



# Federal Indian Elementary-Secondary Education Programs: Background and Issues

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January 16, 2008

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

RL34205

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

The federal government provides elementary and secondary education and educational assistance to Indian children, either directly through federally-funded schools or indirectly through educational assistance to public schools. Direct education is provided by the Bureau of Indian Education (BIE) in the U.S. Department of the Interior, through elementary and secondary schools funded by the BIE. Educational assistance to public schools is provided chiefly through programs of the U.S. Department of Education (ED). The student population served by federal Indian education programs consists of members (or descendants of members) of Indian tribes, not Indians identified by race. Most of this Indian education population attend public schools. Most federal data on Indian students are based on race, however, which complicates analysis of results for the population served by federal Indian education programs.

BIE was originally part of the Bureau of Indian Affairs (BIA) in the Interior Department. The BIA began the current system of direct Indian education in the decades following the Civil War, with congressional approval and funding. The system developed gradually to its current structure. In the late nineteenth century, the BIA began placing a few students in public schools, a trend that accelerated after about 1910. At present 90% or more of the student population served by federal Indian education programs attend public schools.

The BIE-funded education system for Indian students includes 170 schools (and 14 “peripheral dormitories” for students attending public schools nearby). Schools and dorms may be operated by BIE itself or by tribes and tribal organizations. A number of BIE programs provide funding and services, supplemented by set-asides for BIE schools from ED programs. Federal funding for Indian students in public schools flows to school districts chiefly through ED programs, with a small addition from a BIE program. BIE and public schools are subject to the standards and accountability provisions in the No Child Left Behind Act (NCLBA, P.L. 107-110), although not all such provisions apply to BIE schools.

Significant authorizing legislation for BIE and ED programs, most recently reauthorized in P.L. 107-110, are up for reauthorization in the 110<sup>th</sup> Congress. Among the issues raised by Indian education proponents are the current reorganization of BIE, flexibility in the application of NCLBA provisions to BIE schools, a greater role for Indian culture and languages in Indian education programs, and restricting the use of ED supplementary Indian education funds to Indian students’ unique needs.

This report will be updated as necessary.

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## Introduction<sup>1</sup>

The federal government provides elementary and secondary education and educational assistance to Indian<sup>2</sup> children, either directly through federally-funded schools or indirectly through educational assistance to public schools. Direct education is provided by the Bureau of Indian Education (BIE)<sup>3</sup> in the Department of the Interior, through elementary and secondary schools funded by the BIE. Educational assistance to public schools is provided chiefly through programs of the U.S. Department of Education, although there are also smaller programs in the BIE and other federal departments.

Federal provision of education services and assistance to Indian children is based not on race but on their membership, or eligibility for membership, in Indian tribes, which are political entities. Federal Indian education programs are intended to serve Indian children who are members, or at least second-degree descendants of members, of one of the 562 federally recognized Indian tribes or of certain other Indian tribes and groups. The federal government considers its Indian education programs to be based on its trust responsibility for Indian tribes, a responsibility derived from federal statutes, treaties, court decisions, executive actions, and the Constitution (which assigns authority over federal-Indian relations to Congress). The federal government considers Indian education programs to be discretionary, like other education programs, not an entitlement like Medicare.

Indian children, as United States citizens, are also eligible for the federal government's general programs of education assistance, but such programs are not Indian education programs and will not be discussed in this report.

This report provides a brief history of federal Indian education programs, a discussion of data on students served by these programs, an overview of the programs and their funding, a discussion of the application to BIE schools of key provisions of the No Child Left Behind Act (P.L. 107-110), and brief discussions of selected issues in Indian education.

## Brief History of Federal Indian Education Activities

U.S. government concern with the education of Indians began with the Continental Congress, which in 1775 appropriated funds to pay expenses of 10 Indian students at Dartmouth College.<sup>4</sup> Through the rest of the 18<sup>th</sup> century, the 19<sup>th</sup> century, and much of the 20<sup>th</sup> century, Congress's

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<sup>1</sup> LeeAnne M. Kane, CRS 2006 Summer Intern, assisted in the preparation of this report.

<sup>2</sup> In this report, the term "Indian" means American Indians and Alaska Natives (the latter term includes the American Indians, Eskimos (Inuit and Yupik), and Aleuts of Alaska).

<sup>3</sup> The BIE was formerly the Office of Indian Education Programs (OIEP) in the Bureau of Indian Affairs (BIA). In 2006, the Secretary of the Interior moved the OIEP out of the BIA and made it an agency equivalent to the BIA, renaming it the BIE. Both bureaus are under the Assistant Secretary - Indian Affairs. For education programs, this report uses "BIE" for current information and programs and "BIA" for historical periods.

<sup>4</sup> Ford, Worthington Chauncey, ed., *Journals of the Continental Congress, 1774-1789, Vol. II, 1775, May 10-September 20* (Washington: GPO, 1905), pp. 176-177. Congress's stated intent was to keep the students from returning to their homes in British Canada.

concern was for the “civilization” of the Indians, meaning their instruction in Euro-American agricultural methods, vocational skills, and habits, as well as in literacy, mathematics, and Christianity. The aim was to change Indians’ cultural patterns into Euro-American ones—in a word, to assimilate them.<sup>5</sup>

From the Revolution until after the Civil War, the federal government provided for Indian education either by directly funding teachers or schools on a tribe-by-tribe basis pursuant to treaty provisions or by funding religious and other charitable groups to establish schools where they saw fit. The first Indian treaty providing for any form of education was in 1794.<sup>6</sup> The first treaty providing for academic instruction was in 1803.<sup>7</sup> Altogether over 150 treaties with individual tribes provided for instructors, teachers, or schools,<sup>8</sup> whether vocational, academic, or both, either permanently or for a limited period of time. The first U.S. statute authorizing appropriations to “promote civilization” among Indian tribes was the Indian Trade and Intercourse Act of 1793,<sup>9</sup> but the first authorization and appropriation specifically for academic instruction of Indian children was the Civilization Act of 1819.<sup>10</sup> Civilization Act funds were expended through contracts with missionary and benevolent societies. Besides treaty schools and “mission” schools, some additional schools were initiated and funded directly by Indian tribes. The state of New York also operated schools for its Indian tribes. The total of such treaty, mission, tribal, and New York schools reached into the hundreds by the Civil War.<sup>11</sup>

After the Civil War, the U.S. government began to create a federal Indian school system, with schools not only funded but also constructed and operated by the BIA with central policies and oversight.<sup>12</sup> The Board of Indian Commissioners in 1869 recommended the establishment of government schools and teachers,<sup>13</sup> and in 1870 Congress passed the first *general* appropriation for Indian schools not provided for under treaties.<sup>14</sup> The initial appropriation was \$100,000, but both the amount appropriated and the number of schools operated by the BIA rose swiftly

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<sup>5</sup> Prucha, Francis Paul, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), pp. 135-136.

<sup>6</sup> Treaty with the Oneida, Etc., Art. III, December 2, 1794, 7 Stat. 47, 48. The United States agreed not only to construct gristmills and sawmills for the Oneida, Tuscarora, and Stockbridge tribes but also to send persons to instruct the tribes in their use. See also Alice C. Fletcher, *Indian Education and Civilization*, U.S. Bureau of Education Special Report, Sen. Ex. Doc. 95, 48<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1888), p. 162.

<sup>7</sup> Treaty with the Kaskaskia, Art. 3<sup>d</sup>, August 13, 1803, 7 Stat. 78, 79.

<sup>8</sup> Newton, Nell Jessup, ed.-in-chief, *Cohen’s Handbook of Federal Indian Law 2005 Edition* (Newark, NJ: LexisNexis Matthew Bender, 2005), p. 1356. Congress ended treaty-making with Indian tribes in 1871.

<sup>9</sup> Sec. 9, Act of March 1, 1793, Chap. 19, 2<sup>nd</sup> Cong., 2<sup>nd</sup> sess., 1 Stat. 329, 331. As civilizing factors, the section specifically authorizes domestic animals, farming equipment, goods, money, and resident agents, but not teachers or schools.

<sup>10</sup> Act of March 3, 1819, Chap. 85, 15<sup>th</sup> Cong., 2<sup>nd</sup> sess., 3 Stat. 516.

<sup>11</sup> Fletcher, *Indian Education and Civilization*, p. 197.

<sup>12</sup> Szasz, Margaret Connell, and Ryan, Carmelita, “American Indian Education,” in Wilcomb E. Washburn, vol. ed., *Handbook of North American Indians, Vol. 4, Indian-White Relations* (Washington: Smithsonian, 1988), p. 290.

<sup>13</sup> Fletcher, *Indian Education and Civilization*, p. 167.

<sup>14</sup> An Act Making Appropriations for the Current and Contingent Expenses of the Indian Department ..., Act of July 15, 1870, Chap. 296, 41<sup>st</sup> Cong., 2<sup>nd</sup> sess., 16 Stat. 335, 359. See also U.S. American Indian Policy Review Commission, Task Force Five: Indian Education, *Report on Indian Education*, Committee Print (Washington: GPO, 1976), p. 69.

thereafter.<sup>15</sup> The BIA created both boarding and day schools, including off-reservation industrial boarding schools on the model of the Carlisle Indian Industrial School (established in 1879).<sup>16</sup> Most BIA students attended on- or off-reservation boarding schools.<sup>17</sup> BIA schools were chiefly elementary and vocational schools.<sup>18</sup>

An organizational structure for BIA education began with a Medical and Education Division during 1873-1881, appointment of a superintendent of education in 1883, and creation of an education division in 1884.<sup>19</sup> The education of Alaska Native children, however, along that of other Alaska children, was assigned in 1885 to the Department of the Interior's Office of Education, not the BIA.<sup>20</sup> Mission, tribal,<sup>21</sup> and New York state schools continued to operate, and the proportion of school-age Indian children attending a BIA, mission, tribal, or New York school rose slowly.<sup>22</sup>

A major long-term shift in federal Indian education policy, from federal schools to public schools, began in FY1890-FY1891 when the Commissioner of Indian Affairs, using his general authority in Indian affairs, contracted with a few local public school districts to educate nearby Indian children for whose schooling the BIA was responsible.<sup>23</sup> The BIA after 1910 pushed to move Indian children to nearby public schools and to close BIA schools.<sup>24</sup> Congress provided some appropriations to pay public schools for Indian students, although they were not always sufficient and moreover were not paid where state law entitled Indian students to public education.<sup>25</sup>

In 1921 Congress passed the Snyder Act<sup>26</sup> in order to authorize all programs the BIA was then carrying out. Most BIA programs at the time, including education, lacked authorizing legislation. The Snyder Act continues to provide broad and permanent authorization for federal Indian programs.

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<sup>15</sup> Stuart, Paul, *Nations Within a Nation: Historical Statistics of American Indians* (New York: Greenwood Press, 1987), pp. 135, 165.

<sup>16</sup> Founded by Army Captain Richard H. Pratt on an unused Army base in Carlisle, PA, the school's model of educating Indian students in an off-reservation manual labor boarding school, away from students' families and cultures, became well-known. Pratt, its first superintendent, publicized the school and its emphasis on assimilation. Carlisle was funded through Indian appropriations bills and private donations. It closed in 1918. See Szasz and Ryan, "American Indian Education," pp. 290-291.

