

RESOLUTION OF THE  
NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE  
23RD NAVAJO NATION COUNCIL - Fourth Year, 2018

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND  
NAABIK'ÍYÁTI' COMMITTEES; APPROVING NAVAJO NATION FEDERAL  
EDUCATION PRIORITIES FOR FEDERAL FISCAL YEAR 2019

WHEREAS:

- A. The Health, Education and Human Services Committee (HEHSC) is a standing committee of the Navajo Nation Council. It has the authority to review and recommend resolutions regarding certain matters, including health, education and social services. 2 N.N.C. §§ 164 (A)(9), 400 (A), 401 (B)(6)(a) (2012); see also CO-45-12.
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. It has the authority to "review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments." 2 N.N.C. §701(A)(7).
- C. The Navajo Nation has a government-to-government relationship with the federal government. This relationship includes the responsibility of the federal government to adequately fund the education of Navajo children, as mandated by the Treaty of 1868.
- D. The Navajo Nation Board of Education is an administrative agency of the Navajo Nation responsible for implementing and enforcing the education laws of the Navajo Nation. 2 N.N.C. § 1801 and 10 N.N.C. § 107(A). By resolution NNBEJA-07-2018, the board supports Federal Education Priorities for fiscal year 2019 identified by the Navajo Nation Department of Diné Education and the Diné Bi Oltá School Board Association. This resolution of the Board of Education is attached hereto as **Exhibit "A"** (with attachments containing the particular priorities identified by the department and the School Board Association). The priorities include increased funding and forward funding for the Navajo Nation Scholarship Program, maintain funding for Tribal Grant Support Costs; increased funding for school transportation, for the Indian School Equalization Program (ISEP), for school

construction, facilities and repair, for information technology, for tribal education departments; and adequate funding for facilities operation and maintenance, continued funding of the Early Childhood Education and Family Development program, the transfer of the Education Program Enhancement account to Program Management account. Also a further concern and priority of the Navajo Nation is that the Bureau of Indian Education-funded schools should receive payments for administrative expenses which reflect the costs of operating a school. Such schools and programs should be exempt from proposed budget reductions. See **Exhibit "A"**, and its attachments (a more detailed discussion on these and other concerns/priorities of the Navajo Nation Department of Diné Education and concerns/priorities of the Dine Bi Olta School Board Association).

- E. Navajo children, as American citizens, are entitled to a non-discriminatory education, with adequate funding.

**NOW, THEREFORE BE IT RESOLVED THAT:**

The Navajo Nation hereby approves the Navajo Nation's Federal Education Priorities for Federal Fiscal Year 2019, as reflected in **Exhibit "A,"** and its attachments.

**CERTIFICATION**

I, hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 13 in Favor and 00 Opposed, on this 22<sup>nd</sup> day of February, 2018.



LoRenzo C. Bates, Chairperson  
Naabik'iyáti' Committee

Motion: Honorable Tuchoney Slim, Jr.  
Second: Honorable Nelson S. BeGaye

Chairperson Bates not voting



**DEPARTMENT OF DINÉ EDUCATION  
THE NAVAJO NATION**

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**Russell Begaye  
President**

**Jonathan Nez  
Vice-President**

**NNBEJA-417-2018**

**RESOLUTION OF THE  
NAVAJO NATION BOARD OF EDUCATION**

**Relating to Education and Intergovernmental Relations; Supporting the Navajo Nation's Federal Education Priorities as Identified by the Navajo Nation Department of Diné Education and Diné Bi Olta School Board Association**

**WHEREAS:**

1. The Department of Diné Education (hereinafter the “Department”) is the administrative agency within the Navajo Nation with responsibility and authority for implementing and enforcing the educational laws of the Navajo Nation. 2 N.N.C. § 1801 (B); 10 N.N.C. § 107 (A).
2. The Navajo Nation Board of Education (hereinafter the “Board”) is the education agent in the Executive Branch for the purposes of overseeing the operation of all schools serving the Navajo Nation. 10 N.N.C. § 106 (A). The Board carries out its duties and responsibilities through the Department of Diné Education. 10 N.N.C. §106 (G)(3).
3. The Department is under the immediate direction of the Board. 10 N.N.C. § 107 (B).
4. The Navajo Nation established the Naabik'iyati' Committee as a Navajo Nation Council standing committee. The Naabik'iyati' Committee is also empowered to assist and coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation. 2 N.N.C. §§164 (A)(9), 701 (A)(4), 701(A)(6) (2015); CO-45-12.
5. The Diné Bi Ólta' School Board Association “. . . is the only school board association recognized by the Navajo Nation to represent local community school boards.” 10 N.N.C. § 300 (A).
6. The Department and Board have developed a federal education legislative and budgetary position statement, which incorporates the Diné Bi Ólta' School Board Association position statement, is attached hereto as “**EXHIBIT A.**”
7. The Diné Bi Ólta' School Board Association has developed a “Position Statement on the Proposed FY 2019 Federal Budget,” which is attached hereto as “**EXHIBIT B.**”

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**BOARD OF EDUCATION**

*Dr. Pauline M. Begay, President · Marlene Burbank, Vice President · Delores Greyeyes, Secretary*  
*Members: Bennie Begay · Gloria Johns · Patrick D. Lynch · Dr. Bernadette Todacheene*  
*Dr. Tommy Lewis, Jr., Superintendent of Schools*




8. In particular, the Board and DBOSBA strongly request that \$375,000,000 be prioritized for new school construction on the Navajo Nation.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Nation Board of Education hereby approves Navajo Nation's federal education priorities as identified by the Navajo Nation Department of Diné Education and Diné Bi Olta School Board Association.
2. The Navajo Nation Board of Education strongly recommends that the Nabik'íyáti' Committee and Health, Education, and Human Services Committee of the Navajo Nation Council to approve this resolution as the official position of the Navajo Nation regarding its federal education budgetary and legislative priorities. The position statement is attached hereto as "**EXHIBIT A.**"
3. The Navajo Nation Board of Education requests that the Navajo Nation Council to direct that any education or education-related testimony given to any entities of the federal government (United States Congress, Bureau of Indian Affairs, Bureau of Indian Education, Health & Human Services, Interior, Education, etc.) be previously approved by the Navajo Nation and presented solely by authorized representatives of the Nabik'íyáti' Committee and/or Health, Education, and Human Services Committee of the Navajo Nation Council, and/or the Department of Diné Education and/or Office of the President and Vice President.
4. The Navajo Nation Board of Education further recommends that the Navajo Nation Superintendent of Schools or his designee(s) and other designated members of the Navajo Nation Council to advocate on behalf of the Navajo Nation consistent with the positions stated in this resolution.
5. The Navajo Nation Board of Education hereby directs and empowers the Superintendent of Schools to take any actions deemed as necessary and proper to carry out the purposes of this resolution.

**C E R T I F I C A T I O N**

I hereby certify that the foregoing resolution was duly considered by the Board of Education of the Navajo Nation at a duly called meeting at Window Rock, Arizona (Navajo Nation) at which a quorum was present, motion by Bernadette Todacheene and seconded by Gloria Johns and that the same was passed by a vote of 5 in favor; 0 opposed; 0 abstained, this 5th day of January 2018.

  
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Dr. Pauline M. Begay, President  
Navajo Nation Board of Education



## **Navajo Nation Federal Education Priorities**

**(Position Statement on the Proposed FY 2019 Federal Education Budget)**

### **Introduction**

The Navajo Nation, as a government of an indigenous tribe, claims for its people and children the right to a culturally relevant, good, wholesome and all-encompassing education. Navajo Nation entered into the Treaty of 1868 with the United States and based on mutual promises with the United States. Today, the Navajo Nation, once again, reminds the United States of its promise and holds the United States responsible for adequate funding of the education of the Navajo people. The Navajo people are citizens of the United States and the states within which they reside and they are entitled to a non-discriminatory public education.

The Navajo Nation has a tremendous stake in improving the education of Navajo children. While maintaining their language and culture, they must become prepared for an active and equal participation in the national and global marketplace. Navajo students have to be educationally trained in two worlds: "Navajo world" and "outside world". Navajo children must prepare to be the future leaders for their family, community and Nation. Good education of Navajo children is for the continued existence and integrity of the Navajo Nation.

Appropriations for Indian (Navajo) education programs must take into account their historic underfunding. The recommendations set forth below attempt to reflect what is realistically needed to begin the redress of funding inequities of past decades. In addition, BIE-funded schools should receive payments for administrative expenses that truly reflect the costs of operating a statutorily compliant and well-managed school system.

Lastly, BIE-funded programs and other federal education programs must be exempted from any proposed reduction in funding levels. Education programs serving Navajo children and communities have already been dramatically cut and historically underfunded. The federal budget should not be balanced on the backs of Navajo children!

