittee that shall consist of at least four former students or students who attended an Indian boarding school.

Subsection (h). *Duties of the Commission.*

The Commission shall develop recommendations on actions the federal government can take to adequately redress and heal, the historical and intergenerational trauma brought by Indian boarding school policies. This includes:

- Reviewing the federal government’s assimilation practices and how it advanced the attempted cultural and linguistic termination of American Indians, Alaska Natives, and Native Hawaiians;
- Identifying the location of where children are buried on and off-campus;
- Identifying church and government records related to schools and school children’s deaths;
- Locating, analyzing, and preserving records from schools including any records held at State and local levels; and
- Hosting culturally respectful and meaningful public hearings to collect testimony from survivors, schools, tribes, organizations, communities, churches, and states.

The Commission will provide an initial report no later than three years after enactment and publish a final report no later than five years of this Act to the President, the White House Council on Native American Affairs, the Secretary of the Interior, the Senate Committee on

Indian Affairs, the House Committee on Natural Resources, and the Members of Congress making appointments to the Commission.

Subsection (i). *Powers of the Commission.* The Commission shall hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths, virtually or in-person, as the Commission may determine advisable.

The Commission shall have subpoena power to produce testimony or records related to the matter that the Commission is empowered to investigate.

Subsection (j). *Application.* The Commission shall be subject to the Federal Advisory Committee Act (5 U.S.C. App. et seq.).

Subsection (k). *Consultation with Indian tribes.* The Commission shall consult with Indian tribes in carrying out its duties.

Subsection (l). *Collaboration by the Department of the Interior.* DOI shall collaborate and exchange relevant information with the Commission effectively carry its the duties

Subsection (m). *Termination of the Commission.* The Commission shall terminate 90 days after the date on which the Commission submits the final report.

Subsection (n). *Authorization of Appropriations.* There are authorized to be appropriated to the Commission, section such sums as may be necessary, to remain available until expended.

V. COST

A Congressional Budget Office (CBO) score for H.R. 5444 in the 117th Congress has not been completed.

VI. ADMINISTRATION POSITION

Unknown.