<sup>17</sup> Prucha, *Great Father*, pp. 815-816.

<sup>18</sup> Szasz and Ryan, "American Indian Education," pp. 290-294.

<sup>19</sup> Hill, Edward E., comp., *Guide to Records in the National Archives of the United States Relating to American Indians* (Washington: National Archives and Records Service, 1981), p. 24. See also Szasz and Ryan, "American Indian Education," pp. 290, 293.

<sup>20</sup> Hill, *Guide to Records*, p. 112; and Szasz and Ryan, "American Indian Education," p. 297. Authorization for Alaska Native education was in §13, Act of May 17, 1884, Chap.53, 48<sup>th</sup> Cong. 1<sup>st</sup> sess., 23 Stat. 24, 27-28.

<sup>21</sup> After 1870, most tribal schools were in Oklahoma, operated by one of the "Five Civilized Tribes" (Cherokee, Chickasaw, Choctaw, Creek, and Seminole), as they were then called.

<sup>22</sup> Szasz and Ryan, "American Indian Education," p. 291.

<sup>23</sup> U.S. Department of the Interior, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs [Fiscal Year 1890-1891]* (Washington: GPO, 1891), p. 71.

<sup>24</sup> Prucha, *Great Father*, pp. 823-825.

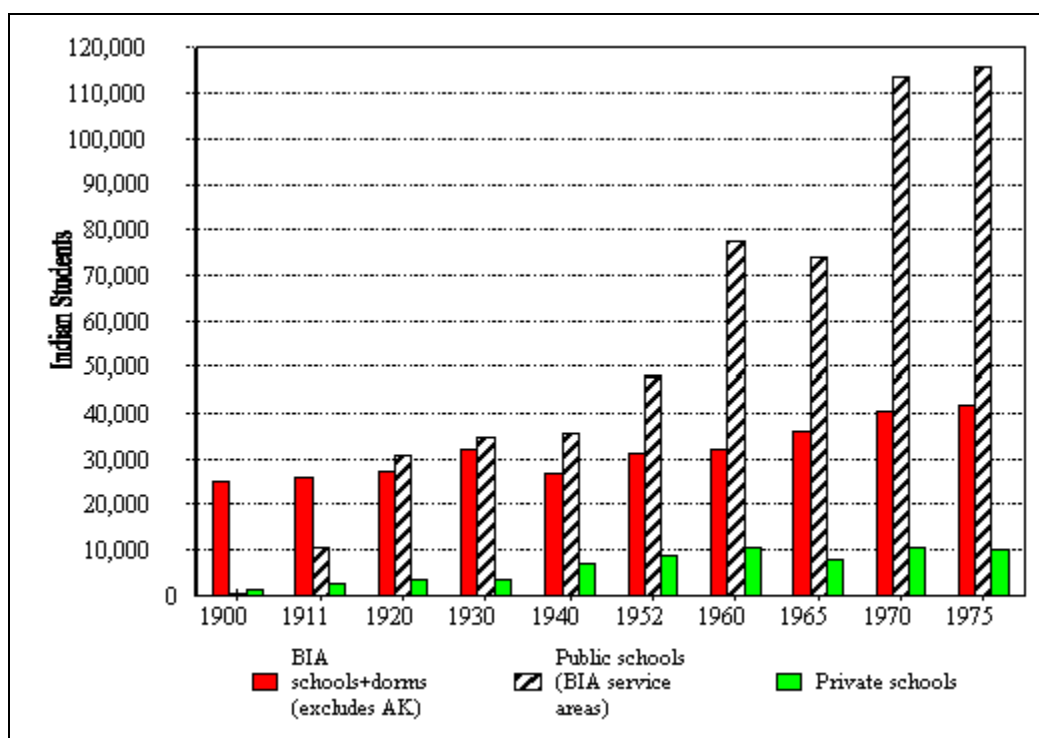
<sup>25</sup> Prucha, *Great Father*, pp. 824-825.

<sup>26</sup> Act of November 2, 1921, 42 Stat. 208, as amended; 25 U.S.C. 13.

By 1920 more Indian students were in public schools than BIA schools.<sup>27</sup> **Figure 1** displays the changing number of Indian students in federal, public, and other schools from 1900 to 1975. The shift to public schools accompanied the increase in the percentage of Indian youths attending any school, which rose from 40% in 1900 to 60% in 1930.<sup>28</sup>

In 1934, to simplify the reimbursement of public schools for Indian students, Congress passed the Johnson-O'Malley (JOM) Act,<sup>29</sup> authorizing the BIA to contract with states and territories for Indian education (and other services to Indians).<sup>30</sup>

**Figure 1. Number of Indian Students Enrolled in BIA, Public, and Private Schools, 1900-1975**



**Source:** U.S. Department of the Interior, Bureau of Indian Affairs, *Report on BIA Education*. Final Review Draft ([Washington]: Bureau of Indian Affairs, 1988), Tables I and 8, pp. 15, 27.

**Notes:** BIA data include students in peripheral dormitories but exclude students in Alaska BIA schools. Public school data are for Indian students living in BIA administrative or service areas.

<sup>27</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Report on BIA Education: Excellence in Indian Education Through the Effective Schools Process*. Final Review Draft ([Washington]: The Department, 1988), Table 1, p. 15.

<sup>28</sup> Reddy, Marlita A., ed., *Statistical Record of Native North Americans* (Detroit: Gale Research, 1993), p. 141. The percentages are of Indians aged 5 to 20 and are based on Census data. Szasz and Ryan state, "In 1928 almost 90 percent of all Indian children were enrolled in some school" ("American Indian Education," p. 294). The discrepancy in percentages may be related to differing age ranges and differing definitions of the Indian population.

<sup>29</sup> P.L. 73-167, Act of April 16, 1934, 48 Stat. 596, as amended; 25 U.S.C. 452-457.

<sup>30</sup> Szasz and Ryan, "American Indian Education," p. 295.



In the 1920s and 1930s, the BIA began expanding some of its own schools' grade levels to secondary education. Under the impetus of the Meriam Report and New Deal leadership, the BIA also began to shift its students toward its local day schools instead of its boarding schools, and, to some extent, to move its curriculum toward Indian instead of solely Euro-American subjects.<sup>31</sup> In addition, in 1931 responsibility for Alaska Native education was transferred to the BIA.<sup>32</sup>

The first major non-Interior Department federal funding for Indian education in the 20<sup>th</sup> century began in 1953, when the Impact Aid Act of 1950<sup>33</sup>—which directed the U.S. Commissioner of Education<sup>34</sup> to pay public school districts to help fund the education of children in “federally impacted areas”—was amended to cover Indian children eligible for BIA schools.<sup>35</sup> Further changes to the Impact Aid law in 1958 and the 1970s increased the funding that went to children on Indian lands.<sup>36</sup> Congressional appropriations eventually made Impact Aid the primary, and JOM the supplemental, source of federal funding to public schools for Indian education. By FY1981, Impact Aid funding for Indian students amounted to \$147 million,<sup>37</sup> while JOM funding the previous year was only \$28.1 million.<sup>38</sup>

In 1966 Congress added further non-Interior funding for Indian education by amending the Elementary and Secondary Education Act (ESEA) of 1965,<sup>39</sup> the major act authorizing federal education aid to public school districts, to add a set-aside for BIA schools to the program of grants to help educate students from low-income families.<sup>40</sup>

A congressional study of Indian education in the 1960s<sup>41</sup> that was highly critical of federal Indian education programs led to further expansion of federal non-Interior assistance for Indian education, embodied in the Indian Education Act (IEA) of 1972.<sup>42</sup> The IEA established the Office

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<sup>31</sup> Szasz and Ryan, “American Indian Education,” pp. 294-295; and Prucha, *Great Father*, pp. 836-839, 977-983. The Meriam Report was an influential study of federal Indian affairs undertaken by the Institute for Government Research (Lewis A. Meriam, ed., *The Problem of Indian Administration* [Baltimore: Johns Hopkins Press, 1928]).

<sup>32</sup> Szasz and Ryan, “American Indian Education,” p. 297.

<sup>33</sup> P.L. 81-874, Act of September 30, 1950, 64 Stat. 1100, as amended; currently codified at 20 U.S.C., Chap. 70, subchap. VIII.

<sup>34</sup> Then in the Federal Security Agency, the office became part of the newly created Department of Health, Education and Welfare in 1953. See U.S. National Archives and Records Administration, *Records of the Office of Education (Record Group 12)*, section 12.1, “History,” at <http://www.archives.gov/research/guide-fed-records/groups/012.html#12.1>.

<sup>35</sup> P.L. 83-248, Act of August 8, 1953, 67 Stat. 530.

<sup>36</sup> LaCounte, Larry, *Tribal Perspective of the Impact Aid Program* (Washington: National Indian Policy Center, [1993?]), pp. 3-5.

<sup>37</sup> U.S. Congress, Senate Select Committee on Indian Affairs, *Indian Education Oversight*, hearings, May 18-19, 1982, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1983), p. 433.

<sup>38</sup> U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 2006*, NCES 2007-017 (Washington: GPO, 2007), p. 536.

<sup>39</sup> P.L. 89-10, Act of April 11, 1965, 79 Stat. 27, as amended; chiefly codified at 20 U.S.C., Chap. 70.

<sup>40</sup> Sec. 102, Elementary and Secondary Education Amendments of 1966, P.L. 89-750, Act of Nov 3, 1966, 80 Stat 1191.

<sup>41</sup> U.S. Congress, Senate Labor and Public Welfare Committee, Special Subcommittee on Indian Education, *Indian Education: A National Tragedy, A National Challenge* (Washington: GPO, 1969).

<sup>42</sup> Title IV of the Education Amendments Act of 1972, P.L. 92-318, Act of June 23, 1972, 86 Stat. 235, 334, as amended; currently codified at 20 U.S.C. 7401 *et seq.*

of Indian Education (OIE) within the Department of Health, Education and Welfare and authorized OIE to make grants to public school districts with Indian children and to BIA schools.<sup>43</sup> The OIE was the first organization outside of the Interior Department created expressly to oversee a federal Indian education program. Education Department (ED) aid for Indian education has become larger, in terms of dollars, than BIA school funding, and ED assistance has also become a significant source of funding for BIA schools (see below).

