

The National Advisory Council on Indian Education

ANNUAL REPORT 2010-2011

I. Legislative Authority and Functions

The National Advisory Council on Indian Education (NACIE) is authorized by section 7141 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 7471; and governed by the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II.

NACIE, whose fifteen members are appointed by the President and serve as Special Government Employees (SGEs), was established with the following purpose and functions: To advise the Secretary of Education (Secretary) concerning the funding and administration (including the development of regulations and administrative policies and practices) of any program, including any program established under Title VII, part A of the ESEA, with respect to which the Secretary has jurisdiction and that includes Indian children or adults as participants or that may benefit Indian children or adults;

To make recommendations to the Secretary for filling the position of Director of the Office of Indian Education (Director) whenever a vacancy occurs; and

In accordance with Executive Order 13336 (EO 13336) on American Indian and Alaska Native Education, Section 2(b), the Interagency Working Group may consult with the members of NACIE for the purpose of obtaining information and advice concerning American Indian and Alaska Native Education.

On November 11, 2010, Office of Elementary and Secondary Education, Assistant Secretary Thelma Melendez swore in 13 appointments to NACIE (one appointee being absent and one position on the Council being unfilled). As of June 30, 2011, all 15 NACIE positions were filled.

II. Activities and Accomplishments

NACIE conducted two meetings in Washington, D.C. during the 2010-2011 year. The first was a Closed Meeting on Wednesday, November 3, 2010, from 8:30-10:45 a.m. Eastern Standard Time (EST) followed by a Swearing-In Ceremony and Public Meeting from 11:00 a.m. – 5:00 p.m. EST; and a Closed Meeting on Thursday, November 4, 2010, from 8:30-10:45 a.m. EST followed by a Public Meeting from 11:00 a.m. – 5:00 p.m. EST. The second was a Public Meeting held on Monday, April 18, 2011, from 9:30 a.m.-5:00 p.m., Eastern Daylight Time (EDT); and on Tuesday, April 19, 2011, from 9:00 a.m. – 5:00 p.m. EDT. In addition, OESE/Senior Management conducted a closed session conference call meeting with NACIE on May 18, 2011 from 2:00-4:00 p.m. EDT. The purpose of the meeting was to receive feedback, advice, and/or recommendations on a time-sensitive embargoed/ proprietary issue.

NACIE established quorum (eight members) at each of the above meetings. An OIE contractor, Kauffman & Associates, compiled a summary of the minutes.

Establishing NACIE processes, managing the appointment of the Director, and advancing and coordinating Indian education programs within the federal government and among tribal and state governments have been the primary foci of the meetings.

Priorities and Recommendations

As a result of discussions and information presented to NACIE during the 2010-2011 reporting year (July 1, 2010-June 30, 2011), NACIE has established the following priorities and recommendations:

A. Raise the profile of Indian education as a priority for the federal government.

- 1. Recommendation:** That the position Assistant Secretary of Indian Education be created or reestablished within the Department of Education (Department).

Rationale: An assistant secretary of Indian education could cooperate across federal agencies at a higher level than the Office of Indian Education (OIE) director, for example, working with people in the Department of the Interior to address the comprehensive educational needs in Indian Country. In the short term, a K-12 policy advisor for Indian education within the Department could help fill this need. This recommendation has been supported in tribal leader consultations across the country and by Native educational organizations.

B. Improve coordination of governmental programs and entities to deliver adequate funds and services to support educational initiatives in Indian Country.

- 2. Recommendation:** That Bureau of Indian Affairs (BIA) Operations and Maintenance Program (O&M) increase its coordination with Bureau of Indian Education (BIE) on school construction to increase alignment between the two departments and work to solve the current school construction backlog.

Rationale: Currently, BIE has the responsibility to ensure that sufficient facilities exist for BIE students, but it has no budgetary control over school construction or facilities improvement. Increased coordination with O&M would allow BIE to have input in the decision making related to school construction budgets.