The Navajo Nation has an excellent opportunity to improve the education of Navajo children by successfully implementing the Diné School Accountability Plan (DSAP). This Plan will prepare the children to be competitive in the national and global marketplace while perpetuating Navajo language and culture. This Plan will empower and prepare the children to be the future leaders of our Nation. As the largest Native American nation in the United States, the Navajo Nation oversees 65 BIE-funded schools and residential halls (out of 183 BIE-funded schools) which is comprised of 32 BIE-operated schools (out of 57), 1 Public Law 93-638 contract school and 32 Public Law 100-297 grant schools encompassing 3 states (out of 127).



## **Increased Funding & Forward Funding of the Navajo Nation Scholarship Program**

**Background:** Since 1983, the Navajo Nation has administered its own scholarship program through a P.L. 93-638 contract. The Office of Navajo Nation Scholarship and Financial Assistance (ONNSFA) awards approximately \$10.8 million in federally-funded college scholarships per year. Additionally, the Navajo Nation contributes a little over \$2.5 million of its own revenues and income from tribal trust funds to Navajo college scholarships. An additional \$900,000 is secured in corporate and private donations. Cumulatively, the ONNSFA funds over 5,000 Navajo undergraduates and approximately 491 graduate students annually.

Over the last several years, Congress has operated under Continuing Resolutions. As a result, funding for the Navajo scholarship program has experienced serious and severe delays in funding and late awarding of much needed scholarship funds to students. This is particularly problematic for Navajo college students who depend on these scholarship funds to pay for tuition, books, room and board. Navajo students arrive on college campuses with little or no money.

There is precedent for forward-funding of Federal Indian education programs. Currently, the BIE-funded schools, including P.L. 93-638 and P.L. 100-297 schools (25 U.S.C. §1810) and Tribally Controlled Schools and Universities (25 U.S.C. §1810) are forward-funded. For the Navajo Nation, forward-funding has proven extremely beneficial to Federal agencies, Indian tribes, BIE-funded schools, public school districts, and Tribally Controlled Colleges and Universities. Most importantly, forward-funding greatly benefit Indian students at all levels.

Further, funding for scholarships has remained relatively flat from the years 2006 to 2010, with a modest increase in 2009. Scholarships were funded at \$10,079,298 in 2010, representing a decrease of almost \$2.6 million or an overall 20.4% budget cut.

**Impact:** The Navajo Nation is in constant need of additional resources for the increasing number of college students. A substantial investment needs to be made for students aiming for higher education. The number of applicants for scholarships has increased each year. In 2015, a total of 12,866 students applied for scholarships. Only 5,968 of those received awards resulting in a denial rate of 46 percent. The denial rate has hovered at 50 percent or more over the last decade. Similar to this, insufficient funding for graduate students create a major stumbling block for those who wish to pursue graduate and professional degrees. Further, the average cost of college attendance has dramatically increased by over 37% in the states of New Mexico, Arizona and Utah which have significant numbers of Navajo college students, while the funding has decreased.

Census 2010 data illustrates the need for an increase:

- The median age is 28-years-old and the under 18-age population accounts for one-third (33 percent) of all tribal members.
- The poverty rate for the Navajo Nation is 38% compared to the national rate of 15.1 percent for the same time period.
- Only 7 percent of those living on the Navajo Nation hold a college degree or higher.

- College education costs have increased dramatically while awards to students have remained at the same level for decades. Between 2001–02 and 2011–12, prices for undergraduate tuition, room, and board at public institutions increased by 40 percent, and costs at private nonprofit institutions increased by 28 percent. (U.S. Department of Education, National Center for Education Statistics, 2013)

With respect to college preparation, additional funds would provide assistance to more students pursuing higher degrees. Adequate preparation of students for college will increase the college retention and graduation rates.

**Navajo Nation Request:** Congress forward-fund Bureau of Indian Affairs' Higher Education program in the Fiscal Year 2018 budget in the amount of \$64,364,000. This will resolve repeated interruptions of scholarship funding for Navajo students.

### **Maintain Funding for Tribal Grant Support Costs**

**Background:** P.L. 100-297 authorized Tribal Grant Support Costs (TGSC) to provide for Tribal Grant and Contract Schools to cover school administrative costs. Through an established funding formula, the calculated need for ACG has been \$60+ million on an annual basis. Since the enactment of P.L. 100-297 law, the number of grant schools has increased to 66% (124 of 183) of the BIE-funded schools. This continues to increase, while the funding level for TGSC has decreased each year. Under these circumstances grant schools cannot be expected to succeed.

In FY 2010, the funding available for TGSC met only 60 percent of need. As a result, schools are required to reduce staff to dangerously low levels and are forced to divert funds from educational programs to meet their statutorily-mandated administrative requirements. For current contract and grant schools, the previous administration fully-funded the TGSC at \$75 million.

**Impact:** The Navajo Nation authorizes or operates 32 Grant and 1 Contract schools. Over the past four years alone, the reduction in funding to the schools amounted to \$19,847,550. The decrease in available TGSC funds coupled with more BIE-operated schools converting to Grant schools has forced schools to spend funds from other accounts, such as facilities, academic, and even Title programs—none of which were intended to cover administrative costs. The cost of mandated programs such as health insurance, workmen's compensatory insurance, pensions, personnel services, utility costs, and property management are sometimes not covered.

**Navajo Nation Request:** Congress, and President Trump's administration, support the continued full funding of the TGSC funds at \$75 million to cover 100% of the funding needs for grant schools.



## **Increase Funding for School Transportation**

**Background:** Students attending BIE-funded and operated schools travel over great distances and very poor road conditions. On the Navajo Nation, approximately 90% of the roads are unimproved and unpaved. The BIE calculates annual school transportation costs based on the miles each school bus travels in transporting students to and from school. However, this calculation does not include miles traveled for extracurricular activities. Overall, the transportation funding is \$2.61 per mile, which covers only 75% of the transportation cost at each school.

**Impact:** Schools have to borrow funds from different line-items to cover basic transportation costs, where student transportation shortages much be made up from education program funds. Schools have no choice in the matter: if they cannot get children to school, they cannot educate them.

### **Navajo Nation Request:**

- (1) Fund student transportation on par with the national average of \$3.71 per mile or \$73 million (this will result in an increase of \$15.755 million over the FY 2017 level of \$57.245 million);
- (2) Include separate and adequate funding for student transportation needs as it relates to extracurricular activities, bus maintenance, and school vehicles. Because fuel costs are much higher on the Navajo Nation, travel and transportation costs are consequently much higher.
- (3) The FY 2016 level of increase of \$4 million in transportation be maintained. Funding provided for this line item has historically been inadequate to cover the full cost of the transportation program. More actual data is needed to identify the extent of the shortfall.

## **Increase Funding for Indian School Equalization Program (ISEP)**

**Background:** The Indian School Equalization Program (ISEP) is the core budget account for educational and residential programs of the BIE elementary and secondary schools and dormitories. These funds are used for instructional programs at BIE-funded schools and residential programs at dormitories. It includes salaries of teachers, teacher aides, principals, and other school-level program administration, food service and dormitory staff. The ISEP amount due to each school is determined by a statutorily-mandated formula established by federal regulation.

At most schools, the chronic shortfall in other key school accounts has a negative impact on ISEF funding because ISEP funds are most often diverted to make up for shortfalls in other accounts (school transportation, facilities, administrative costs, etc.) when no other source of revenue to satisfy those shortfalls. This means fewer dollars are available for the education and residential programs. The Navajo Nation strongly urges that ISEP be funded at \$431 million.

**Navajo Nation Request:** Provide \$431 million for the Indian School Equalization Program, an increase of \$39 million above the FY 2016 enacted budget. Navajo Nation would like to see an



estimate of the funding needed to meet the DOD teacher pay requirement compared to the proposed overall increase.

## **School Construction, Facilities, & Repair**

**Background:** Because of Federal budget cuts, the Navajo Nation has experienced a significant decline in new school construction, school replacement, severe shortfalls on current construction projects, and inadequate funding for renovation and emergency repairs. Nationwide, 35% of all Bureau of Indian Education-funded schools (or 65 schools) are located on the Navajo Nation. Even though these schools were built in the 1930s and 1940s, most of these schools have not been considered for New School Replacement. The Navajo Nation underscores the growing problem of inadequate teacher/staff housing at many school sites. Employee housing repair needs special attention. The lack of adequate housing for staff is a significant factor in teacher turnover in our schools. The current backlog of repair costs for employee housing is \$107.8 million, much of that is on Navajo Nation schools.

In 2016, the President's request was \$138.257 million for BIE school construction and repair. That amount was not enough to address the staggering construction and repair backlog on Navajo Nation alone. Since FY 2005, the funding levels have dramatically decreased for this critical program. The Navajo Nation seeks \$263.4 million, which was the funding level in FY 2005. The FY 2005 funding level was instrumental in reducing the severe construction and repair backlog. BIA's budget has historically been inadequate to meet the needs of Navajo students and schools; while Navajo school and student needs have multiplied.

**Impact:** First, these schools are plagued with asbestos, structural problems, lead paint contamination, leaking roofs, and numerous other health and safety issues--resulting in unsafe conditions for students and staff and declining enrollment. Second, and in the related matter, the lack of progress over the past seven years in negotiated rulemaking has once again seriously impeded tribal participation on school construction matters.