Federal Indian education policy also began to move toward greater Indian control of federal Indian education programs, in both BIA and public schools. In 1966, the BIA signed its first contract with an Indian group to operate a BIA-funded school (the Rough Rock Demonstration School on the Navajo Reservation).<sup>44</sup> In 1975, through enactment of the Indian Self-Determination and Education Assistance Act (ISDEAA),<sup>45</sup> Congress authorized all Indian tribes and tribal organizations, such as tribal school boards, to contract to operate their BIA schools. Three years later, in Title XI, Part B, of the Education Amendments of 1978, Congress required the BIA “to facilitate Indian control of Indian affairs in all matters relating to education.”<sup>46</sup> This act created statutory standards and administrative and funding requirements for the BIA school system and separated control of BIA schools from BIA area and agency officers by creating a BIA Office of Indian Education Programs (OIEP) and assigning it supervision of all BIA education personnel.<sup>47</sup> Ten years later, the Tribally Controlled Schools Act (TCSA) of 1988<sup>48</sup> authorized grants to tribes and tribal organizations to operate their BIA schools, in addition to self-determination contracts. These laws provide that grants and self-determination contracts be for the same amounts of funding as the BIA would have expended on operation of the same schools.<sup>49</sup>

Indian control in public schools received an initial boost from the 1972 IEA. The IEA required that public school districts applying for its new grants prove adequate participation by Indian parents and tribal communities in program development, operation, and evaluation.<sup>50</sup> The 1972 IEA also amended the Impact Aid program to mandate Indian parents’ consultation in school programs funded by Impact Aid.<sup>51</sup> In 1975 the ISDEAA added to the Johnson-O’Malley Act a requirement that public school districts with JOM contracts have either a majority-Indian school board or an Indian parent committee that has approved the JOM program.<sup>52</sup>

The number of schools in the BIA school system has shrunk over the years, through administrative consolidation and congressional closures. For example, all BIA-funded schools in

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<sup>43</sup> The OIE was transferred to the new Department of Education in 1980.

<sup>44</sup> Prucha, *Great Father*, p. 1102.

<sup>45</sup> P.L. 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended; 25 U.S.C. 450 *et seq.*

<sup>46</sup> P.L. 95-561, Title XI, Part B, Act of November 1, 1978, 92 Stat. 2143, 2316, as amended; currently codified at 25 U.S.C., Chap. 22. The quote is from §1130 of the original act (now §1131 of the amended act).

<sup>47</sup> Prucha, *Great Father*, p. 1146.

<sup>48</sup> P.L. 100-297, Title V, Act of April 28, 1988, 102 Stat. 130, 385, as amended; 25 U.S.C., Chap. 27.

<sup>49</sup> Provisions are currently codified at 25 U.S.C. 2007 and 25 U.S.C. 2503.

<sup>50</sup> Sec. 421(a) of the 1972 act; currently codified, as amended, at 20 U.S.C. 7424(c)(4).

<sup>51</sup> P.L. 92-318, §411(a),(c)(2), 86 Stat. 334-339; currently codified, as amended, at 20 U.S.C. 7704. See also Szasz and Ryan, “American Indian Education,” p. 298.

<sup>52</sup> 25 U.S.C. 456.

Alaska were transferred to the state of Alaska between 1966 and 1985, removing an estimated 120 schools from BIA responsibility.<sup>53</sup> The number of BIA-funded schools and dormitories stood at 233 in 1930<sup>54</sup> and 277 in 1965,<sup>55</sup> but fell to 227 in 1982 and to 180 in 1986 before rising to 185 by 1994;<sup>56</sup> it currently stands at 184.<sup>57</sup> Since the 1990s, Congress has limited both the number of BIA schools and the grade structure of the schools.<sup>58</sup> The number of Indian students educated at BIA schools has for the last 20 years fluctuated between about 39,000 and 48,000.<sup>59</sup> In 2006, as noted above, the Interior Secretary separated BIA education programs from the rest of the BIA and placed them in a new Bureau of Indian Education (BIE) under the Assistant Secretary – Indian Affairs.

## Students Served by Federal Indian Education Programs

It is commonly estimated that BIE schools serve roughly 10% of Indian students, public schools serve roughly 90%, and private schools serve 1% or less. These general percentages, however, are not certain. Data on Indian students come from differing programs and sources. Different federal Indian education programs serve different, though overlapping, sets of Indian students. Their student data also differ (and overlap).

Although different federal Indian education programs have different eligibility criteria, none of the eligibility criteria are based solely on race. Indian students do not receive the benefits because they are racially Indian. Eligibility is based on the political status of the groups of which the students are members or descendants of members.

The BIE school system, for instance, serves students who are members of federally recognized Indian tribes, or at least one-fourth degree Indian blood descendants of members of such tribes, and who reside on or near a federal Indian reservation or are eligible to attend a BIE off-reservation boarding school.<sup>60</sup> Many Indian tribes require less than one-fourth degree of tribal or Indian blood for membership, so many BIE Indian students have less than one-fourth Indian blood. Separately, the BIE's Johnson-O'Malley (JOM) program, according to its regulations,

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<sup>53</sup> U.S. Congress, House Committee on Appropriations, *Department of the Interior and Related Agencies Appropriations for 1994*, hearings, part 8, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1993), p. 168.

<sup>54</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Report on BIA Education: Excellence in Indian Education Through the Effective Schools Process*. Final Review Draft ([Washington: The Department], 1988), p. 17.

<sup>55</sup> U.S. Department of the Interior, Bureau of Indian Affairs, Branch of Education, *Fiscal Year 1965 Statistics Concerning Indian Education* (Haskell, Kansas: Haskell Institute Publications Service, [1966]), p. 15.

<sup>56</sup> U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, *Fiscal Year 1995 Annual Education Report* ([Washington: The Bureau, n.d. (1996?)]), p. vi.

<sup>57</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications Fiscal Year 2008* ([Washington: The Department], 2007), p. IA-EDUC-6.

<sup>58</sup> The limitations are in the annual BIA appropriations acts.

<sup>59</sup> *FY1995 Annual Education Report and Budget Justifications FY2008*, *loc.cit.*

<sup>60</sup> 25 U.S.C. 2007(f). "One-fourth degree" is the equivalent of one "full-blood" grandparent out of four.

serves students in public schools who are at least one-quarter degree Indian blood and recognized by BIA as eligible for BIA services.<sup>61</sup>

Education Department programs under the Indian Education Act (IEA), on the other hand, serve a broader set of students, including not only those who are (1) BIE-eligible but also those who are (2) members (or one-quarter blood descendants of members) of two types of non-federally-recognized tribes, state-recognized tribes and tribes whose federal recognition was terminated after 1940; (3) members of an organized Indian group that received a grant under the IEA as it was in effect before the passage of the Improving America's Schools Act of 1994;<sup>62</sup> (4) Eskimo, Aleut, or other Alaska Native; or (5) considered to be Indian by the Secretary of the Interior, for any purpose.<sup>63</sup> Both public school districts and BIE schools are eligible for IEA programs, so data on IEA beneficiaries include BIE students as well as public school Indian students. Public school districts must have a minimum number or percentage of IEA-eligible Indian students to receive a grant. IEA grants are administered by the OIE, so the OIE is the source of data on IEA students.

Another major ED program, the Impact Aid program, serves among others public schools whose students reside on "Indian lands."<sup>64</sup> The students residing on Indian lands for whom Impact Aid is provided need not, however, be Indian.

Indian student data based on race present additional problems. Not all students reported as racially Indian are members or descendants of members of politically recognized Indian tribes, and not all members of such tribes may be reported as racially Indian.

For example, ED's National Center for Education Statistics (NCES), which collects and analyzes student and school data and produces the National Assessment of Educational Progress (NAEP),<sup>65</sup> publishes reports on Indian students' characteristics, academic achievements, and NAEP results. NCES data, however, are based on racial or ethnic identification (except data on BIE students), so the data will include students who are reported as racially Indian even though they are not members of tribes and do not fall into federal programs' eligibility categories. NCES's race-based Indian student population is not the same as federal programs' Indian student population. The two populations overlap to a very great extent, but the degree of overlap has not been determined. NCES data based on race, then, cannot be assumed to represent completely accurately the Indian student population served by federal Indian programs.

**Tables 1 and 2** below attempt to illustrate the size of the problem. **Table 1** shows BIE, IEA, and NCES data for Indian students for school years (SY) 2002-2003 through SY2004-2005. The NCES counts are far larger than the IEA counts for each school year not only by themselves (see row 2) but also when BIE counts are added in (row 3) for better comparability with the IEA count (row 4). The greater number of NCES Indian students might be explained if one argued that NCES counts include all IEA Indian students and that the additional students are otherwise eligible but are attending non-IEA-eligible school districts. But state-by-state data—**Table 2**

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<sup>61</sup> 25 CFR 273.12.

<sup>62</sup> P.L. 103-382, Act of October 20, 1994, 108 Stat. 3518.

<sup>63</sup> 20 U.S.C. 7491(3).

<sup>64</sup> 25 U.S.C. 7703(a)(1).

<sup>65</sup> NAEP is often known as "the nation's report card."

compares NCES-plus-BIE totals with IEA data for selected states—show that NCES student counts are not always greater than IEA counts for the same state (see Alabama and Oklahoma). The disagreements between NCES and IEA data suggest that NCES counts may not include all IEA Indian students, and that IEA counts may include eligible Indian students who are not counted as racially Indian.

**Tables 1 and 2** show the significant differences between the IEA and NCES numbers and suggest the difficulty of estimating BIE's share of the national total of Indian students (**Table 1**, rows 5 and 6).

There is, then, no single source of data on all Indian students served by federal Indian education programs. This situation creates problems for Indian education statistics and analysis.

**Table 1. Number of Indian Students: Comparison of BIE, NCES, and IEA Data, School Years 2002-2005**

Row	School Type	Sources	Basis of Indian Status	SY2002-SY2003	SY2003-SY2004	SY2004-SY2005
1	BIE schools <sup>a</sup>	BIE	Attendance	46,163	45,857	45,811
2	Public schools	NCES	Race	581,227	590,374	581,481
3	Public and BIE schools (row 1 plus row 2)	BIE and NCES	Attendance plus race	627,390	636,231	627,292
4	Public and BIE schools receiving IEA grants	OIE	IEA eligibility	453,905	470,338	459,795
5	Percent BIE (row 1 divided by row 3)	BIE and NCES	Attendance and race	7.4%	7.2%	7.3%
6	Percent BIE (row 1 divided by row 4)	BIE and OIE	Attendance and IEA eligibility	11.3%	10.8%	11.1%

**Notes:** For sources and list of abbreviations, see **Table 2**.

a. Excludes students in BIE peripheral dormitories.

**Table 2. Indian Student Data for Selected States: Comparison of IEA Count with NCES-BIE Total, SY2002-SY2003**

State	NCES Plus BIE Total	IEA Count
Alabama	5,786	9,322
Arizona	75,735	60,080
California	54,674	31,326
Oklahoma	112,826	115,489
Michigan	26,609	12,317
New Mexico	46,858	40,925
North Dakota	12,288	8,203

State	NCES Plus BIE Total	IEA Count
Texas	13,168	1,563
<b>Total for All States</b>	<b>627,390</b>	<b>453,905</b>

**Sources:** for **Tables 1 and 2:**

NCES: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "State Nonfiscal Survey of Public Elementary/Secondary Education," query results generated Feb. 22 and 26, 2007.

BIE: U.S. Department of the Interior, Bureau of Indian Education, unpublished spreadsheets transmitted Jan. 3, 2007.

OIE: U.S. Department of Education, Office of Indian Education, unpublished spreadsheet transmitted Feb. 23, 2007.

**Abbreviations:**

BIE—Bureau of Indian Education

IEA—Indian Education Act

NCES—National Center for Education Statistics

OIE—Office of Indian Education

## Federal Indian Education Programs and Services

Federal Indian education programs serve Indian elementary-secondary students in both public schools and BIE system schools. Except for one BIE program, public schools do not receive BIE funding. Public schools instead receive most of their federal assistance for Indian education through the U.S. Department of Education (ED). BIE-funded schools, on the other hand, receive funding both from BIE and from ED. The BIE estimates that it provides about two-thirds of BIE-funded schools' overall funding and ED provides most of the remaining third.<sup>66</sup> This section of the report profiles first the BIE school system and programs and second those ED programs that provide significant funding for Indian education.