- 3. Recommendation:** That Title I language be amended to clarify that other funding sources, such as Title VII funds, cannot be used to supplant Title I funds, and that technical assistance be provided to state education chiefs to clarify the difference between Title I and Title VII funds and the appropriate uses for each.

Rationale: The Department does not have the capacity to monitor all grant programs and so some school districts are currently out of compliance with appropriate use of Title I and Title VII funds. NACIE's goal in this recommendation is to ensure that Title VII funds go specifically toward the Indian students for which they are intended.

4. **Recommendation:** That when state and district plans are submitted to the federal government, those plans are reviewed for their compliance with federal law, including all relevant executive orders, and for due diligence and accountability to the Native populations those plans are required to serve.

Rationale: While various protections for Indian students and Native sovereignty exist at the federal level, those protections are not always translated into state and district education plans, and state plans are not currently evaluated for their compliance with federal law and executive orders. The goal of this recommendation is to respect tribal sovereignty and to ensure that states are accountable to Native populations.

5. **Recommendation:** That the U.S. Congress repeal the equalization provisions of Section 8009 of the ESEA.

Rationale: States such as New Mexico that serve large numbers of American Indian/Alaska Native (AI/AN) students are negatively impacted by the application of the equalization provisions as indicated by the 2009 National Indian Education Study (NIES). This defeats the intent of the legislation which established Impact Aid; as a result the intended beneficiaries are not receiving funding.

6. **Recommendation:** That the reauthorization of ESEA recognize Tribal Education Departments and Tribal Education Agencies (TEDs/TEAs) on the same level as State Educational Agencies (SEAs) and Local Educational Agencies (LEAs) and allow TEDs/TEAs to be eligible for state-level formula funding and to authorize tribal-state cooperative agreements to co-administer the ESEA programs and services within tribal geographic territories.

Rationale: TEDs/TEAs coordinate all educational matters of a tribe on and off Indian geographic territories to provide education supports and services. This recommendation is consistent with the furtherance of the trust relationship between the federal government and Indian Country.

7. **Recommendation:** To encourage the Department and the Department of Justice to conduct joint listening sessions in Indian Country to address school discipline disparities and the school-to-prison pipeline that disproportionately affects AI/AN students.

Rationale: The disproportionate dropout and incarceration rates of AI/AN children adversely affect Indian Country.

8. **Recommendation:** For OIE grant programs, both discretionary and formula grants, that grantees be required to set aside 5-10% of grant funds to be used for dissemination of promising practices and other data.

Rationale: While communities currently receive grants and develop successful and innovative programs, there is little information sharing or data collection about what works well in those programs. Information on the successful practices of beacon programs should be widely distributed so other programs can learn from them, and dissemination of this information should be a requirement of the grant.

9. **Recommendation:** That for distribution of Race to the Top funds, tribes, consortium of tribes, and the BIE be allowed to apply and compete with states or districts for funds. That for states (or districts) with 5% or more of AI/AN population, states (or districts) must conduct and demonstrate meaningful consultation with tribes in the development of their plans as a requirement for eligibility for funds. We propose that to be eligible under this program a state that has the presence of federally or state recognized tribes must demonstrate that they have conducted meaningful consultation and incorporated this information in the development of their application with the tribes.

Rationale: In some states and districts, addressing the needs of Indian-land schools or schools with high concentration of AI/AN students comes as an afterthought. Meaningful consultation should be built into the process from the beginning. The United States has a unique legal relationship with Indian tribal governments as set forth in the federal Constitution, treaties, statutes, executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The federal government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes. This eligibility requirement is consistent with, and in furtherance with, that relationship.

10. **Recommendation:** Strongly encourage the OIE to maintain the overall size and scope of the 2009 NIES and strongly encourage the National Center for Education Statistics (NCES) to include BIE schools and staff within all future iterations of the national Schools and Staffing Survey, to continue oversampling public schools in which American Indian and Alaska Native students constitute high percentages of student enrollment, and to analyze these data and to publish results as an update to the 1995 report, "Characteristics of American Indian and Alaska Native Education: Results from the 1990-91 and 1993-94 Schools and Staffing Survey," coauthored by Pavel and Curtin.

