

LEGISLATIVE SUMMARY SHEET

Tracking No. 0305-20

DATE: November 17, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'ÍYÁTI' COMMITTEES; SUPPORTING AND RECOMMENDING SUSPENSION OR WAIVER OF REQUIREMENTS UNDER 25 C.F.R. SUBCHAPTER E – EDUCATION, INCLUDING COLLECTING DATA DETERMINING FUNDING ALLOCATIONS

PURPOSE: This resolution, if adopted, would support and recommend suspension or waiver of requirements under 25 C.F.R. Subchapter E – Education.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: 8:07pm 12-04-20
Posting End Date: 12-09-20
Eligible for Action: 12-10-20

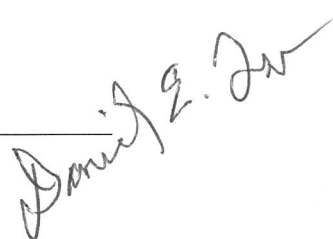
Health Education & Human Services Committee
Thence
Naabik'íyáti' Committee

PROPOSED COMMITTEE RESOLUTION OF THE NAVAJO NATION

24th NAVAJO NATION COUNCIL -- Second Year, 2020

INTRODUCED BY


(Primary Sponsor)



TRACKING NO. 0305-20

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND
NAABIK'ÍYÁTI' COMMITTEES; SUPPORTING AND RECOMMENDING
SUSPENSION OR WAIVER OF REQUIREMENTS UNDER 25 C.F.R.
SUBCHAPTER E – EDUCATION, INCLUDING REQUIREMENTS ON
COLLECTING DATA DETERMINING FUTURE FUNDING ALLOCATIONS

WHEREAS:

1. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 400(A). Among other responsibilities, the committee oversees all education and health-related activities of the Navajo Nation. 2 N.N.C. § 401(C) (2).
2. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council 2 N.N.C. § 700(A). The committee, among other responsibilities, “coordinate[s] all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation.” 2 N.N.C. § 701(A)(4).
3. The Code of Federal Regulations, at 25 C.F.R. Subchapter E, among other matters, provides methods for collecting data for purposes of annual funding allocations for Bureau of Indian Education (BIE) schools. For instance, under the Indian Schools

1 Equalization Formula (ISEF) provisions (Part 39), funds are allocated based on
2 student attendance counts, student contact hours and student transportation. Due to
3 COVID-19, such data cannot be collected as current health concerns prevent face-to-
4 face instructions for students.

- 5 4. For purposes stated herein, the Diné Bi Olta School Board Association supports the
6 suspension or waiver of 25 C.F.R. Subchapter E. See **EXHIBIT A**.
7 5. To insure that future funding is not reduced, it is in the best interests of the Navajo
8 Nation that 25 C.F.R. Subchapter E. be suspended or waived.
9

10 **NOW THEREFORE BE IT RESOLVED:**

11 The Navajo Nation hereby supports and recommends that 25 C.F.R. Subpart E be
12 suspended or waived until students can safely return to school.
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AT

DINÉ BI'OLTA SCHOOL BOARD ASSOCIATION INC.
DBOSBA
P.O. Box 3719
Window Rock, Arizona 86515
Telephone (928) 871-5225/5226
Fax (928) 871-5148



August 28, 2020

President Jonathan Nez
Vice President Myron Lizer
Navajo Nation Office of the President and Vice President
P.O. Box 7440
Window Rock, AZ 86515

Re: Requesting Support for BIE School System-Wide Suspension or Waiver of Indian Education Regulations (25 C.F.R. Subchapter E)

Dear President Nez and Vice President Lizer:

The Diné Bi'Olta School Board Association (DBOSBA) wants to thank you for your strong letter of August 24, 2020, which notified federal officials that the Navajo Nation will not permit face-to-face in-classroom instruction for schools operated by the Bureau of Indian Education (BIE) within the Navajo Nation during the fall 2020 semester.