### Bureau of Indian Education

The BIE funds a system consisting of elementary and secondary schools, which provide free education to eligible Indian students, and "peripheral dormitories" (discussed below).<sup>67</sup> The BIE was formerly the Office of Indian Education Programs within the Bureau of Indian Affairs (BIA). It was split off into a separate bureau in 2006 but like the BIA is under the Assistant Secretary - Indian Affairs within the Interior Department.<sup>68</sup> The BIE system is administered by a director and

<sup>66</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Year 2008* ([Washington: The Department, 2007]) (hereinafter cited as BIA, *Budget Justifications FY2008*), p. IA-EDUC-8.

<sup>67</sup> BIE also funds post-secondary institutions and programs not discussed in this report. A small number of BIE-funded elementary-secondary schools also receive funding as public schools from their states.

<sup>68</sup> BIA, *Budget Justifications FY2008*, pp. IA-EDUC-5 to -6.

headquarters office in Washington, DC, a national service center in Albuquerque, NM, and 21 education line offices (ELOs) across Indian Country. ELOs provide supervision and technical support for the schools and peripheral dorms.<sup>69</sup>

The BIE-funded school system includes day and boarding schools and peripheral dormitories. The majority of BIE-funded schools are day schools, which offer elementary or secondary classes or combinations thereof and are located on Indian reservations. BIE boarding schools house students in dorms on campus and also offer elementary or secondary classes, or combinations of both levels, and are located both on and off reservations. Among the combinations of grade levels offered in BIE schools are K-2, K-3, K-6, K-8, K-12, 3-9, 6-8, and 9-12.<sup>70</sup> Peripheral dormitories house students who attend nearby public or BIE schools; these dorms are also located both on and off reservations.

Elementary-secondary schools funded by the BIE may be operated either directly by the BIE or by tribes and tribal organizations through grants or contracts authorized under the Tribally Controlled Schools Act (TCSA) of 1988 or the Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975. (See the discussion of these two acts in “Statutory Authority for BIE Elementary-Secondary Schools,” below).

BIE funds 170 schools and 14 peripheral dorms. **Table 3** below shows the number of BIE-funded schools and peripheral dorms, by type of operator. The majority of BIE-funded schools are tribally operated, and the number of tribally operated schools continues to rise.<sup>71</sup>

**Table 3. Number of BIE-Funded Schools and Peripheral Dormitories, SY2006-2007**

Schools and Peripheral Dormitories	Tribally Operated	BIE-Operated	Total
Total	123	61	184
Elementary/Secondary Schools	110	60	170
Day schools	86	32	118
Boarding schools	24	28	52
Peripheral Dormitories	13	1	14

**Source:** U.S. Department of the Interior, Bureau of Indian Education, unpublished table transmitted June 27, 2007.

The total number of BIE schools and peripheral dorms and the class structure of each school have been limited by Congress since the mid-1990s. Through annual appropriation acts, Congress has since 1994 prohibited BIE from funding schools that were not in the BIE system as of September 1, 1996, and has since 1996 prohibited use of BIE funds to expand a school’s grade structure

<sup>69</sup> BIA, *Budget Justifications FY2008*, pp. IA-EDUC-27 to -28; and BIE, telephone conversation, October 4, 2007.

<sup>70</sup> U.S. Department of Education, Office of Elementary and Secondary Education, *Bureau of Indian Affairs, Office of Indian Education Programs, Consolidated State Application Accountability Workbook* (last updated August 31, 2006), at <http://www.ed.gov/admins/lead/account/stateplans03/csabia.pdf>, p. 8.

<sup>71</sup> BIA, *Budget Justifications FY2008*, p. IA-EDUC-19.

beyond the grades in place as of October 1, 1995.<sup>72</sup> Congress was concerned that adding new BIE schools or expanding existing schools would, in circumstances of limited financial resources, “diminish funding for schools currently in the system.”<sup>73</sup>

Only Indian children attend the BIE school system, with few exceptions. In SY2006-07, BIA estimates that BIE-funded schools and peripheral dorms served approximately 46,000 Indian students representing over 250 tribes.<sup>74</sup> **Table 4** shows the student count in BIE day and boarding schools and peripheral dormitories in SY2005-06, by type of operator.

**Table 4. Number of Students in BIE-Funded Schools and Dormitories, SY2005-SY2006 Student Count**

Schools and Peripheral Dormitories	Tribally Operated	BIE-Operated	Total
Total	26,763	15,880	42,643
Elementary/Secondary Schools	25,403	15,737	41,140
Day schools	22,881	11,942	34,823
Boarding schools	2,522	3,795	6,317
Peripheral Dormitories	1,360	143	1,503

**Source:** U.S. Department of the Interior, Bureau of Indian Education, unpublished table transmitted Aug. 1, 2007.

BIE-funded schools and peripheral dorms are generally small. The average size of BIE-funded schools was 270 students in SY2003-2004,<sup>75</sup> compared to 521 students for public elementary and secondary schools in SY2003-2004.<sup>76</sup> In SY2002-2003, 69% of BIE-funded schools had 300 or fewer children in attendance.<sup>77</sup>

The 184 BIE-funded schools and peripheral dormitories are located on 63 reservations in 23 states.<sup>78</sup> These BIE facilities are not evenly distributed across the country. In SY2004-2005, almost 72% of BIE schools and dorms and just over 76% of BIE students were located in 4 of the 23 states: Arizona (29% of students), New Mexico (23%), South Dakota (16%), and North Dakota (8%). **Table 5** shows the distribution of BIE schools and students across the 23 states.

<sup>72</sup> See, e.g., the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, P.L. 109-54, Act of August 2, 2005, 119 Stat. 499, 516.

<sup>73</sup> U.S. Congress, Senate Appropriations Committee, *Department of the Interior and Related Agencies Appropriations Bill, 1995*, report to accompany H.R. 4602, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 103-294 (Washington: GPO, 1994), p. 58.

<sup>74</sup> BIA, *Budget Justifications FY2008*, pp. IA-EDUC-12, -27.

<sup>75</sup> Excludes BIE peripheral dorms. CRS calculation based on unpublished BIE data transmitted January 3, 2007. Adding in students in BIE peripheral dorms raises the average size to 259 students in SY2003-2004.

<sup>76</sup> U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 2005*, NCES 2006-030 (Washington: GPO, 2006), Table 87.

<sup>77</sup> U.S. Department of Education, National Center for Education Statistics, *Status and Trends in the Education of American Indians and Alaska Natives*, NCES 2005-108 (Washington: GPO, 2005), p. 32.

<sup>78</sup> *Ibid.*



There are no BIE schools or students in Alaska, a circumstance directed by Congress (see “Brief History of Federal Indian Education Activities,” above).<sup>79</sup>

**Table 5. BIE Schools and Peripheral Dormitories and Students: Number and Percent, by State, SY2004-2005, in Order of Number of Students**

	State	Schools and Dorms		Students	
		Number	Percent	Number	Percent
1	Arizona	54	29.3	13,797	29.0
2	New Mexico	44	23.9	10,965	23.0
3	South Dakota	22	12.0	7,766	16.3
4	North Dakota	12	6.5	3,703	7.8
5	Mississippi	8	4.3	1,816	3.8
6	Washington	8	4.3	1,511	3.2
7	Oklahoma	5	2.7	1,405	3.0
8	North Carolina	1	0.5	1,127	2.4
9	Wisconsin	3	1.6	834	1.8
10	California	2	1.1	822	1.7
11	Minnesota	4	2.2	806	1.7
12	Montana	3	1.6	459	1.0
13	Oregon	1	0.5	430	0.9
14	Utah	2	1.1	418	0.9
15	Michigan	2	1.1	327	0.7
16	Maine	3	1.6	310	0.7
17	Wyoming	1	0.5	237	0.5
18	Florida	2	1.1	230	0.5
19	Idaho	2	1.1	204	0.4
20	Iowa	1	0.5	162	0.3
21	Nevada	2	1.1	107	0.2
22	Kansas	1	0.5	80	0.2
23	Louisiana	1	0.5	72	0.2
<b>Total</b>		<b>184</b>	<b>100</b>	<b>47,588</b>	<b>100</b>

**Source:** U.S. Bureau of Indian Education, unpublished table transmitted Jan. 3, 2007.

<sup>79</sup> Annual appropriation acts for the Department of the Interior regularly include an administrative provision prohibiting BIA expenditures to support operation of schools in Alaska (except through the Johnson-O'Malley program); see, e.g., P.L. 109-54 (119 Stat. 499, 516).

## **Statutory Authority for BIE Elementary-Secondary Schools**

Currently, BIE-funded schools, dorms, and programs are administered under a number of statutes. The key statutes are summarized here.

### ***Snyder Act of 1921***<sup>80</sup>

This act provides a broad and permanent authorization for federal Indian programs, including for “[g]eneral support and civilization, including education.” The act was passed because Congress had never enacted specific statutory authorizations for most BIA activities, including BIA schools. Congress had instead made detailed annual appropriations for BIA activities. Authority for Indian appropriations in the House had been assigned to the Indian Affairs Committee after 1885 (and in the Senate to its Indian Affairs Committee after 1899). Rules changes in the House in 1920, however, moved Indian appropriations authority to the Appropriations Committee, making Indian appropriations vulnerable to procedural objections because they lacked authorizing acts. The Snyder Act was passed in order to authorize all the activities the BIA was then carrying out. The act’s broad language, however, may be read as authorizing—though not requiring—nearly any Indian program, including education, for which Congress enacts appropriations.

### ***Indian Self-Determination and Education Assistance Act of 1975***<sup>81</sup>

ISDEAA, as amended, provides for tribal administration of certain federal Indian programs, including BIA and BIE programs. The act allows tribes to assume some control over the management of BIE-funded education programs by negotiating “self-determination contracts” with BIE for tribal management of specific schools or dorms. Under a self-determination contract, BIE transfers to tribal control the funds it would have spent for the contracted school or dorm, so the tribe may operate it. Tribes or tribal organizations may contract to operate one or more schools.<sup>82</sup>

### ***Education Amendments Act of 1978***<sup>83</sup>

This act declares federal policy on Indian education and establishes requirements and guidelines for the BIE-funded elementary and secondary school system. As amended, the act covers academic accreditation and standards, a funding allocation formula, BIE powers and functions, criteria for boarding and peripheral dorms, personnel hiring and firing, the role of school boards, facilities standards, a facilities construction priority system, and school closure rules, among other topics. It also authorizes several BIE grant programs, including administrative cost grants for

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<sup>80</sup> Act of November 2, 1921, 42 Stat. 208, as amended; 25 U.S.C. 13.

<sup>81</sup> P.L. 93-638, act of January 4, 1975, 88 Stat. 2203, as amended; 25 U.S.C. 450 et seq.