Navajo Nation strongly supports the Appropriation Committee's suggestion that the Bureau "model its efforts on the process used by the Department of Defense (DOD)..." Navajo Nation agrees with the House Report 114-632 which states that a "more comprehensive, long-term planning approach is needed for every campus and component facility in the BIE system, modeled after the Department of Defense Education Activity."

### **Navajo Nation Request:**

(1) The Navajo Nation requests a \$125.143 million increase from the FY 2016 enacted level of \$138.245 million for a total of \$263.4 million to the BIA for Indian school construction and repair.

- (2) Congressional approval of the NCLBA-Negotiated Rule Making Committee's final recommendations as set forth for school replacement policies and procedures for school renovation and school replacement construction policies and procedures.
- (3) An increase of funding for employee housing and quarters construction to \$7.5 million.
- (4) The Bureau be allowed to model its efforts on the process used by the Department of Defense.

### **Facilities Accounts: Facilities Operation & Maintenance**

**Background:** All tribally-operated schools use government buildings. Unlike other government buildings, however, they do not receive proper funding for their operation and maintenance, and are not replaced on a schedule consistent with appropriate health, safety, habitability and educational standards. The backlog of construction and repair needs is so enormous that the BIA has even stopped estimating the need in its annual budget request. Presently, all school facilities backlog items are currently estimated at \$14.5 billion.

The Facilities Operation account is intended to cover expenses for personnel, electricity, heating fuels, communications, ground maintenance, vehicle rentals (except school buses), refuse collection, custodial services, pest control, water and sewer services, fire/intrusion monitoring, and facilities operation program management. According to BIE, the school system occupies over 21 million square feet of educational space (this does not count outside spaces).

From FY 2003 through FY 2010, the annual funding for Facilities Operation has increased by less than \$2 million—a scant 3.2% increase. Interestingly, the BIE budget does not reveal the percentage of need supplied, while schools report receiving only slightly more than 50% of the amount mandated by the facilities formula. Not only does this poor funding severely hamper schools' ability to pay utility and custodial expenses, it also results in unhealthy, uncomfortable, and unsafe building conditions and rapid deterioration of the federal government's investment in these facilities.

Funding for education Facilities Maintenance is used for preventive, routine, and unscheduled maintenance for all school buildings, equipment, utility systems, and ground structures. This includes maintenance services for HVAC systems, boilers and other pressure vessels, furnaces, fire alarms, sprinklers, radio repeaters, security systems, utility systems, water needs (wells, water treatment plants, and storage tanks), and outdoor spaces such as sidewalks, driveways, parking lots and landscaping.

**Impact:** As with shortfalls in TGSC Grant and student transportation funding, shortages in the Facilities Accounts must be covered by diverting resources from the educational program for Indian children. Often, much needed maintenance is just not performed at all. Again, this small level of funding negatively impacts schools' abilities to pay utility and custodial expenses and perform much needed routine and preventive maintenance. This also results in unhealthy, uncomfortable, and



unsafe building conditions and rapid deterioration of the federal government's investment in these facilities.

**Navajo Nation Request:** Facilities Operations funding of at least \$109.8 million (a \$36.549 million increase over FY 2016 enacted level of \$73.251 million), and Facilities Maintenance funding at \$76 million.

### **Broadband and Information Technology Enhancement**

The Navajo Nation strongly supports the provision of \$25 million, which is an increase of \$16.8 million to bring broadband and digital access to all Bureau schools (over the \$8.283 million that was appropriated in FY 2016 and FY 2017). The Bureau of Indian Education received only a \$2.0 million increase for information technology in the FY 2016 appropriation, which is far less than the \$34 million original proposed increase. While the FY 2017 funding level is not as substantial as the request made in FY 2016, the funding would have a very significant impact on the access and use of technology in the Navajo classrooms. A great many innovative teaching techniques and materials, now including testing materials, are based on digital platforms, which cannot be used without such technology access.

**Navajo Nation Request:** Fund the Broadband and Information Technology Enhancement line item at \$25 million (an increase of \$16.8 million above the FY 2016 and FY 2017 enacted levels).

### **Tribal Education Departments**

**Background:** Education program enhancement funds provide BIE-funded schools with necessary resources to improve student achievement through the adoption of school improvement measures. This particular funding assists tribal education departments which are uniquely situated at the local level to implement innovative education programs to improve Navajo education. Because this grant and program are administered by tribes, tribal education departments are in a great position to deliver education programs and initiatives that are customized to improve educational outcomes for their own children and communities. In particular, this particular funding stream enhances the ability of tribal education department to build capacity and exercise self-determination. The Navajo Nation, through the Department of Diné Education, is a recipient of this crucially needed Tribal Education Department grant to build the capacity of the Navajo Nation to undertake its own education reform plans and improve the quality of education for Navajo children.

**Navajo Nation Request:** Continue to fund the Tribal Education Departments line item in the BIE budget at \$2 million.



## **Support for Early Childhood Education and Family Development**

The Navajo Nation supports a continued FY 2016 and FY 2017 funding level of \$15.62 million for early childhood education and family development. In particular, the Navajo Nation BIE-funded schools, through the FACE program, are successful in strengthening Navajo families and student readiness for school.

**Navajo Nation Request:** Continue to fund the Early Childhood Education and Family Development line item in the BIE budget at \$15.62 million; allow for the release of the 2013-2014 Study and internal review of the program.

## **Education Program Enhancements**

The BIE has requested an increase of \$2 million in this program. It is unfortunately not always clear how this funding is used and whether it has been effective. In the past, it appears that large contracts were given to education assistance companies that were springing up in response to the demands of NCLBA. The FY 2016 budget justification states that the funding would be used for “capacity building” for tribal departments of education as well as a discretionary fund to “drive reforms and spur innovations in the 126 tribally controlled schools operating on 64 reservations.” Since FY 2008, more than \$100 million has been appropriated for this program. The justifications for the program have been rather vague and the results seem minimal. If this funding is requested for capacity building for tribal education departments, there should be a fair and transparent process established by which the tribes can apply for such funding. Consistent with the opportunity to waive the current accountability plan of the BIE under the new ESSA and develop its own accountability standards, the Navajo Nation has been developing its own unique option and will need additional funding for implementation of the various functions involved.

The funding of 26 FTE with Education Program Enhancement funds is questionable including the proposed increase of 8 more FTE in the FY 2017 budget. Navajo Nation agrees with the language in the conference report in the FY 2016 Interior Appropriations Act, which reads: “Education program enhancements are funded at the fiscal year 2015 enacted level. The Bureau should consider transferring this line item to education program management in the fiscal year 2017 budget request to more accurately account for personnel.” The account should be transferred to the Program Management account.

## **BIE Education Program Management**

In the FY 2017 budget, the funding level was \$8.0 million “to further establish a School Operations Division....” Navajo Nation supports this FY 2018 request IF this funding will be used to finally implement 25 USC 2006 (a) and (b) that vests all education functions in the AS-IA and then states that the AS-IA will “carry out such functions through the Director of the Office of Indian Education

Programs” (Now known as BIE). In paragraph (b)(1), it states that “The Director shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement and finance connected with school operation programs.” True implementation of this statute would almost certainly involve a transfer of functions, personnel, and funding, from the BIA to the BIE as well as provide new funding for BIE. Paragraph (b)(2) requires the AS–IA “to coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.” There is no confusion about the meaning of these provisions of the statute. Furthermore, these statutory provisions are consistent with the GAO recommendations, and with languages in House Report 114-632 and Senate Report 114-281.

## **Impact Aid (Title VII)**

**Background:** The Impact Aid program provides critical funding to public schools that are impacted by the presence of non-taxable Federal or Indian lands and students that reside on that land. State public schools located on or near the Navajo Nation rely heavily on Impact Aid support to provide public education to students served. For example, Impact Aid presently comprises over fifty (50) percent of school district budgets in the State of Arizona. Sequestration and delays in processing Impact Aid payments to school districts have forced many school districts serving Navajo students to make drastic decisions to eliminate programs, lay off teachers and staff, to close or consolidate schools. The FY 2017 request for Impact Aid was \$1.306 billion. However, this amount does not keep pace with inflation or current needs and it has to be increased to \$2 billion.

Distribute Impact Aid where eligible population resides. Navajo public schools face funding shortfalls. Federal Impact Aid dollars fund all public schools on the Navajo Nation. However, in New Mexico, rather than distributing Impact Aid funds to school districts with Indian populations, the state chooses to distribute the Impact Aid funds “equally” to all school districts. Hence, school districts with no Indian population receive Impact Aid funds intended for schools on federal lands. The U.S. Supreme Court reviewed this policy and ruled in favor of New Mexico. Congressional legislative action seems to be the only avenue to address this funding diversion that severely impacts Indian student education in state schools.

**Navajo Nation Request:** Impact Aid be funded at \$2 billion, which is a \$694 million increase above the FY 2016 enacted budget.