DBOSBA also wants to call to your attention another aspect of the BIE school reopening plan that could have significant, harmful consequences for all BIE-funded schools serving students, families and communities within the Navajo Nation. Throughout the BIE's school reopening consultation process, tribal school officials called for the BIE to issue a system-wide waiver or suspension of regulatory requirements related to student attendance counts, student contact hours (including Special Education) and student transportation. These regulatory provisions (found in 25 C.F.R. Subchapter E) establish methodologies for collecting data used to determine the annual funding allocation made available to each school within the BIE school system. The regulatory provisions were designed to gather data associated with traditional face-to-face in-person classroom instruction.

Given the COVID-19 Pandemic, however, all schools within the Navajo Nation will employ distance learning in order to protect the health and safety of students, staff, teachers, and their families and community. If the 25 C.F.R. Subchapter E regulations apply, our schools could see future funding reduced. For instance, these regulatory provisions include the Indian School Equalization Formula (ISEF), which determines the funding allocation for BIE-funded schools. Funding is determined by factors such as student attendance counts and instructional hours provided.

Schools may only count students who are "in attendance during any of the first 10 days of school, and receive at least 5 days' instruction [during those ten days]," and schools must drop students from their counts when they are "absent for 10 consecutive school days." The number

of instructional hours determines whether a program is considered a full-time educational program. Under certain circumstances schools may receive funding for part-time students, but it is reduced accordingly.

The regulatory requirements for student counts and instructional hours, particularly for K-3 students, are impractical under the current conditions. The regulations provide that Kindergarten children must receive four hours of instruction per day and children in grades 1 through 3 must receive 4.5 hours per day. K-3 students do not have the attention span required to engage in distance learning for long periods of time. Even the older students from grades 4 on up, cannot be expected to sit at their computer for 6 hours or more daily. These requirements are stringent and cruel for all our children and it could impose a long-term negative impact on the overall well-being of our Diné children.

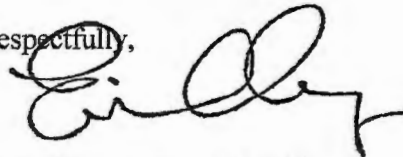
The regulations also determine funding allocated for student transportation costs. The regulations require documenting the number of students served and miles traveled to establish the costs "of students from home to school and return." The regulatory provisions account for transportation across unimproved roads, as is the case for many bus routes on the Navajo Reservation. Our schools will not generate this type of data with students attending school remotely.

By not suspending or waiving these regulations, the BIE's fall 2020 school reopening plan has the potential to damage the long-term funding needs of all schools located within the Navajo Nation. The BIE has said that we can request individual waivers, but we do not know whether those waivers will be granted or the impact the waiver may have on future funding allocations. Accordingly, DBOSBA is now submitting a new letter to the BIE requesting a system-wide suspension or blanket waiver of all 25 C.F.R. Subchapter E requirements. We ask you to support our effort for a system-wide waiver of these regulations, as this waiver is vital to ensure the long-term capacity of our Navajo education system.

For further background on this issue, we are attaching a copy of the letter DBOSBA submitted to the Assistant Secretary - Indian Affairs and the BIE Director on this issue. Given the urgency of the matter, we have also drafted a proposed template letter for you to consider using in submitting your own statement to support our position for a system-wide waiver or suspension of these regulations for all bureau-funded schools.

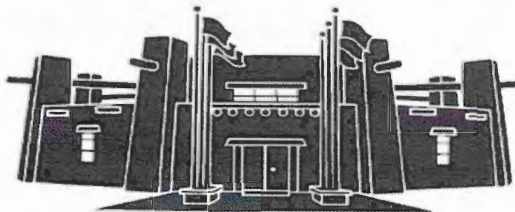
Thank you for your consideration.