<sup>82</sup> ISDEAA’s Title IV, “Tribal Self-Governance,” §§401-408 (25 U.S.C. 458aa-458hh), authorizes “self-governance compacts” with tribes under which a tribe may operate multiple BIA programs under a single compact, but BIE’s formula funding for schools is excluded from these compacts (§403(b)(4)(B); 25 U.S.C. 458cc(b)(4)(B)).

<sup>83</sup> P.L. 95-561, Title XI, Part B, Act of November 1, 1978, 92 Stat. 2143, 2316, as amended by §1042 of the Native American Education Improvement Act of 2001, which was Title X, Part D, of the No Child Left Behind Act, P.L. 107-110, Act of January 8, 2002, 115 Stat. 2007, as further amended; 25 U.S.C., Chap. 22 (§§2000 et seq.).

tribally operated schools (described below), early childhood development program grants (also described below), and grants and technical assistance for tribal departments of education.

### ***Tribally Controlled Schools Act (TCSA) of 1988***<sup>84</sup>

TCSA added grants as another means, besides ISDEAA contracts, by which Indian tribes and tribal organizations could operate BIE-funded schools. The act requires that each grant include all funds that BIE would have allocated to the school for operation, administrative cost grants, transportation, maintenance, and ED programs. Because ISDEAA contracts were found to be a more cumbersome means of Indian control of schools, most tribally operated schools are grant schools.<sup>85</sup>

### **BIE Education System Programs**

Funding for and operation of BIE-funded schools are carried out through a number of different programs. The major BIE funding programs are “forward-funded”—that is, the BIE programs’ appropriations for a *fiscal* year are used to fund the *school* year that begins during that fiscal year.<sup>86</sup>

### ***Indian School Equalization Program***

The Indian School Equalization Program (ISEP) is the formula-based method by which Congressional appropriations for BIE-funded schools’ academic (and, if applicable, residential) operating costs are allocated among the schools. Before allocation under the formula, part of ISEP funds are set aside for program adjustments and contingencies.

The ISEP formula, although authorized under the Education Amendments of 1978,<sup>87</sup> is specified not in statute but in federal regulations. The formula is based on a count of student “average daily membership” (ADM) that is weighted to take into account students’ grade levels and residential-living status (e.g., in boarding schools or peripheral dorms) and is then supplemented with weights or adjustments for gifted and talented students, language development needs, and a school’s geographic isolation and size. These weighted figures are called “weighted student units” (WSUs). Total WSUs are calculated for each school, by school year. All schools’ WSUs are then totaled nationally, for the current and each of the preceding three school years. The preceding three years’ national WSUs are then averaged (by totaling and dividing by three). This national three-year average WSU figure is then divided into the Congressional appropriation for ISEP for the current school year, to yield a national dollar value for a single WSU. This national dollar

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<sup>84</sup> P.L. 100-297, Title V, Act of April 28, 1988, 102 Stat. 130, 385, as amended; 25 U.S.C., Chap. 27.

<sup>85</sup> *Cohen’s Handbook of Federal Indian Law 2005 Edition*, p. 1361.

<sup>86</sup> Federal fiscal years (FY) begin on October 1 and end on the following September 30. School years (SY) begin on July 1 (three-quarters of the way through the fiscal year) and end the following June 30. Hence BIE appropriations for FY2007 (October 1, 2006-September 30, 2007) will be used to fund SY2007-2008 (July 1, 2007-June 30, 2008).

<sup>87</sup> 25 U.S.C. 2007.

value of a WSU is then multiplied by each school's current-year WSU total to get that school's funding allocation for the current school year.<sup>88</sup>

### ***Student Transportation***

To transport its students, both day and boarding, the BIE funds an extensive student transportation system. Student transportation funds provide for buses, fuel, maintenance, and bus driver salaries and training, as well as certain commercial transportation costs for some boarding school students. Because of largely rural and often remote school locations, many unimproved and dirt roads, and the long distances from children's homes to schools, transportation of BIE students can be expensive. Student transportation funds are distributed on a formula basis, using commercial transportation costs and the number of bus miles driven (with an additional weight for unimproved roads).<sup>89</sup>

### ***Early Childhood Development***

BIE's early childhood development program funds the agency's Family And Child Education (FACE) grants to tribes and tribal organizations for services for pre-school Indian students and their parents. FACE programs include early childhood education for children under 6 years old, and parenting skills and adult education for their parents to improve their employment opportunities. The grants are distributed by formula among applicant tribes and organizations who meet the minimum tribal size of 500 members. In FY2006 FACE programs were being carried out at 38 BIE-funded schools.<sup>90</sup>

### ***Administrative Cost Grants***

Administrative cost grants pay administrative and indirect costs for tribally operated BIE-funded schools. By providing assistance for direct and indirect administrative costs that may not be covered by ISEP or other BIE funds, administrative cost grants are intended to encourage tribes to take control of their schools. These are formula grants based on an "administrative cost percentage rate" for each school, with a minimum grant of \$200,000.<sup>91</sup>

### ***Facilities Operations***

This program funds the operation of educational facilities at all BIE-funded schools and dorms. Operating expenses may include utilities, supplies, equipment, custodians, trash removal, maintenance of school grounds, minor repairs, and other services, as well as monitoring for fires and intrusions.<sup>92</sup>

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<sup>88</sup> 25 CFR Part 39, Subparts A-C.

<sup>89</sup> BIA, *Budget Justifications FY2008*, pp. IA-EDUC-15 to -16, and 25 CFR Part 39, Subpart G.

<sup>90</sup> BIA, *Budget Justifications FY2008*, pp. IA-EDUC-17 to -18.

<sup>91</sup> BIA, *Budget Justifications FY2008*, pp. IA-EDUC-18 to -19, and 25 CFR Part 39, Subpart J.

<sup>92</sup> BIA, *Budget Justifications FY2008*, p. IA-EDUC-19.

## ***Education Department Set-Asides***

The BIE receives funding from the Education Department under set-asides in the Elementary and Secondary Education Act, the Individuals with Disabilities Education Act, and other acts, and allocates the funds to its schools. As noted above, the BIE estimates that it provides about two-thirds of BIE-funded schools' overall funding and ED provides most of the remaining third.<sup>93</sup> More detailed discussion of ED funding for BIE is provided in "Department of Education Indian Programs" and **Table 7**, below.

## **BIE Assistance to Public Schools: Johnson O'Malley Program**

The Johnson O'Malley (JOM) program provides supplementary financial assistance, through contracts, to meet the unique and specialized educational needs of Indian students in public schools and non-sectarian private schools. BIE contracts with tribes and tribal organizations to distribute funds to schools or other programs providing JOM services, and it also contracts directly with states and public school districts for JOM programs. Most JOM funds are distributed through tribal contractors. Prospective contractors must have education plans that have been approved by an Indian education committee made up of Indian students' parents. JOM funds are distributed to contractors by formula, based on a count of Indian students and average per-pupil operating costs, and are to be used for supplemental programs, such as tutoring, other academic support, books, supplies, Native language classes, cultural activities, summer education programs, after-school activities, or a variety of other education-related needs. JOM funds may be used for general school operations only when a public school district cannot meet state educational standards or requirements without them.<sup>94</sup> JOM serves about 272,000 students in 33 states, according to the BIA.<sup>95</sup>

## ***JOM Statutory Authority***

Enacted in 1934, the Johnson O'Malley Act authorized the Interior Secretary to contract directly with states, local governments (such as school districts), colleges, and private entities "for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State."<sup>96</sup> Education eventually came to be the chief area of JOM contracting. After enactment of Impact Aid gave public school districts a separate and much

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<sup>93</sup> BIA, *Budget Justifications FY2008*, p. IA-EDUC-8.

<sup>94</sup> BIA, *Budget Justifications FY2008*, p. IA-EDUC-20; 25 CFR Part 273; U.S. Bureau of Indian Affairs, Office of Indian Education Programs, "JOM," available at <http://www.oiep.bia.edu>; and unpublished data transmitted April-May 2006. Also, National Indian Education Association, "The Johnson O'Malley Program," February 12, 2007, available at [http://www.niea.org/sa/uploads/legislativetracking/44.35.NIEA\\_Briefing\\_OMalleyProgram\\_2-8.pdf](http://www.niea.org/sa/uploads/legislativetracking/44.35.NIEA_Briefing_OMalleyProgram_2-8.pdf).

<sup>95</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Year 2005* ([Washington: The Department, 2004]), p. BIA-58. Student counts have remained effectively unchanged since FY1996, because House and Senate Appropriations Committees' directives in 1994 to move JOM funding to specific parts of the BIA budget, combined with a statutory prohibition on changing tribes' base funding (25 U.S.C. 450j-1(b)(2)), had the effect of "freezing" tribal JOM programs and student counts (BIA, telephone conversation, November 2, 2000).

<sup>96</sup> P.L. 73-167, Act of April 16, 1934, Chap. 147, 73<sup>rd</sup> Cong., 48 Stat. 596, as amended; 25 U.S.C. 452-457. The quote is from §1 (25 U.S.C. 452).

larger source of federal funding for Indian students (see “Brief History of Federal Indian Education Activities,” above), Indian groups argued that JOM funds should be used only for Indian students and not for districts’ general operating costs. The BIA amended its regulations in 1974 to restrict school districts’ use of JOM funds to supplementary programs purely for Indian students (the same regulations also made it clear that Indian tribes were eligible for JOM contracts).<sup>97</sup> In 1985 Congress enacted a statute limiting JOM contracts to supplementary educational services for Indian students.<sup>98</sup>

## **BIE School Facilities Construction and Repair**

The BIA funds construction activities for BIE schools and school facilities. Construction may mean replacing all facilities on an existing BIE school campus, replacing individual buildings, or making major and minor repairs and improvements. Included in the education construction program is improvement and repair of BIE employee housing units.<sup>99</sup> Construction may be administered either by BIA or by tribes under ISDEAA or TCSA.

## **BIA Elementary-Secondary Education Appropriations**

BIA appropriations for elementary-secondary education are divided between program funds, expended through the BIE, and construction and related spending carried out through the BIA. **Table 6** below shows detailed appropriations for BIE programs and BIA education construction for FY2003-FY2008.<sup>100</sup>

Appropriations for BIE elementary-secondary programs have remained relatively stable, rising 8% over the 6-year period, from \$533.3 million in FY2003 to \$577.9 million in FY2008.<sup>101</sup> As a proportion of BIA’s Operation of Indian Programs (OIP) budget, BIE elementary-secondary program funding has consistently stood at just below 30% of OIP appropriations. Total BIA spending on elementary-secondary education, however, has fallen 13% over the same period, from \$827.1 million to \$720.8 million, and has shrunk from 37% of total BIA appropriations to 31%. As illustrated in **Figure 2**, changes in BIA education construction appropriations account for the 13% reduction; current appropriations for education construction have fallen 51%, from \$293.8 million in FY2003 to \$142.9 million in FY2008. A major reason for the FY2008 reduction is a backlog of unexpended funds for incomplete education construction projects.<sup>102</sup> The explanatory statement for the Consolidated Appropriations Act, 2008,<sup>103</sup> making FY2008

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<sup>97</sup> 39 Fed.Reg. 30114-30116 (August 21, 1974). See also Prucha, *Great Father*, pp. 1143-1144.

<sup>98</sup> P.L. 99-190, §101(d) [Title I], Act of December 19, 1985, 99 Stat. 1185, 1235.