## **Johnson O'Malley**

**Background:** The Navajo Nation operates a Johnson O'Malley (JOM) program. In general, the JOM program provides supplementary financial assistance to meet the unique and specialized educational needs of Indian children by promoting student achievement and incorporating Native



American languages and culturally-based educational activities in the learning process. In FY 2016, as in previous years, the JOM program was funded through P.L. 93-638 contract between the Navajo Nation and BIA. Further, in 1995 the Bureau of Indian Affairs froze the student count, effectively placing a moratorium on the establishment of new JOM programs despite the fact that Indian student population has increased overall and that more school districts have been established. President's FY17 budget request was \$18.533 million.

**Impact:** Without funding, the important services that the JOM program provides to students, parents, and schools will cease. For example, many subcontractor JOM programs design individual education plans with outcome goals for students and their parents to follow. Based on a needs assessment, each plan is tailored to meet the needs of the students to help ensure that they reach their educational goals.

#### **Navajo Nation Request:**

- (1) The Administration and Congress fully fund the JOM program at \$42 million (an increase of \$23.6 million above the FY 2016 enacted budget).
- (2) Forward-funding of the JOM program. With forward-funding, money for the present fiscal year will be available at the beginning of each new school year.
- (3) JOM Program not be combined with other federal programs, such as Title VI, because it is a unique stand-alone program that provides essential services to Native American children.

#### **Navajo Head Start**

**Background:** Navajo Head Start receives federal funding through the Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) to provide early childhood education services which take into account a child's physical, emotional and social well-being. Navajo Head Start's primary focus is to ensure that education to the youngest students is culturally relevant and supportive of families and communities. Navajo Head Start provides services to children and families over a 26,000 square mile area, reaching some of the most remote areas of the Navajo Nation.

As the largest American Indian Head Start grantee, Navajo Head Start program faces significant programmatic challenges including: facilities, transportation and roads, recruitment and retention of qualified staffing, federal financial assistance, and culturally relevant curriculum development.

**Facilities:** The Navajo Head Start program currently utilizes chapter facilities (local governments within the Navajo Nation) to provide services. Many of these facilities are 30-40 years old and are in need of repair. Other facilities are modular buildings, meant for temporary usage. The harsh weather conditions and rural settings have left many of these buildings in disrepair. Currently, the Navajo Nation does not have funds to construct new buildings nor do major renovations. When facilities are closed due to disrepair and no new facilities are available for classrooms. Navajo



children and families are left without these necessary educational and support services which the Navajo Head Start program provides.

**Transportation and Roads:** The Navajo Head Start program provides door-to-door transportation for Navajo Head Start students. Navajo Head Start also assists families in receiving physical, emotional, and social well-being services. These services areas are often defined by Indian Health Services (IHS) areas. As many families live in extremely remote areas and not having their own personal transportation, Navajo Head Start assists children and families over an extremely large geographical areas resulting in a time intensive but necessary service. With extremely limited public transportation on the Navajo Nation, families do not have the means of transporting their children to and from school. The cost of maintaining so many school buses and gasoline prices being some of the highest prices within the United States, the Navajo Head Start program is faced with additional costs to ensure that the children with the most need for these educational services continue to receive them. In addition, many of the roads throughout the Navajo Nation are unpaved. Due to climate conditions throughout most of the year, these roads become impassable.

**Recruitment and Retention of Qualified Staff:** Rural areas often have a difficult time recruiting and retaining qualified staff. The Navajo Head Start program must also overcome low wages and a massive housing shortage that affects the entire Navajo Nation. In addition, the Navajo Head Start program must balance federal requirements of what is a “qualified” staff member with its own desire to ensure that Navajo language and culture remains a central focus of its educational program. While increasing educational requirements for teachers, the Head Start Act failed to take into account core cultural components which are often lacking in higher educational institutions programs which provide for those degrees. Navajo Head Start remains committed to providing the highest quality educational program, but the program must be built from within the Navajo Nation.

**Federal Financial Assistance:** Currently, the Navajo Head Start program has been placed on a monthly reimbursement schedule by the federal government. The requirements to meet this monthly schedule is labor intensive and heavily burdensome to a program already facing so many obstacles to providing high quality educational services. Many federal requirements, created in Washington D.C., do not take into account the lack of technology on the Navajo Nation nor the massive land area being served. These processes have only contributed to additional delays in providing high quality educational services. Delays in receiving federal funds have also impacted the Navajo Head Start’s program ability to provide services and to retain highly qualified staff.

**Culturally Relevant Curriculum:** The Navajo Head Start program is creating its own culturally relevant curriculum. This process is intensive as the Navajo language continues to be primarily an oral language. Many fluent speakers do not read and write this language and thus curriculum development must not only address the development of written curriculum but also a curriculum which may be used by families and communities that teach through oral tradition. Navajo Head Start has begun the creation of such a curriculum that may be used in its home-based programs, teaching not only the child but also the parents. This is essential to the Navajo Head Start program and to the Navajo Nation. Resources need to be identified that assist in the creation of curriculums which are based in the Navajo way of thinking. Early childhood learning is maximized when children are

taught with culturally appropriate materials. These resources strengthen language and cultural materials that meet research-based criteria to help children with identity, self-confidence and self-esteem—creating a strong foundation for success in life.

**Navajo Nation Request:**

- (1) Provide full funding to the Navajo Head Start program based upon a needs assessment that addresses issues of facilities, transportation, staff recruitment and retention, and culturally relevant curriculum development.
- (2) Provide construction funds for the construction of new facilities and major renovations of current facilities.
- (3) Provide resources to specifically develop a Navajo curriculum and culturally appropriate materials to be used by Navajo children and their families.
- (4) Provide full funding for Indian Health Services to assist in providing early childhood services.
- (5) Provide full forward-funding at the beginning of each program year.

**Support for Diné School Improvement Plan (DSAP)**

**Background:** The Diné School Accountability Plan was signed by the U.S. Department of Education and U.S. Department of Interior on September 27, 2016. The DSAP fulfills the requirements of academic accountability requirements within the parameters of the Every Student Succeeds Act. DSAP is to be implemented in a phased approach for the next 6 years. Phase 1 is having the BIE funded schools meet all federal requirements of ESSA; Phase 2 is implementing the Diné Content Standards as an additional academic indicator of accountability with DSAP; and Phased 3 is having the Navajo Nation implement all accountability requirements with all Bureau of Indian Education Schools on the Navajo Nation.

**Need Statement:** The Department of Diné Education is going to be required to change its business rules; go through an organization change; add new positions; create a new legal status to function within the parameter of DSAP. As such, this new change will have a systemic impact on the Navajo budget, personnel policies, legal authority, professional responsibilities and sovereign status of the Nation.

**Support for Diné Sovereignty in Education Pursuing SEA Status**

**Background:** The Navajo Nation is seeking State Education Status with the U.S. Department of Education. Presently, we are under the Department of Interior listed as a Tribal Education Agency with no authority. In order to become a State Education Agency (SEA), amendments to P.L. 100-



297 needs to occur clearly defining the legal status of the Navajo Nation as a SEA for BIE-funded schools on the Navajo Nation. The signing of DSAP is the first step to becoming an SEA.

**Need Statement:** The Navajo Nation is going to be required to closely examine P.L. 100-297 to highlight the changes in the language of the law to support the Navajo Nation to become a SEA. Once this is completed, new language needs to be crafted and legislated through Navajo Nation Council then on to the federal government. It will require federal inquiry and support of our congressional delegation. Presently, BIE is identified as failing our Indian students in the GAO report. The Navajo Nation will need to provide a quick and qualified response as to how it will address and resolve this on-going issue.

### **Support for Native Languages (Esther Martinez Program)**

**Background:** In 2006, Congress enacted the Esther Martinez Native American Languages Preservation Act. The Act amended the Native American Programs Act of 1974 to authorize the Secretary of Health and Human Services, as part of the Native American languages grant program, to make three-year grants for educational Native American language nests, survival schools, and restoration programs. The grants may be used for curriculum development, teacher training, and parental involvement. In FY 2008, Congress authorized \$3 million to fund the Act.

**Impact:** Even though no Navajo Nation school has received one of these grants, the Navajo Nation supports the program. Navajo schools continue to be at the forefront of native language programs. For instance, the Window Rock Unified School District (WRUSD), located in northeastern Arizona, and Central Consolidated School District (CCSD), located in northwestern New Mexico, established and operate two of the country's exemplary Navajo immersion schools, Tsehootsooi Diné Bi Oltá and Eva B. Stokely Elementary School.

**Navajo Nation Request:** Fund the Act at \$12 million, which is a \$3 million increase above the FY 2015 enacted budget.

### **Office of Special Education & Rehabilitation Services**

**Background:** The Rehabilitation Act of 1973, P.L. 114-95, authorized the American Indian Vocational Rehabilitation Services (AIVRS) under Section 121, Part D of the Workforce Innovation Opportunity Act of 2014 (as amended in 1998) under P.L. 113-128. The AIVRS program is funded in five years cycle to provide vocational rehabilitation that is culturally appropriate on the reservation.