Rationales: The current methodology for this study includes an oversample of American Indian and Alaska Native students in the National Assessment of Educational Progress, in the 12 states with the highest concentrations of AI/AN students, as well as a separate survey of students and staff regarding educational conditions and contexts (e.g., academic and cultural). Due to proposed budget cuts, the OIE has instructed the NCES to substantially downsize the analysis and dissemination of data from the NIES. This will result in data being collected, but only being made available via electronic format. Given the lack of technology access and use in many parts of Indian country, this will impact the overall accessibility and utility of these important data. This will also compromise the work of researchers who

depend on these data to accurately portray the educational conditions and outcomes of American Indian and Alaska Native students.

Further, the NCES has proposed to eliminate BIE affiliated schools and staff from the Schools and Staffing Survey effective 2011. The loss of these data will have significant impacts for both practitioners and researchers as they work to understand and respond to the educational conditions and subsequent outcomes of students within these schools.

Finally, failure to adequately include AI/AN students in the collection, analysis and dissemination of national level educational data represents a failure of the federal government to abide by its trust responsibility for AI/NA peoples, which includes the responsibility to provide educational services. Without ongoing data collection, analysis and reporting it is impossible to know the extent to which these students are being appropriately educated, or respond to those situations in which educational inequities persist, or to recognize schools in which AI/AN students are being educated in academically and culturally appropriate ways which promote their academic achievement, as well as their subsequent life paths.

C. Improve tribal consultation by all government agencies.

11. Recommendation: For purposes of accountability and in fulfillment of Executive Order 13175, government agencies that have held or will hold meaningful consultations with tribal nations must have a dissemination process for the information gathered.

Rationale: EO 13175 requires federal agencies to consider the impact on and consult with tribal governments when promulgating regulations that impose “substantial direct compliance costs” or that have “tribal implications and that preempt tribal law.”

12. Recommendation: That NACIE and the Department immediately begin reviewing and making recommendations to advance the tribal consultation policy internally within the Department so as to honor all treaties, agreements, and statutes made with or concerning American Indian tribes and Alaska Natives.

Rationale: To respect and support tribal sovereignty and to fully implement the presidential order on tribal consultation.

D. Provide improved technical assistance to address the needs of AI/AN students.

13. Recommendation: That high priority be placed on improving technical assistance to Indian Country, in order to build effective programs and improve school achievement, including strategies that affect tribal and state education departments, tribally controlled community colleges, state offices of Indian education, educational labs and centers.

Rationale: The federal trust responsibility for assisting tribes in the expenditure of federal program dollars has been significantly underperformed for decades, especially for Indians in

rural areas. Improved technical assistance is necessary to support tribes' determination to create strong educational infrastructures; to respect and support tribal sovereignty; to improve instructional options, teacher quality, and academic rigor; and to fully implement the presidential order on tribal consultation.

14. Recommendation: That this improved technical assistance be achieved adding by stronger language promoting accountability to AI/AN schools, students, and communities in the reauthorization of current Title programs, programs for bilingual education and safe and drug free schools, and other related educational programs.

Rationale: Including accountability language in the reauthorization of existing legislation will ensure that current programs will allocate resources toward the AI/AN schools and communities that they are already supposed to be serving. Adding accountability language and requirements to general educational programs (i.e., not just Title VII) builds accountability into the educational infrastructure as a whole and ensures that everyone is aware of Indian education and its needs, not just AI/AN communities and AI/AN education policy and advocacy organizations.

15. Recommendation: That OIE develop a plan to describe how they will strengthen and expand technical assistance using state education staff, comprehensive centers, chief state school officers, and other means to help meet Title VII needs.

Rationale: In the past, state education organizations have been valuable partners in meeting the educational needs of Indian students. The goal of this recommendation is to educate state partners and rebuild these relationships to counteract the narrow educational focus created by No Child Left Behind.