<sup>99</sup> BIA, *Budget Justifications FY2008*, pp. IA-CON-ED-2 to -4.

<sup>100</sup> For more information on BIA FY2008 appropriations, see CRS Report RL34011, *Interior, Environment, and Related Agencies: FY2008 Appropriations*, coordinated by Carol Hardy Vincent.

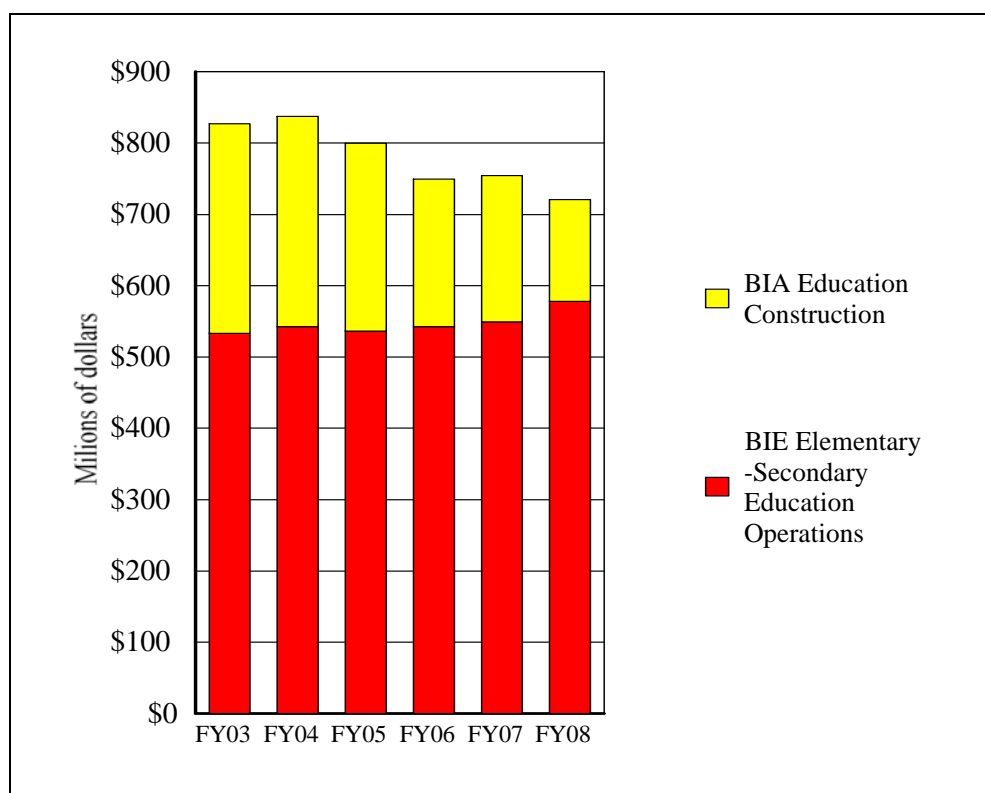
<sup>101</sup> Totals for the BIE elementary-secondary education program were calculated by CRS.

<sup>102</sup> See BIA, *Budget Justifications FY2008*, pp. IA-CON-ED-1 to -8.

<sup>103</sup> P.L. 110-161, act of December 26, 2007. BIA appropriations are in Division F, Title I.

appropriations for the BIA, approved a BIA plan to use FY2008 (and previous years') funding to complete existing projects and alleviate shortfalls before beginning new projects.<sup>104</sup>

**Figure 2. Appropriations for BIE Operations and BIA Education Construction, FY2003-FY2008**



<sup>104</sup> *Congressional Record*, December 17, 2007, p. H16129.

**Table 6. Appropriations for BIE Elementary-Secondary Education Programs and BIA Education Construction, Compared with BIA Totals, FY2003-FY2008**

(current \$ in thousands)

	<b>FY2003<sup>a</sup></b>	<b>FY2004</b>	<b>FY2005</b>	<b>FY2006</b>	<b>FY2007</b>	<b>FY2008<sup>e</sup></b>
<b>BIA Operation of Indian Programs (OIP)</b>	1,845,246	1,893,291	1,926,091	1,962,190	1,988,223	2,047,809
<b>BIE Elementary-Secondary Education</b>	533,292	542,353	536,505	542,420	549,293	577,862
<i>Percent of OIP</i>	29%	29%	28%	28%	28%	28%
Elementary/Secondary (Forward-Funded)	445,072	452,874	449,721	457,750	458,310	479,895
ISEP Formula Funds	347,204	349,919	348,073	350,062	351,817	358,341
ISEP Program Adjustments	670	659	1,145	5,116	7,533	3,205
Student Transportation	37,262	38,116	39,444	42,738	42,833	47,844
Early Childhood Development	15,164	15,604	15,355	15,281	12,067	15,024
Administrative Cost Grants	44,772	48,576	45,704	44,553	44,060	43,373
Education Program Enhancements	—	—	—	—	—	12,108
Elementary/Secondary Programs	76,128	77,557	76,218	75,887	72,390	74,620
Facilities Operation	55,423	57,106	55,976	55,812	56,047	56,504
Residential Education Placement Program <sup>b</sup>	3,797	3,785	3,732	3,704	3,713	3,715
Juvenile Detention Education	—	—	—	—	630	620
Johnson-O'Malley Program	16,908	16,666	16,510	16,371	12,000	13,782
Education Program Management <sup>c</sup>	12,092	11,922	10,566	8,783	18,593	23,347
<b>All BIA Construction</b>	345,988	346,827	319,129	271,582	271,823	203,754
<b>Education Construction<sup>d</sup></b>	293,795	294,954	263,372	206,787	204,956	142,935
<i>Percent of All BIA Construction</i>	85%	85%	83%	76%	75%	70%
Replacement School Construction	124,409	139,612	105,550	64,530	83,891	46,716
Replacement Facility Construction	—	—	—	—	26,873	9,748
Employee Housing Repair	3,100	3,081	3,038	1,971	1,973	1,942



	<b>FY2003<sup>a</sup></b>	<b>FY2004</b>	<b>FY2005</b>	<b>FY2006</b>	<b>FY2007</b>	<b>FY2008<sup>e</sup></b>
Education Facilities Improvement and Repair	163,306	146,335	142,531	140,286	92,219	84,529
Tribal School Construction Demonstration Program	2,980	5,926	12,253	0	0	0
<b>All BIA Appropriations</b>	<b>2,257,244</b>	<b>2,306,401</b>	<b>2,295,702</b>	<b>2,274,270</b>	<b>2,308,304</b>	<b>2,291,279</b>
<b>Total: BIE Elementary-Secondary Education and Education Construction</b>	<b>827,087</b>	<b>837,307</b>	<b>799,877</b>	<b>749,207</b>	<b>754,249</b>	<b>720,797</b>
<i>Percent of All BIA Appropriations</i>	<i>37%</i>	<i>36%</i>	<i>35%</i>	<i>33%</i>	<i>33%</i>	<i>31%</i>

**Sources:** “Annual comprehensive budget table,” in U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Year [2005-2008]* ([Washington: The Department], 2004-2007); and U.S. Bureau of Indian Affairs, “FY2008 Indian Affairs Budget,” unpublished table transmitted Jan. 15, 2008.

**Notes:** In this table, “BIA” includes all Indian programs under the Assistant Secretary - Indian Affairs in the Department of the Interior. Totals for BIE elementary-secondary education were calculated by CRS.

**Abbreviations:**

BIA—Bureau of Indian Affairs

BIE—Bureau of Indian Education

ISEP—Indian School Equalization Program

OIP—BIA Operation of Indian Programs (includes all BIA and BIE programs except construction, miscellaneous payments, land and water rights settlements, and loan guarantees)

- a. FY2003 BIA data have been rearranged from BIA’s budget structure at that time to BIA’s current budget structure.
- b. Formerly called the Institutionalized Disabled Program.
- c. Includes funds for management of BIE elementary, secondary, and post-secondary education programs.
- d. Includes small amount of funds for BIA post-secondary education institutions.
- e. FY2008 appropriation figures are after rescission.

## U.S. Department of Education (ED) Indian Programs

In SY2004-2005, approximately 414,000-581,000 Indian elementary-secondary students attended public schools, accounting for between about 89% and 93% of Indian students (for discussion of the data ranges, see “Students Served,” above). The U.S. Department of Education (ED) provides funding specifically for Indian elementary-secondary education to both public and BIE schools; about three-quarters of this funding goes to public schools and related organizations (see **Table 7** below).

According to NCES data for SY2002-SY2003, Indian students in public schools were more likely than the total student population to attend rural schools.<sup>105</sup> Indian public school students were also likely to be concentrated: while they constituted only 1.2% of public school students nationwide, 40% of Indian students attended public schools where they made up 25% or more of the school’s student body, and 26% attended schools where they made up 50% or more of all students.<sup>106</sup> Schools where Indians constituted 25% or more of the student body were likely to be relatively small: over 70% of such schools had less than 300 students.<sup>107</sup> Schools where Indians were less than 25% of the student body were larger: over 68% of such schools had over 300 students.<sup>108</sup>

Geographically, according to NCES data, Indian public school students were spread across more states than BIE students, appearing in all 50 states and the District of Columbia (compare **Table 5** above).<sup>109</sup> In SY2004-2005, however, over half of all Indian public school students were in just 5 states: Oklahoma (20%), Arizona (11%), California (9%), and New Mexico and Alaska (6% apiece).<sup>110</sup>

ED’s assistance specifically for Indian education is not to be confused with its general assistance to elementary-secondary education nationwide. Indian students benefit from ED’s *general* assistance as *citizens*, not as Indians. This report covers ED Indian assistance—that is, assistance statutorily specified for Indians—not general ED assistance that may also benefit Indian students.

ED Indian funding to public and BIE schools flows through a number of programs, most authorized under the Elementary and Secondary Education Act (ESEA)<sup>111</sup> or the Individuals with Disabilities Education Act (IDEA),<sup>112</sup> although other acts also authorize Indian education assistance. Some general ED programs have set-asides for BIE schools, while other programs

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<sup>105</sup> NCES 2005-108, pp. 30, 137.

<sup>106</sup> NCES 2005-108, pp. 30-31. NCES data recalculated by CRS for public schools only.

<sup>107</sup> NCES 2005-108, p. 33.

<sup>108</sup> *Ibid.*

<sup>109</sup> NCES 2005-108, pp. 136-137.

<sup>110</sup> U.S. Department of Education, NCES, CCD, “State Nonfiscal Survey of Public Elementary/Secondary Education,” data generated February 22, 2007. SY2004-05 data for Nevada were missing, so SY2003-04 data for Nevada were used instead and percentages were recalculated accordingly.

<sup>111</sup> P.L. 89-10, Act of April 11, 1965, 79 Stat. 27, as amended, especially by the No Child Left Behind Act of 2001, P.L. 107-110, Act of January 8, 2002, 115 Stat. 1439, as further amended; chiefly codified at 20 U.S.C., Chap. 70.