Office of Special Education and Rehabilitation Services (OSERS) operates an AIVRS program and provides VR services such as evaluation assessments, counseling/guidance, job training, post-secondary education, job development and placement, traditional healing services, transportation, transition services for special education and other services on and near the Navajo Nation plus the three satellite communities of Alamo, Ramah, and To'hajiilee in New Mexico. AIVRS programs are



more successful than their state counterparts in providing vocational rehabilitation services to American Indians with disabilities who reside on and near reservation. OSERS presently serves 2,500 annually and has 80% employment placement outcome, which is higher than states surrounding the Navajo Nation providing similar services (AZ – 47%; NM – 60%; Utah – 66%).

While successful, there are issues that need addressing of the Workforce Innovation and Opportunity Act for AIVRS. The set-aside allocation for AIVRS should be increased from 1.8 percent to 2 percent due to the increase in AIVRS programs. In addition, the AIVRS programs should have equal access to VR funds such as reimbursements, professional development, and supplemental funding due to increase in clientele. AIVRS grants and refunded are discretionary grant-based. That should be permanently funded because the Navajo Nation VR is under a formula status.

Impact: Equal access and full funding for AIVRS Programs will allow OSERS and other AIVRS Programs to ensure services that are consistent and continued without interruption or delay of services to American Indians (AI) with disabilities. Furthermore, OSERS and other AIVRS Programs can continue to increase services, improve employment outcomes and decrease dependences on tribal, state and federal financial assistance programs. In addition, this will bring financial stability and economic growth on and near Indian country.

#### Navajo Nation Request:

- (1) Ensure AIVRS programs have equal access comparable to the state VR programs that allows AIVRS programs to secure reimbursements from Social Security Trust Fund;
- (2) Stabilize the AIVRS programs from a “grant-based” to “performance-based” continuation funding;
- (3) Increase the set-aside allocation for AIVRS from 1.8% to 2% for adequate funding;
- (4) OSERS and other AIVRS should be recognized as a comparable state VR agency as its counterparts;
- (5) The allocations for year 2018 and year 2019 be protected and available for the competition in 2020 to ensure all AIVRS are funded adequately to continue services;
- (6) State VR agencies provide adequate 15% funding to the public schools on the reservation for services to American Indian youth with disabilities in special education that they deserve in preparation for post-secondary education and/or career opportunities.
- (7) Provide adequate funding for professional development in the profession for speech, orthopedic, psychological and occupational therapist/evaluators for assessment and services that culturally relevant to Navajo children and students.

## **Title I (ESSA)**

Title I, Part A (Title I) of the Elementary and Secondary Education Act (ESEA), as amended, provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards. Federal funds are currently allocated through four statutory formulas that are based primarily on census poverty estimates and the cost of education in each state.

Navajo Nation Request: The Navajo Nation supports the provision of \$25 billion for Title I, Part A, which is an increase of \$10.1 billion above FY 2016 enacted; \$9.6 billion above FY 2017 Administration Request.

## **Title VI (ESSA) – Indian Education Formula Grants**

Funding for Title VI of the ESSA is designed to address the unique cultural, language, and educationally-related academic needs of American Indian and Alaska Native students, including preschool children. The funded programs are to meet the unique cultural, language, and educational needs of Indian students and ensure that all students meet challenging state academic standards.

Grant funds supplement the regular school program by meeting the culturally related academic needs of Indian children. Projects help Indian children sharpen their academic skills, assist students in becoming proficient in the core content areas, and provide students an opportunity to participate in enrichment programs that would otherwise be unavailable. These funds support activities such as culturally-responsive after-school programs, Native language classes, early childhood education, tutoring, and dropout prevention. In particular, the Navajo Nation, through the State Tribal Education Partnership (STEP) grant, utilized funding appropriated through this grant to build the capacity of Department of Diné Education as a tribal education agency as well as enhanced its ability to conduct research, evaluation, and data collection activities with two (2) of the largest public school districts, CCSD and GMCS, in the United States serving Native American students.

### Navajo Nation Request:

(1) The Navajo Nation supports the provision of \$198 million for Title VI, Part A, which is an increase of \$54.2 million above FY 2016 enacted and \$23.1 million above FY 2017 Administration Request.

(2) The Navajo Nation also supports the provision of \$53 million for Title VI, Part A, Subpart 2: Special Programs and Projects to Improve Educational Opportunities for Indian Children.

## **Other Issues/Concerns**

### A. The FY 2017 Budget: Continuing Resolution



Navajo Nation supports a continuation of the FY 2017 continuing appropriation resolution to September 30, 2017 at the current FY 2016 levels.

Navajo Nation opposes any effort to reduce funding for the remainder of FY 2017. If Congress cuts funding for the remainder of FY 2017, the reductions will be disruptive to schools funded by the Bureau of Indian Education and will cause financial, management, personnel and service problems.

BIE-funded schools receive forward funding, so school year 2016-2017 is being funded with fiscal year 2016 funds and would not be affected by a reduction of FY 2017 funds. The exception is the education facilities operation and maintenance programs, which are funded on an October-to-September basis. A cut in FY 2017 funds could make it difficult for schools to pay utility bills and to continue with routine maintenance.

The impact on schools would take place in school year 2017-2018. The funding for the Indian School Equalization Program (ISEP) has increased by only 4.5% since FY 2009 and has not kept pace with inflation costs. The funding for the Student Transportation program has increased by only 5.2% since FY 2009. A reduction in FY 2017 for ISEP and Student Transportation would result in funding levels below what they were prior to the FY 2013 sequestering of federal funds.

#### **B. Hiring Freeze**

Another concern for BIE-operated schools is the hiring freeze on federal employees recently imposed by President Trump. BIE-operated schools hire teachers and counselors through annual contracts. The hiring freeze makes it impossible for BIE-operated schools to hire teachers and counselors for the 2017-2018 school year. Navajo Nation supports Congressional bill language to provide an exception to the federal hiring freeze to allow BIE-operated schools to hire personnel.

The FY 2017 budget by the Department of the Interior for BIE Education was reasonably good when viewed in conjunction with the FY 2016 final appropriations.

#### **C. Commitment to Self-determination**

Navajo Nation strongly supports the Administration's commitment to self-determination, particularly the proposal to continue funding 100% of the Administrative Cost Grants (\$2.1 million increase). Navajo Nation also supports continuation of full funding for the Tribal Education Departments in 2017, but would point out that the authorized level should be increased beyond the current \$2 million level. In addition, the BIE should base the amount of awards on the size of the tribe being awarded. Due to the number of BIE-funded schools on Navajo, the planning effort is much greater than tribes with only a handful of schools. On Navajo Nation, a lack of funding continues to hamper the development activity.

#### **D. FY 2018 Recommendations for BIE Education System**



- Budget Analysis Division. 25 USC 2009 requires that BIE establish a Division of Budget Analysis no later than one year after enactment of NCLBA. It would have been a tremendous help through the years if such a division was in existence and providing the type of information called for in the statute. In addition, 25 USC 2001(h) requires the Comptroller General to 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...” The longstanding failure of the Bureau to implement these provisions has created a void of information where it has become increasingly difficult to justify funding based upon objective data. As part of the reform measures called for by the appropriation committees, Navajo Nation believes these two statutory mandates should be specifically mentioned for implementation in FY 2018.

- BIE Reorganization. Navajo Nation opposed portions of the BIE reorganization. The problem has been that the Department has treated the existing statute as though it is somehow optional and proceeded to ignore the structure of the system mandated in the statute. The Department has received a conditional approval of its reorganization contingent on its consistency with the GAO Report 13-774. The Committee Report states: “As the Department takes steps to reform the system, the Secretary is reminded that future support from Congress will continue to be based in large part upon successful implementation of GAO report recommendations. In particular, consistent with GAO report 13-774, the Secretary is urged to reorganize Indian affairs so that control and accountability of the BIE system is consolidated within the BIE, to present such reorganization proposal in the fiscal year 2017 budget request...” Specifically named are problems related to the “organizational structure, accountability, finance, health and safety, and ultimately student performance.” The Department’s original reorganization plan ignored the GAO report, as well as the applicable statute (25 USC 2006). Navajo Nation believes that going forward with the Department’s original reorganization plan does not address the GAO’s recommendations, is not in compliance with applicable statutes, and would make matters worse in the field. The reading of the FY 2017 budget justification leaves questions concerning the BIE’s compliance with the appropriation committees’ determination. Navajo Nation urges the appropriations committees to review this matter carefully in FY 2018. [LT Note: Does this conflict with DODE’s statement?]

- Relationship with U.S. Department of Education: Shift to Department of Defense (DOD) budget model

The Department of the Interior has been involved with developing a major initiative for BIE Education. One of the suggested options that came out of those discussions/consultations was an idea to utilize the Department of Defense budget model as it relates to the flow-through funding from the Department of Education. Currently the BIE receives about \$200 million from the Department of Education via a set aside in the authorizing legislation (now ESSA). Conversely, the Department of Defense Education System, receives its total funding through its own DOD appropriation. It is therefore free to develop its educational program to meet the special needs of the students it serves. This is a fundamental difference between the two education systems operated by the Federal government. The Department of Defense model appears to be superior to the Bureau of Indian Education model.