16. Recommendation: That School Support and Technology Programs and Technical Assistance Programs identify how current technical assistance is being targeted to serve Native students specifically.

Rationale: Once NACIE is informed of what steps are being taken to address the needs of AI/AN students in existing technical assistance programs, they can make suitable recommendations for how to focus technical assistance more strategically.

E. Ensure the vitality of indigenous languages and cultures and the health of tribal children.

17. Recommendation: That the requirement in No Child Left Behind that teachers be “highly qualified” not be used in a detrimental manner against Native language teachers.

Rationale: There is concern that the “highly qualified” criteria may be used to exclude or pose an obstacle to Native language teachers.

18. Recommendation: That the government support and expand funding for indigenous language acquisition and proficiency by adult tribal members and continue to support language acquisition and proficiency by children through programs including, but not limited to, immersion schools.

Rationale: Successful language acquisition and proficiency by children depends on a community of proficient language speakers to take hold and flourish. Tribes should be encouraged to develop and implement programs appropriate for adult members wishing to learn or deepen their knowledge of traditional languages. In this way, children studying in tribal immersion schools or other educational environments will be able to enhance and reinforce their language-learning at home and in their communities.

19. Recommendation: That the reauthorization of ESEA include a requirement that all school districts receiving Title I and serving a significant number of AI/AN and Native Hawaiian children or receiving Title VII funding have a rigorous health/physical education program to advance the health and wellbeing of AI/AN and Native Hawaiian children and increase academic achievement and learning.

Rationale: Indian Country faces a health crisis with childhood Type II diabetes, hypertension, and obesity, among other illnesses, on the rise. As stated by Assistant Secretary – Indian Affairs Larry Echohawk, “Obesity and related diseases affect our communities and children in disproportionate ways that need to be addressed immediately.” (Source: <http://www.nc-chokeberry.com/theonefeather/2011/02/10/bie-to-participate-in-fitness-intiative/> [last visited April 28, 2011].)

20. Recommendation: To encourage the Council of Chief State School Officers and National Governors Association (CCSSO/NGA) to consider cultural relevancy in the creation of the Common Core State Standards and assessments.

Rationale: Common Core State Standards and assessments that took account of cultural relevancy would be strong tools for indigenous teachers’ professional development and student achievement performance outcomes.

21. Recommendation: Ensure that federal laws aimed at protecting indigenous peoples’ cultures such as the Native American Language Act (PL 101-477) are made applicable to the states and enforced. Increased state compliance could be effected by more education and technical assistance and/or by withholding funds for noncompliance.

Rationale: Legal protections at the national level do not always bind the states. Federal legislation must be given “teeth” at the state level. Special measures to ensure enforcement at the state level are sometimes necessary, as in the case of the Native American Graves Protection and Repatriation Act. The federal Native American Language Act and similar acts aimed at cultural protection should be afforded applicability at the state level, and enforced.

F. Support funding for higher education serving AI/AN students.

22. Recommendation: That the funding for the Tribal Colleges and Universities (TCUs) remain intact and that the annual funding for TCUs reflect the increasing student enrollment and other needs of the institutions.

Rationale: As TCUs continue to increase in enrollment, funding from year to year needs to increase to accommodate that growth and change.

Disclaimer: NACIE is a Federal Advisory Committee created by Congress. NACIE provides advice to the Secretary concerning the funding and administration of any program, including any program established under Title VII, Part A of the Elementary and Secondary Education Act of 1965, with respect to which the Secretary has jurisdiction and that includes American Indian and Alaska Native (AI/AN) children or adults as participants or that may benefit AI/AN children or adults. NACIE also submits an annual report to Congress not later than June 30 on its activities and may include any recommendations that the Council considers appropriate for the improvement of federal education programs that serve AI/AN children or adults. The findings and recommendations of NACIE do not represent the views of the Department.

**National Advisory Council on Indian Education
2010-Present**

All terms are indefinite.

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