<sup>112</sup> P.L. 94-142, Act of November 29, 1975, 89 Stat. 773, as amended by P.L. 108-446, Title I, §101, Act of December 3, 2004, 118 Stat. 2647; codified at 20 U.S.C., Chap. 33 (§§1400 *et seq.*).

either may be intended solely for Indian students, may specifically include Indian and non-Indian students, or may mention Indian students as a target of the assistance. BIE schools are included in the definition of “local educational agency” (LEA) in ESEA<sup>113</sup> and IDEA,<sup>114</sup> so many ED programs may provide funding to BIE schools even when the programs have no BIE set-aside or other specific provision for BIE schools.

Major ED Indian programs are profiled below, divided between set-aside programs for BIE schools and all other programs. For more information on ESEA programs discussed below, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*. For more information on IDEA programs, see CRS Report RS22590, *The Individuals with Disabilities Education Act (IDEA): Overview and Selected Issues*. See **Table 7** below for a list of all ED programs for Indian elementary-secondary education.

### **ED Set-Asides for BIE System Schools**

ED funds that are set aside for BIE schools are administered and allocated by the BIE. See **Table 7** for the amount of funds under each ED program. As LEAs, BIE schools are also eligible to receive assistance under many ED non-Indian programs,<sup>115</sup> outside of BIE administration, but these funds are not discussed here. BIE schools may also receive assistance under some ED Indian programs for public schools discussed below.

### ***ESEA Title I-A Grants to Local Educational Agencies***

Title I, Part A, of ESEA<sup>116</sup> authorizes formula grants, through state educational agencies, to public school districts (LEAs) for the education of disadvantaged children. ESEA Title I-A grants go to LEAs to serve pupils in schools with relatively large numbers or percentages of children from low-income families, and are used to provide supplementary education services, as either schoolwide programs or targeted assistance to the lowest-achieving students. Section 1121 of ESEA<sup>117</sup> sets aside 1% of Title I-A appropriations for the Interior Secretary and the outlying areas. Interior Department funds are for BIE schools and for out-of-state Indian students being educated in public schools under BIE contracts (e.g., students in peripheral dorms). The amount of the 1% that goes to the Interior Department is the amount determined by the Secretary of Education to be needed to meet the special educational needs of the Indian students (in recent years it has been approximately 70% of the total set-aside).<sup>118</sup>

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<sup>113</sup> ESEA, §9101(26)(C); 20 U.S.C. 7801(26)(C).

<sup>114</sup> IDEA, §602(19)(C); 20 U.S.C. 1401(19)(C).

<sup>115</sup> BIA, *Budget Justifications FY2008*, p. IA-EDUC-9.

<sup>116</sup> 20 U.S.C., Chap. 70, Subchap. I, Part A. For more information on the ED program, see CRS Report RL33731, *Education for the Disadvantaged: Reauthorization Issues for ESEA Title I-A Under the No Child Left Behind Act*.

<sup>117</sup> 20 U.S.C. 6331.

<sup>118</sup> Calculated from “Fiscal Year 2001-2008 State Tables for the U.S. Department of Education: State Tables by Program,” U.S. Department of Education, Budget Service <http://www.ed.gov/about/overview/budget/statetables/index.html>.

### ***ESEA Title II-A Improving Teacher Quality State Grants***

Title II, Part A, Subpart 1, of ESEA<sup>119</sup> authorizes grants to states for the recruitment, retention, and professional development of highly-qualified teachers and principals in elementary-secondary schools. Section 2111(b)(1)(A)(ii) of ESEA<sup>120</sup> sets aside 0.5% of appropriations for programs in BIE schools.

### ***ESEA Title IV-B 21<sup>st</sup> Century Community Learning Centers***

Title IV, Part B, of ESEA<sup>121</sup> authorizes formula grants to states for activities that provide learning opportunities for school-aged children during non-school hours. States award competitive subgrants to LEAs and community organizations for before- and after-school activities that will advance student academic achievement. Section 4202(a)(3) of ESEA<sup>122</sup> sets aside no more than 1% of Title IV-B appropriations for the BIE and the outlying areas. The amount of the 1% that goes to the BIE is determined by the Secretary of Education.

### ***Indian Education Act Formula Grants to LEAs***

The Indian Education Act authorizes a formula-based allocation for BIE schools, in addition to the LEA formula grants for which BIE schools are eligible as LEAs.<sup>123</sup> See “Indian Education Act,” below, for a more detailed discussion.

### ***IDEA Part B Special Education Grants to States***

Part B of IDEA<sup>124</sup> authorizes formula grants to states to help them provide a free appropriate public education to children with disabilities. States make subgrants to LEAs. Funds may be used for salaries of teachers or other special-education personnel, education materials, transportation, occupational therapy, or other special-education services. Section 611(b)(2) of IDEA<sup>125</sup> reserves 1.226% of state-grant appropriations for the Interior Secretary. Section 611(h) of IDEA<sup>126</sup> directs the Interior Secretary to allocate 80% of the funds to BIE schools for special education for children aged 5-21 and 20% to tribes and tribal organizations on reservations with BIE schools for early identification of children with disabilities aged 3-5, parent training, and provision of direct services. In recent years, appropriations acts have limited annual increases for BIE schools

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<sup>119</sup> 20 U.S.C., Chap. 70, Subchap. II, Part A, Subpart 1. For more information on the ED program, see CRS Report RL31882, *Teacher Quality Enhancement Grants (Title II, Part A of the Higher Education Act): Overview and Reauthorization Issues*.

<sup>120</sup> 20 U.S.C. 6611(b)(1)(A)(ii).

<sup>121</sup> 20 U.S.C., Chap. 70, Subchap. IV, Part B. For more information on the ED program, see CRS Report RL31240, *21<sup>st</sup> Century Community Learning Centers: Background and Funding*.

<sup>122</sup> 20 U.S.C. 7172(a)(3).

<sup>123</sup> ESEA, §7113(d); 20 U.S.C. 7423(d).

<sup>124</sup> 20 U.S.C., Chap. 33, Subchap. II.

<sup>125</sup> 20 U.S.C. 1411(b)(2).

<sup>126</sup> 20 U.S.C. 1411(b)(2), (h).

under IDEA to the rate of inflation, so the Interior set-aside is now below the 1.226% set in IDEA.

## **ED Indian Programs for Public Schools**

Some ED programs may be intended solely for Indian students, some may specifically include Indian and non-Indian students, and some may mention Indian students as a target of the assistance (along with other intended beneficiaries). ED programs (or portions of programs) that are specifically for Indian students are discussed below. In some of these programs, funding may go to BIE schools in addition to public schools.

### ***Impact Aid***

Impact Aid, Title VIII of ESEA,<sup>127</sup> provides financial assistance to school districts whose tax revenues are significantly reduced, or whose student enrollments are significantly increased, because of the impacts of federal property ownership or federal activities. Among such impacts are having a significant number of children enrolled who reside on “Indian lands,”<sup>128</sup> which is defined as Indian trust and restricted lands,<sup>129</sup> lands conveyed to Alaska Native entities under the Alaska Native Claims Settlement Act of 1971,<sup>130</sup> public lands designated for Indian use, and certain lands used for low-rent housing.<sup>131</sup> Impact Aid funds are distributed by formula directly to LEAs and are used for basic operating costs, special education, and facilities construction and maintenance. The Education Department estimates that currently about 121,000 Indian students benefit from Impact Aid each year.<sup>132</sup> The amount of Impact Aid funding going to LEAs because of Indian lands makes it the largest ED Indian education program. Among the LEAs to which Impact Aid goes are a few BIE schools.

### ***Indian Education Act***

Title VII, Part A, of ESEA<sup>133</sup> authorizes formula grants to eligible public school districts, BIE schools (as LEAs), and (in certain circumstances) Indian tribes for supplementary education programs to assist Indian students to meet challenging state standards. The supplementary programs can include tutoring, after-school programs, dropout prevention, early childhood and family programs, culturally related activities, and many other activities. For an LEA to be eligible, at least 10 Indian students must be enrolled or at least 25% of its total enrollment must

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<sup>127</sup> 20 U.S.C., Chap. 70, Subchap. VIII. For more information on this ED program, see CRS Report RL34119, *Impact Aid for Public K-12 Education: Reauthorization Under the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Richard N. Apling.

<sup>128</sup> ESEA, §8013(5), (7); 20 U.S.C. 7713(5), (7).

<sup>129</sup> Trust lands and restricted lands are not taxable by states or local governments, including LEAs. Trust lands are lands held by the federal government in trust for an Indian tribe or individual; restricted lands are lands held by an Indian tribe or individual subject to federal restrictions on alienation.

<sup>130</sup> P.L. 92-203, Act of December 18, 1971, 85 Stat. 688; 43 U.S.C. 1601 *et seq.*

<sup>131</sup> 20 U.S.C. 7713(5), (7).

<sup>132</sup> U.S. Department of Education, Budget Service, unpublished table, transmitted March 2, 2007.

<sup>133</sup> 20 U.S.C., Chap. 70, Subchap. VII.

be Indians (exempted from these requirements are LEAs in Alaska, California, and Oklahoma and LEAs located on or near an Indian reservation). An LEA's application must be approved by a local Indian education committee of parents, teachers, and secondary students. In addition to LEA formula grants, the act requires the Secretary of Education to allocate a formula-based amount for distribution to the Interior Secretary for BIE schools.

The IEA also authorizes several competitive grant programs. One provides demonstration grants to develop and test services and programs to improve Indian students' educational opportunities and achievement; LEAs, colleges, tribes and tribal organizations, and BIE schools are eligible for these grants. Another competitive program provides for professional development grants to colleges, or tribes or LEAs in consortium with colleges, to train Indian individuals as teachers or other professionals. In addition, the IEA authorizes national programs for gifted and talented Indian students, and also the National Advisory Council on Indian Education, which advises the Education Secretary and Congress on Indian education.

### ***Alaska Native Education Equity***

Title VII, Part C, of ESEA<sup>134</sup> authorizes competitive grants to Alaska Native organizations, educational entities with Native experience, and cultural and community organizations, for supplemental education programs that address the educational needs of Alaska Native students, parents, and teachers. Grants may be used for development of curricula and educational materials, student enrichment in science and math, professional development, family literacy, home preschool instruction, cultural exchange, dropout prevention, and other programs.

### **ED Indian Education Funding**

ED Indian education funding goes primarily to public schools and related organizations. Less than a quarter of ED Indian education funds is transferred to BIE schools (see **Table 7**, below). For most ED Indian education programs, the funding pattern during FY2003-FY2007 showed an increase from FY2003 to FY2004, a smaller increase from FY2004 to FY2005, a decline from FY2005 to FY2006, and a recovery in FY2007 to amounts slightly less than FY2005.