Memoranda of agreement have been reached through the years whereby the BIE is supposed to function as a State Education Agency (SEA) in order to receive the Department of Education funds and administer the various programs to the LEAs (Local Education Agencies). Rather than work with tribes and local BIE funded schools in designing its curriculum and ensuring that the needs of its students are met, the Bureau is forced to comply with Department of Education rules devised for the states.

Following the passage of NCLB, these rules and procedures became much more detrimental to BIE school programs. The Bureau began neglecting its own statutory authorizations in favor of its clearer SEA role as the enforcer of NCLB rules. The result was that the BIE Education System, set up to meet the special needs of Indian children, was forced instead to try to set up the same education system that was in the process of failing in most of the rest of the country. Of course, the failures in Indian country have been more significant since the BIE was ignoring the very principles that have been developed through the years based on numerous studies and years of experience. Increases in BIE funding were funneled into NCLB implementation. Genuine initiatives toward self-determination, including at least two on Navajo, were squelched due to lack of funding and a BIE that lacked the administrative authority and resources required by statute.

Navajo Nation believes that FY 2018 funding can represent a major change in its educational structure with the help of the federal government. Navajo Nation recommends that the BIE set aside funding from the Department of Education in ESSA be transferred to the Department of Interior's Budget for BIE. The BIE should then be required to have substantive consultations with the tribes, school staff and BIE-funded school boards to further develop a unique education system, based on self-determination and deemed to be the most beneficial and effective for Indian youth. Navajo Nation believes that this change will require a statutory change and is disappointed that the new ESSA did not deal in any substantial way with Indian Education. Navajo Nation believes the statutory change to be minor but believes the benefits will be significant.





DINÉ BI OLTA SCHOOL BOARD ASSOCIATION, INC.

**DBOSBA**

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FAX (928) 871-5148

**DBOSBA 18-01-003**

**RESOLUTION OF THE  
DINÉ BI OLTA SCHOOL BOARD ASSOCIATION, INC.**

**Approving the Diné Bi Olta School Board Association, Inc.'s Position Statement on the FY2019 Bureau of Indian Education Budget as it relates to Indian Education, Tribal Support Costs, Student Transportation, Indian School Equalization Formula & Program; School Construction, Facilities and Repair; Facility Accounts: Operation & Maintenance; Herein Attached as "Exhibit A"**

**WHEREAS:**

1. The Diné Bi Olta School Board Association, Inc. is established by the Navajo Nation Council to address the educational needs of Navajo children in the schools of Navajo Nation; to work with the Navajo Nation government to advocate with federal agencies and the U.S. Congress for education needs and resources, and to represent and assist schools funded and/or operated by the Bureau of Indian Affairs; 10 N.N.C. §301.et.seq.; and
2. Pursuant to 2. N.N.C. §484, (B)(6), the Education, Health, and Human Services Committee is responsible to "represent the Navajo Nation in consultation with federal, state and local officials regarding any proposed changes in education program"; and
3. The Navajo Nation and the United States government entered into the Treaty of 1868, which stipulated an obligation on the part of the Federal government to provide education to the Navajo people. This obligation continues through a series of laws enacted by the United States Government, including P.L 93-638, P. L. 95-561, P. L.100-297 and P. L. 107-110; and
4. Public Law 107-110, the Every Student Succeeds Act, Part B, Bureau of Indian Affairs Program §1120, Declaration of Policy, reaffirms that *"Congress declares that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that it has established on or near Indian reservation and Indian trust lands throughout the Nation for Indian children"*; and
5. The Bureau of Indian Education Central Office provides policy, budget and administrative services for the BIA school system's six (6) Line Offices located in within the Navajo Nation pursuant to the Kempthorne Settlement. The Line Offices work with 66 BIE-funded schools and eight (8) residential/ dormitory programs serving Navajo students; and

6. Public Law 93-638 Indian Self-Determination and Education Assistance Act, amended, Section 3(a) (b) (c), Congressional Declaration of Policy, stipulates that "Indian tribes shall be afforded maximum participation in the direction of education...so as to render such services more responsive to the needs and desires of those communities"; and

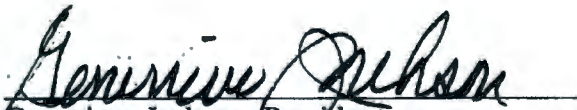
7. The Diné Bi Olta School Board Association, Inc. asserts that it is in the best interests of Navajo students served by the BIA/BIE federally operated and federally funded-schools to issue a position statement outlining funding needs for Navajo education programs and services.

**NOW, THEREFORE, BE IT RESOLVED, THAT;**

The Diné Bi Olta School Board Association, Inc. hereby submits the Diné Bi Olta School Board Association, Inc.'s Position Statement on the FY 2019 Bureau of Indian Education Budget as it relates to Indian Education, Tribal Support Costs Grants, Student Transportation, , Indian School Equalization Formula & Program; School Construction, Facilities and Repair; Facility Accounts: Operation & Maintenance; herein attached as "Exhibit A".

**CERTIFICATION**

I hereby certify that the foregoing resolution was presented at a duly called Special Meeting of the Executive Board of the Diné Bi Olta School Board Association, Inc held in Window Rock, Arizona at which a quorum was present, with a motion by \_\_\_\_\_, seconded by \_\_\_\_\_ and that same was passed by a vote of 4 in favor, 0 opposed, and 0 abstained, this **4th day of January 2018.**

  
Genevieve Jackson, President

**DINÉ BI OLTA SCHOOL BOARD ASSOCIATION, INC.**

**Motion By: Kathleen Tsosie**

**Second By: Ervin Chavez**





DINÉ BI OLTA SCHOOL BOARD ASSOCIATION, INC.

**DBOSBA**

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**DBOSBA 18-01-003: Exhibit "A"**

**DINÉ BI OLTA SCHOOL BOARD ASSOCIATION, INC.  
Position Statement on the Proposed FY 2019 Federal Budget  
January 4, 2018**

Pursuant to Navajo Nation Code 10§301 et.seq. the Navajo Nation established the Diné Bi Olta School Board Association, Inc. (DBOSBA). The DBOSBA organization is the only school board association recognized by the Navajo Nation to represent local community school boards to address the views and situations of community controlled schools operated and funded by the Bureau of Indian Education. There are currently 66 federally funded schools on the Navajo Nation, 34 of which are operated by a grant or contract under P.L. 93-638 or P.L. 100-297 while 32 are Bureau operated.

**The FY 2018 Budget: Continuing Resolution**

DBOSBA supports a continuation of the fiscal year 2017 continuing appropriation resolution to September 30, 2018 at the current FY 2017 levels.

BIE-funded schools receive forward funding, so school year 2017-2018 is being funded with fiscal year 2017 funds and was not affected by a reduction of FY 2018 funds. The exception is the education facilities operation and maintenance programs, which are funded on an October to September basis. The impact on schools would take place in school year 2017-2018.

The funding for the Indian School Equalization Program (ISEP) has increased by only 4.5% since FY 2009 and has not kept pace with inflation costs. The funding for the Student Transportation program has increased by only 5.2% since FY 2009. A reduction in FY 2017 for ISEP and Student Transportation would result in funding levels below what they were prior to the FY 2013 sequester.

The FY 2018 budget by the Department of the Interior for BIE Education was reasonably good when viewed in conjunction with the FY 2016 final appropriations. DBOSBA hereby submits its position on the FY 2019 Budget Request and also provides input and guidance on the overall direction of the BIE Education System going forward.

**The FY 2019:**

**Commitment to Self-determination** - DBOSBA strongly supports the Administration's proposal to continue funding 100% of the Administrative Cost Grants (\$2.1 million increase). We also support continuation of full funding for the Tribal Education Departments in 2017, but would point out that the authorized level should be increased beyond the current \$2 million level. In addition, the BIE should base the amount of awards on the size of the tribe being awarded. Due

to the number of BIE funded schools on Navajo, the planning effort is much greater than tribes with only a handful of schools. On Navajo, in spite of tribal authorization to establish a true educational system, a lack of funding continues to hamper the development activity.

**Indian School Equalization Program (ISEP)** – The Indian School Equalization Program (ISEP) funds support classroom operations for 183 BIE-funded elementary and secondary schools and dormitories. ISEP funds support teachers, counselors, school administrators, food services, and dormitory operations.

The Indian School Equalization Program (ISEP) funding has grown from \$391.7 million in FY 2010 to \$391.8 million in FY 2016, an increase of only \$138,000 (+0.04%). The ISEP funding has lost purchasing power. ISEP lost 5.5% of its funding during the FY 2013 sequester and only recovered funding in FY 2016. The BIE funded schools have been asked to do more to serve an economically disadvantaged and mostly rural population with inadequate resources.

The Congress appropriated \$400.2 million for ISEP formula funds for FY 2017. DBOSBA supports maintaining the ISEP funds at the FY 2017 appropriated level in the FY 2019 Indian Affairs budget request.