Respectfully,




Ervin Chavez, Board President

Cc: files



MEMORANDUM

To : Hon. Carl Slater, Delegate
Navajo Nation Council

From : 
Ron Haven, Attorney
Office of Legislative Counsel

Date : November 30, 2020

Re : AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN
SERVICES AND NAABIK'ÍYÁTI' COMMITTEES; SUPPORTING AND
RECOMMENDING SUSPENSION OR WAIVER OF 25 C.F.R.
SUBCHAPTER E REQUIREMENTS

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. As to format, the resolution as drafted is legally sufficient. Regarding substance, as with any legislation, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

OLC # 20-460-1

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION**



LEGISLATION NO: _0305-20_

SPONSOR: Carl Slater

TITLE: An Action Relating To Health, Education And Human Services And Naabik'iyáti' Committees; Supporting And Recommending Suspension Or Waiver Of Requirements Under 25 C.F.R. Subchapter E - Education, Including Requirements On Collecting Data Determining Future Funding Allocations

Date posted: December 4, 2020 at 8:07PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0305-20

SPONSOR: Honorable Carl R. Slater

TITLE: An Action Relating To Health, Education And Human Services And Naabik'iyáti' Committees; Supporting And Recommending Suspension Or Waiver Of Requirements Under 25 C.F.R. Subchapter E -Education, Including Requirements On Collecting Data Determining Future Funding Allocations

Posted: December 4, 2020 at 8:07 PM

5 DAY Comment Period Ended: December 09, 2020

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	<i>None</i>



Legislative Tracking Secretary
Office of Legislative Services

12/10/20 9:00 AM

Date/Time

Committee Report

THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE NAVAJO
NATION COUNCIL to whom has been assigned;

LEGISLATION NO. 0305-20

AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND
NAABIK'IYATI' COMMITTEES; SUPPORTING AND RECOMMENDING SUSPENSION OR
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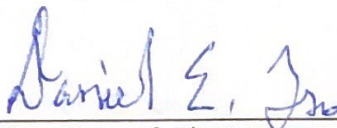
Sponsor: Honorable Carl R. Slater

Co-Sponsor: Honorable Daniel E. Tso

(Eligible for Committee Action December 10, 2020)

Has had under consideration and report the same with the recommendation
that Legislation 0305-20 pass with no amendment and no directive; and
therefore referred the same to the NAABIK'IYATI' COMMITTEE OF THE NAVAJO
NATION COUNCIL

Respectfully Submitted,



Daniel E. Tso, Chairperson
Health, Education and Human Services Committee

December 16, 2020 - Main Motion

Motion by: Honorable Pernell Halona

Seconded by: Honorable Paul Begay, Jr.

Vote: 5 in favor; 0 Opposed; Chairperson Not Voting

Yeas: Carl R. Slater; Pernell Halona; Edison J. Wauneka;

Paul Begay, Jr.; Charlaine Tso

Nays: none

Not Voting: all present

Absent (excused): all present

HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE

Regular Meeting
December 16, 2020

Roll Call
Vote Tally Sheet

THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE NAVAJO
NATION COUNCIL to whom has been assigned;

LEGISLATION NO. 0305-20

AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND
NAABIK'IYATI' COMMITTEES; SUPPPORTING AND RECOMMENDING SUSPENSION OR
WAIVER OF REQUIREMENTS UNDER 25 C.F.R. SUBCHAPTER E - EDUCATION,
INCLUDING REQUIREMENTS ON COLLECTING DATA DETERMINING FUTURE FUNDING
ALLOCATIONS

Sponsor: Honorable Carl R. Slater

Co-Sponsor: Honorable Daniel E. Tso

(Eligible for Committee Action December 10, 2020)

December 16, 2020 - Main Motion

Motion by: Honorable Pernell Halona

Seconded by: Honorable Paul Begay, Jr.

Vote: 5 in favor; 0 Opposed; Chairperson Not Voting

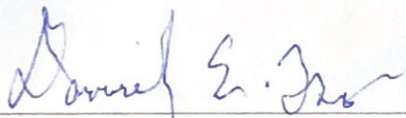
Yeas: Carl R. Slater; Pernell Halona; Edison J. Wauneka;

Paul Begay, Jr.; Charlaine Tso

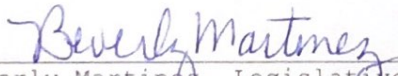
Nays: none

Not Voting: all present

Absent (excused): all present



Daniel E. Tso, Chairman
Health, Education and Human Services Committee



Beverly Martinez, Legislative Advisor
Health, Education and Human Services Committee