The DOI proposed to cut the funding for ISEP funding by \$23.4 million (-5.9%) below the FY 2017 enacted level. The justification in the FY 2018 Indian Affairs budget justification was, “to prioritize direct school operations.” Cutting ISEP funding will not result in a higher priority for direct school operations.

**Fixed Cost and Teacher Pay** - The Bureau of Indian Education is required by 25 USC Section 2012(g) to use the Department of Defense Education Activity (DoDEA) methodology for teacher and counselor pay cost adjustments. However, Indian Affairs has short-changed the BIE-funded schools by applying a two-day reduction against teacher pay costs for FY 2017 (school year 2017-2018). The schools will not have 2 fewer days. DBOSBA requests that the BIE and Indian Affairs follow the law with respect to teacher pay in planning the FY 2019 budget. We also request that the teacher pay cost adjustment be applied to grant schools as it is applied to BIE-operated schools.

**Facilities O & M** - DBOSBA strongly supports the increase in Facilities O & M of \$6 million. Combined with the significant increase in FY 2016, this is greatly appreciated and will reduce the problem of schools having to divert instructional dollars to “keep the lights on.” The failure through the years to adequately fund these line items results in minor problems evolving into major repairs.

**Education Program Enhancements** – The BIE has requested an increase of \$2 million in this program. It is unfortunately not always clear how this funding is used and whether it has been effective. In the past, it appears that large contracts were given to education assistance companies that were springing up in response to the unrealistic demands of NCLBA. The FY2016 budget justification states that the funding would be used for “*capacity building*” for tribal departments of education as well as a discretionary fund to “*drive reforms and spur innovations in the 126 tribally controlled schools operating on 64 reservations.*” Since FY



2008, more than \$100 million has been appropriated for this program. The justifications for the program have been rather vague and the results seem minimal. If indeed this funding is requested for capacity building for tribal education departments, there should be a fair and transparent process established by which the tribes can apply for such funding. Consistent with the opportunity to waive the current accountability plan of the BIE under the new ESSA, and develop its own accountability standards; the Navajo Nation has been developing its own unique option and will need additional funding for implementation of the various functions involved.

DBOSBA continues to question the funding of 26 FTE with Education Program Enhancement funds, and the proposed increase of 8 more FTE in the FY 2017 budget. We agree with language in the conference report on the FY 2016 Interior Appropriations Act, which read: "Education program enhancements are funded at the fiscal year 2015 enacted level. The Bureau should consider transferring this line item to education program management in the fiscal year 2019 budget request to more accurately account for personnel." The account should be transferred to the Program Management account.

**School Transportation** – DBOSBA strongly supports the retention of the FY 2016 level of \$4 million increase in transportation. Most schools agree that the funding provided historically via this line item has been inadequate to cover the full cost of the transportation program. This shortfall means that the schools must take funding out of their instructional programs just to get the students to school. More actual data seems to be needed to identify the extent of the shortfall.

**Broadband and IT enhancement** - DBOSBA strongly supports the \$16.8 million for bringing Broadband and digital access to all Bureau schools. BIE received only a \$2.0 million increase for information technology in the FY 2016 appropriations, far less than the \$34 million increase proposed. The FY 2017 funding level is not as substantial as the request made in FY 2016, the funding would have a very significant impact on the access and use of technology in the Navajo classrooms. A great many innovative teaching techniques and materials, now including testing materials; are based on digital platforms and cannot be used without such access.

**BIE school construction** – DBOSBA supports the continuation of the FY 2016 school construction funding level in the FY 2018 budget (\$138 million) but with an increase of \$7.5 million for Employee Housing. We wish to underscore the growing problem of inadequate teacher/staff housing at many school sites and believe that Employee Housing Repair needs special attention. The lack of adequate housing for staff is a significant factor in teacher turnover in our schools. The current backlog of repair costs for Employee Housing is \$107.8 million, much of that on the Navajo Nation schools. DBOSBA strongly supports the appropriation committees' suggestion that the Bureau "*model its efforts on the process used by the Department of Defense (DOD)...*" We agree with the House Report 114-632 that read: "A more comprehensive, long-term planning approach is needed for every campus and component facility in the BIE system, modeled after the Department of Defense Education Activity."

**BIE Education Program Management** – In the FY 2017 budget, the funding level was \$8.0 million "to further establish a School Operations Division..." DBOSBA supports this n FY 2018 request IF this funding will be used to finally implement 25 USC 2006 (a) and (b) that vests all education functions in the AS –IA and then states that the AS - IA will "*carry out such functions through the Director of the Office of Indian Education Programs.*" (Now known as BIE) In

paragraph (b)(1), it states that *"The Director shall-direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement and finance connected with school operation programs."* True implementation of this statute would almost certainly involve a transfer of functions, personnel, and funding, from the BIA to the BIE as well as provide new funding for BIE. Paragraph (b) (2) requires the AS -IA *"to coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director."* DBOSBA believes there is absolutely no confusion about the meaning of these provisions of the statute! Furthermore, these statutory provisions are consistent with the GAO recommendations, and with language in House Report 114-632 and Senate Report 114-281."

### **Early Childhood Education and Family Development**

The Congress appropriated \$15,620,000 for the Early Childhood Education Program in FY 2016 but the BIE distributed only \$13,128,012. DBOSBA believes that the BIE is using \$2,491,988 (16.0%) for administrative costs. DBOSBA requests that the BIE allocate the entire FY 2017 appropriation of \$18,659,000 to the Family and Child Education (FACE) program sites. Administrative costs should be budgeted for in the Program Management account, not in the service accounts.

We recommend that funding for Early Childhood Education be maintained at the FY 2017 enacted level of \$18,659,000 in the FY 2019 Indian Affairs budget request. We believe that this program is successful in strengthening Navajo families and student readiness for school.

### **Tribal Grant Support Costs**

The Congress appropriated \$80,165,000 for Tribal Grant Support Costs (called "administrative cost grants" in the appropriations bill language) for FY 2017. We request that the funding be maintained at the FY 2017 level in the FY 2019 budget.

President Richard Nixon proposed the policy of Indian self-determination without termination in a Special Message on Indian Affairs to the Congress on July 8, 1970. President Nixon specifically addressed the need for greater tribal control of Indian education. President Nixon's proposal led to the Indian Self-Determination and Education Assistance Act of 1975, PL 93-638. Tribal control of schools was further strengthened in the Tribally Controlled Schools Act of 1988, PL 100-297. It appears that President Donald Trump is rejecting the policy of Indian self-determination without termination. The proposed \$5.8 million cut to Tribal Grant Support Costs in the FY 2018 budget would disrupt four decades of federal Indian policy.

### **School Construction**

President Trump has proposed to invest in infrastructure in America. However, the FY 2018 Indian Affairs budget would eliminate the funding for Indian school construction.



DBOSBA recommends that the FY 2019 budget for Indian school construction be maintained at the FY 2017 enacted level of \$138.3 million.

We support language in House Report 114-632 regarding Indian school construction:

A more comprehensive, long-term planning approach is needed for every campus and component facility in the BIE system, modeled after the Department of Defense Education Activity. Indian Affairs is therefore directed to publish a report on the status of its education construction program no later than one year after the date of enactment of this Act.

We also support language in Senate Report 114-281:

The Committee directs the Bureau to report back within 90 days of enactment of this act on the progress the Bureau has made towards implementing a long-term facilities plan similar to the Department of Defense [DOD] process in 2009 as encouraged in the joint explanatory statement accompanying Public Law 114-113.

**BIE Reorganization** - The BIE continues to reorganize in a manner that ignores statutory requirements contained in 25 USC 2006 "Bureau of Indian Affairs education functions," and 25 USC 2009 "Division of Budget Analysis."

Title 25 United States Code Section 2006 contains this language:

(b) Direction and supervision of personnel operations

(1) In general

Not later than 180 days after January 8, 2002, the Director of the Office [of Indian Education Programs] shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education program services by the Bureau, including school or institution custodial or maintenance personnel, and personnel responsible for contracting, procurement, and finance functions connected with school operation programs.

(2) Transfers

The Assistant Secretary for Indian Affairs shall, not later than 180 days after January 8, 2002, coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.

Title 24 United States Code Section 2009 contains this language:

(a) Establishment

Not later than 1 year after January 8, 2002, the Secretary shall establish within the Office of Indian Education Programs a Division of Budget Analysis (hereinafter in this section referred to as the "Division"). Such Division shall be under the direct supervision and control of the Director of the Office.

(b) Functions

In consultation with the tribal governing bodies and tribal school boards, the *Director of the Office*, through the Division, shall conduct studies, surveys, or other activities to gather demographic information on Bureau-funded schools and project the amount necessary to provide Indian students in such schools the educational program set forth in this chapter.

The Indian Affairs Central Office has ignored the statutory language for fifteen years. The General Accountability Office (GAO) has published a series of reports in the past three years describing management problems caused by the failure of Indian Affairs to follow the law. The Service Level Agreements entered into between the BIA and the BIE in October 2013 violate the law.

We agree strongly with the language contained in the FY 2017 conference report on the Interior Appropriations Act regarding the need to reorganize in accordance with the recommendations in the GAO reports. The language is:

In particular, consistent with GAO report 13-774, the Secretary is urged to reorganize Indian Affairs so that control and accountability of the BIE system is consolidated within the BIE, to present such reorganization proposal in the fiscal year 2018 budget request, and to submit to the Committees a corresponding workforce plan. (Congressional Record, May 3, 2017, page H3881.)

**Agency Priority Goal** - We are disappointed in the way that the BIA Agency Priority Goal (APG) for Indian Education is being implemented. The BIE established a goal of increasing the graduation rate at BIE-funded high schools by 5 percent by September 30, 2017. We agree with the goal of increasing the graduation rate. However, the BIE has not worked with tribal governments, school boards, and school administrators to develop a plan to meet the goal. The goal cannot be achieved unless the BIE collaborates with tribes and schools.

The BIE system includes:

9 BIE-operated schools that have high school grades including:

- 6 BIE-operated high schools – grades 9 to 12
- 2 BIE-operated schools that have grades K-12
- 1 BIE-operated school with grades 4 to 12

52 tribally-operated schools that have high school grades including:

- 6 tribally-operated high schools – grades 9 to 12
- 37 tribally-operated schools with grades K-12
- 9 tribally-operated schools that have other grade structures – 1 to 12, 6 to 12, and 7 to 12

At minimum, we request a report that would display:



- A list of all BIE-funded high schools along with their enrollments and average daily membership (ADM) for the past five years
- Baseline 2014-2015 graduation rates for those schools

In order to plan for the future, we need a good understanding of where we are starting.

Also, DBOSBA would like to know how the BIE has communicated with the tribes and the schools about the Agency Priority Goal, and the planning that has taken place to meet the goal. We would also like to know what Education Program Enhancement funds have been dedicated to helping the high schools meet the goal. And we would like to know where on the BIE website we can find information about the APG.

### **Every Student Succeeds Act**

The Every Student Succeeds Act (ESSA) will have profound impacts on the educational standards, the assessment systems, and the accountability requirements for BIE-funded schools. The BIE must establish an on-going planning process to work with tribal governments, school boards, and school administrators to address the requirements of the ESSA. We emphasize the term “planning”.

The BIE decided in 2004 to follow state educational standards and testing systems to implement the Adequate Yearly Progress (AYP) requirements of the No Child Left Behind Act. Then, the BIE did not pursue the development of alternative educational standards and assessment systems for BIE funded schools. We are concerned that the BIE may once again decide to follow state standards, assessment systems and accountability systems under the ESSA. We recommend that the BIE work with teachers, school administrators and school boards to look at a variety of options for meeting the requirements of the ESSA. The BIE needs to establish an on-going process for working with the schools and not just a one-time consultation meeting.

There was no real accountability system for BIE-funded schools under the No Child Left Behind Act. The BIE maintains a page on the BIE website called “School Report Cards.” The most recent data is from school year 2012-2013. The BIE collected the data from schools, then used the data for 10 GPRA measures in the DOI Annual Performance Report. But the GPRA measures were not displayed on the BIE website. There was no feedback to schools and tribes on how the schools were performing. The BIE needs to display the accountability system, and the uses of the data, on the BIE website in an transparent manner.

The negotiated rule-making committee that was established this year must be allowed to meet and to begin to work on options to meet the requirements of the ESSA. It was irresponsible of the Department of the Interior to stop the work of the committee.

### **Allocation of Appropriated Funds**

The Indian Affairs Budget Office delayed the allocation of FY 2017 funds to some BIE-funded school. The forward-funded schools and colleges were supposed to receive FY 2017 funds for

the period July 1, 2017 to September 30, 2018. Some schools have received funds; others have not.

The problems with the allocation of funds for Indian education programs could be solved by implementing the requirements in 25 USC 2009 Division of Budget Analysis.

### **FY 2019 Recommendations for BIE Education System**

**Budget Analysis Division** – 25 USC 2009 requires that BIE establish a Division of Budget Analysis no later than one year after enactment of NCLBA. It would have been a tremendous help through the years if such a division were in existence and providing the type of information called for in the statute. In addition, 25 USC 2001 (h) requires the Comptroller General to 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...”* The long standing failure of the Bureau to implement these provisions has created a void of information where it has become increasingly difficult to justify funding based upon objective data. As part of the reform measures called for by the appropriation committees, DBOSBA believes these two statutory mandates should be specifically mentioned for implementation in FY 2018.

**BIE Reorganization** - DBOSBA has actively opposed portions of the BIE reorganization. The problem has been that the Department has treated the existing statute as though it is somehow optional and proceeded to ignore the structure of the system mandated in the statute. The Department has received a conditional approval of its reorganization contingent on its consistency with the GAO Report 13-774. The Committee Report states: *“As the Department takes steps to reform the system, the Secretary is reminded that future support from Congress will continue to be based in large part upon successful implementation of GAO report recommendations. In particular, consistent with GAO report 13-774, the Secretary is urged to reorganize Indian affairs so that control and accountability of the BIE system is consolidated within the BIE, to present such reorganization proposal in the fiscal year 2017 budget request...”* Specifically named are problems related to the *“organizational structure, accountability, finance, health and safety, and ultimately student performance.”* The Department’s original reorganization plan ignored the GAO report, as well as the applicable statute (25 USC 2006). DBOSBA believes that going forward with the Department’s original reorganization plan does not address the GAO’s recommendations, is not in compliance with applicable statutes, and would make matters worse in the field. Our reading of the FY 2017 budget justification leaves questions concerning the BIE’s compliance with the appropriation committees’ determination. (See comments on Education Program management above) We have submitted written testimony/correspondence on numerous occasions to no avail. We now urge the appropriations committees to review this matter carefully in FY 2018.

### **Relationship with U.S. Department of Education**

#### **Shift to Department of Defense (DOD) budget model**

The Department of the Interior has been involved with developing a major initiative for BIE Education. One of the suggested options that came out of those discussions/consultations was an idea to utilize the Department of Defense budget model as it relates to the flow through funding



from the Department of Education. Currently the BIE receives about \$200 million from the Department of Education via a set aside in the authorizing legislation (now ESSA). Conversely, the Department of Defense Education System, receives its total funding *through its own DOD appropriation*. It is therefore free to develop its educational program to meet the special needs of the students it serves. This is a fundamental difference between the two education systems operated by the Federal government. In our estimation, there is no question that the Department of Defense model is superior to the Bureau of Indian Education model.

Memoranda of agreement have been reached through the years whereby the BIE is supposed to function as an SEA (State Education Agency) in order to receive the Department of Education funds and administer the various programs to the LEAs (Local Education Agencies). Rather than work with tribes and local BIE funded schools in designing its curriculum and ensuring that the needs of its students are met, the Bureau is forced to comply with Department of Education rules devised for the states.

Following the passage of NCLB, these rules and procedures became much more detrimental to BIE school programs. The Bureau began neglecting its own statutory authorizations in favor of its clearer SEA role as the enforcer of NCLB rules. The result was that the BIE Education System, set up to meet the special needs of Indian children, was forced instead to try to set up the same education system that was in the process of failing in most of the rest of the country. Of course, the failures in Indian country have been more significant since the BIE was ignoring the very principles that have been developed through the years based on numerous studies and years of experience. Increases in BIE funding were funneled into NCLB implementation. Genuine initiatives toward self-determination, including at least two on Navajo, were squelched due to lack of funding and a BIE that lacked the administrative authority and resources required by statute.

We believe that it is time in FY 2018 for a major change in the structure. We recommend that the BIE set aside funding from the Department of Education in ESSA be transferred to the Interior Budget for BIE. The BIE should then be required to have substantive consultations with the tribes, school staff and BIE funded school boards to further develop a unique education system, based on self-determination and deemed to be the most beneficial and effective for Indian youth. We believe that this change would require a statutory change and were disappointed that the new ESSA did not deal in any substantial way with Indian Education. We believe the statutory change to be minor but believe the benefits could be significant.

### Conclusion

Every Presidential Administration has supported Indian education. We hope that the current Administration will support Indian education.

Thank You.

CONTACT: Angela Barney Nez, Executive Director  
**DINÉ BIOLTA SCHOOL BOARD ASSOCIATION, INC.**

**NAVAJO NATION**

RCS# 812

Naa'bik'iyati Committee

2/22/2018  
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Amd# to Amd#

Legislation 0050-18: Approving

PASSED

MOT Slim

NN Federal Education Priorities

SEC BeGaye, N

for Federal Fiscal Year 2019

**Yea : 13**

**Nay : 0**

**Excused : 0**

**Not Voting : 11**

**Yea : 13**

Begay, K  
Begay, S  
BeGaye, N  
Bennett

Chee  
Damon  
Daniels

Filfred  
Phelps  
Slim

Smith  
Witherspoon  
Yazzie

**Nay : 0**

**Excused : 0**

**Not Voting : 11**

Bates  
Begay, NM  
Brown

Crotty  
Hale  
Jack

Perry  
Pete  
Shepherd

Tso  
Tsosie