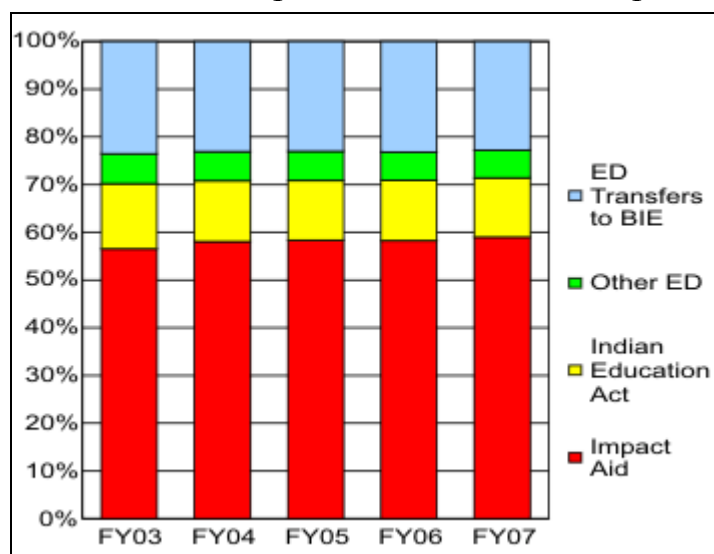
ED's transfers to BIE are authorized chiefly under ESEA and IDEA. The two largest set-asides for BIE schools come from the LEA grant program for disadvantaged children under Title I, Part A, of ESEA, and the special education grants to states under Part B of IDEA. Together these two set-asides account for about 80% of ED Indian education funds transferred to BIE.

Impact Aid is the largest single ED Indian education program, as **Figure 3** illustrates. The second largest program is the Indian Education Act, especially its formula grants to LEAs.

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<sup>134</sup> 20 U.S.C., Chap. VII, Subchap. C.

**Figure 3. Distribution of ED Funding for Indian Education Programs, FY2003-FY2007**



Source: Table 7.

**Table 7. Estimated Funding for Department of Education's Indian Elementary-Secondary Education Programs, FY2003-FY2007**  
(\$ in thousands)

<b>Education Department (ED) Programs<sup>a</sup></b>	<b>FY2003</b>	<b>FY2004</b>	<b>FY2005</b>	<b>FY2006</b>	<b>FY2007</b>
<b>ED Funds Transferred to BIE Pursuant to Statutes</b>	209,109	219,076	220,706	217,111	217,774
<i>Percent of ED Total</i>	24%	23%	23%	23%	23%
ESEA Title I-A Grants to Local Educational Agencies	81,886	90,093	91,322	88,423	89,762
IDEA Part B Special Education Grants to States	80,459	81,617	83,546	86,306	86,306
ESEA Title II-A Improving Teacher Quality State Grants	14,581	14,577	14,510	14,635	14,365
ESEA Title IV-B 21 <sup>st</sup> Century Community Learning Centers	7,145	7,317	7,565	7,323	7,129
IDEA Part C Grants for Infants and Families with Disabilities	5,360	5,486	5,442	5,388	5,223
ESEA Title I-B Reading First	4,968	5,120	5,208	5,146	5,093
ESEA Title IV-A Safe and Drug-Free Schools	4,750	4,750	4,750	4,750	4,750
ESEA Title II-D Educational Technology State Grants	5,115	5,085	3,646	2,001	2,007
ESEA Title VI-A-1 State Assessment Grants	1,900	1,950	2,000	2,000	2,000
McKinney-Vento Homeless Assistance Act Title VII-B Homeless Children and Youth	546	596	625	619	619
ESEA Title VI-B Rural Education	418	420	427	422	422
ESEA Title I-B-4 Literacy through School Libraries	62	99	98	97	97
ESEA Title I-F Comprehensive School Reform	1,918	1,966	1,567	—	—
<b>Other ED Funds for Indian Education</b>	679,978	730,490	738,001	719,317	737,806
<i>Percent of ED Total</i>	76%	77%	77%	77%	77%
ESEA Title VIII Impact Aid <sup>b</sup>	502,737	551,457	559,457	545,454	563,761
ESEA Title VIII Impact Aid - Basic Support	472,111	495,861	503,166	515,813	519,712
ESEA Title VIII Impact Aid - Disabilities	21,685	21,393	21,222	20,731	20,731
ESEA Title VIII Impact Aid - Construction	8,942	34,203	35,069	8,910	23,318
ESEA Title VII-A Indian Education Act <sup>b</sup>	121,573	120,856	119,889	118,690	118,683
ESEA Title VII-A-1 Indian Education Act - LEA Grants	96,502	95,933	95,166	95,331	95,331



<b>Education Department (ED) Programs<sup>a</sup></b>	<b>FY2003</b>	<b>FY2004</b>	<b>FY2005</b>	<b>FY2006</b>	<b>FY2007</b>
ESEA Title VII-A-2 Indian Education Act - Special Programs	19,870	19,753	19,595	19,399	19,399
ESEA Title VII-A-3 Indian Education Act - National Programs	5,201	5,170	5,129	3,960	3,953
ESEA Title VII-C Alaska Native Education Equity	30,798	33,302	34,224	33,908	33,908
Carl D. Perkins Vocational and Technical Education Act Title I-D Native American Program	14,903	14,938	14,929	14,780	14,780
ESEA Title III-A-1 English Language Acquisition	5,000	5,000	5,000	5,000	5,000
ESEA Title I-B-3 Even Start	4,968	4,938	4,502	1,485	1,674
<b>Total ED Indian Elementary-Secondary Education Programs</b>	<b>889,087</b>	<b>949,566</b>	<b>958,706</b>	<b>936,428</b>	<b>955,580</b>

**Sources:** U.S. Department of Education, Budget Service, unpublished tables, transmitted on various dates, 2003-2007. Most recent table was transmitted March 2, 2007.

**Notes:** Columns may not sum to totals due to rounding.

**Abbreviations:**

BIE—Bureau of Indian Education (U.S. Department of the Interior)

ED—U.S. Department of Education

ESE—Elementary and Secondary Education Act

IDEA—Individuals with Disabilities Education Act

LEA—Local education agency (school district)

a. The number and letter sequence following each act's initials or title is: title number - part number - subpart number.

b. Some grants go to BIE schools.

## **BIE Schools Under the No Child Left Behind Act**

Amendments to ESEA by the No Child Left Behind Act (NCLBA)<sup>135</sup> expanded significantly ESEA's requirements of schools receiving assistance under ESEA Title I, Part A. The key provisions of ESEA amended by NCLBA concern

- student assessments and standards,
- positive school outcomes, as defined by “adequate yearly progress” (AYP),
- highly-qualified teachers and qualified classroom paraprofessionals, and
- accountability of states, school districts (LEAs), and schools for AYP.

Under NCLBA, schools must make adequate yearly progress as measured by their state's standards-based assessments. Schools that fail to make AYP for two consecutive years or more must go through a series of three accountability steps—school improvement, corrective action, and school restructuring—each of which includes certain actions and deadlines. The accountability steps proceed until the school has achieved AYP for two consecutive years. (For full summaries of NCLBA requirements, see CRS Report RL31284, *K-12 Education: Highlights of the No Child Left Behind Act of 2001 (P.L. 107-110)* and CRS Report RL33371, *K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)*.)

BIE-funded schools are generally subject to the key provisions of ESEA amended by NCLBA, with some specific exceptions and options, described below. BIE-funded schools are defined as LEAs in NCLBA, although the schools are not subject to the jurisdiction of state educational agencies (SEAs) but rather to that of the BIA.<sup>136</sup> Many NCLBA statutory and regulatory requirements may be waived by the Secretary of Education, and Indian tribes as well as SEAs and LEAs may request waivers from the Secretary.<sup>137</sup>

### **Standards-Based Assessments**

Assessments of schools and students must be developed or adopted by the SEA and be based on the state's “challenging student academic achievement standards,”<sup>138</sup> but the choice of assessments to be used in BIE-funded schools depends on how the school is accredited. State-accredited BIE schools must use either the state's assessments or other appropriate assessments approved by the Secretary of the Interior; BIE schools accredited by a regional accreditation agency must use appropriate assessments, approved by the Interior Secretary, that meet NCLBA requirements and are consistent with assessments used by other schools in the state or region; and BIE schools accredited by a tribal accreditation agency or a tribal education division must use the tribal agency's or division's assessments if the Interior Secretary ensures that the assessments

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<sup>135</sup> NCLBA's amendments to ESEA, in titles I-IX of NCLBA, are codified at 20 U.S.C., Chap. 70, §§6301 *et seq.*

<sup>136</sup> 20 U.S.C. 7801(26)(C). BIA-funded schools' definition as LEAs is limited by a minimum size requirement.

<sup>137</sup> 20 U.S.C. 7861.

<sup>138</sup> 20 U.S.C. 6311(b)(3) and 6316(a)(1)(A).

meet NCLBA requirements.<sup>139</sup> Assessment provisions related to testing limited English proficient (LEP) students,<sup>140</sup> and to federal tests under the National Assessment of Educational Progress (NAEP),<sup>141</sup> also apply to BIE-funded schools. (For a more detailed discussion of NCLBA assessments, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act.*)

## **Adequate Yearly Progress**

States, LEAs, and schools must demonstrate AYP, as measured by standards-based assessments.<sup>142</sup> Each state defines AYP for its LEAs and schools.<sup>143</sup> BIE-funded schools must also make AYP, but the definition of AYP for BIE-funded schools is assigned to the Secretary of the Interior. The Secretary of the Interior must define AYP using negotiated rulemaking, taking into account the schools' unique needs and circumstances, and the definition must be consistent with NCLBA; or the Secretary may use the definition of the state where the BIE-funded school is located.<sup>144</sup> In either case a tribe or tribal school board may seek a waiver of all or part of the Interior Secretary's definition and use its own alternative AYP definition, unless the Secretary of Education determines the alternative definition does not meet NCLBA requirements.<sup>145</sup>

NCLBA requires that a state's AYP definition must include "annual measurable objectives" for public school students, not only as a whole, but also for certain subgroups: economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and LEP students.<sup>146</sup> A state's annual objectives must set a minimum percentage of students scoring at a proficient or higher level on the state's assessments of math and reading achievement, and this minimum percentage must be applicable to each of the student subgroups.<sup>147</sup> The minimum percentage must be increased at least once every three years,<sup>148</sup> and must rise to 100% of pupils scoring proficient or higher by the end of SY2013-2014.<sup>149</sup> BIE-funded schools are also subject to these requirements for annual measurable objectives, disaggregated assessment data, and minimum percentages of students scoring proficient or above, for AYP determinations, although (as noted above) the BIA takes the role of the state for these schools. (For further discussion of AYP under NCLBA, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act.*)

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<sup>139</sup> 20 U.S.C. 6311(m).

<sup>140</sup> 20 U.S.C. 6311(b)(3)(C)(ix)(III) and 6312(b)(1)(A). Such students are sometimes referred to as English language learners (ELLs).

<sup>141</sup> 20 U.S.C. 6311(c)(2) and 6312(b)(1)(F).

<sup>142</sup> 20 U.S.C. 6311(b)(2).

<sup>143</sup> 20 U.S.C. 6311(b)(2)(C).

<sup>144</sup> 20 U.S.C. 6316(g)(1).

<sup>145</sup> 20 U.S.C. 6316(g)(1)(B).

<sup>146</sup> 20 U.S.C. 6311(b)(2)(C). The subgroups must be of a minimum size to "yield statistically reliable information."

<sup>147</sup> 20 U.S.C. 6311(b)(2)(G)(iii).

<sup>148</sup> 20 U.S.C. 6311(b)(2)(H)(iii).

<sup>149</sup> 20 U.S.C. 6311(b)(2)(F).

## **Teachers and Paraprofessionals**

NCLBA requires states and LEAs to ensure that teachers are highly qualified, and that school paraprofessionals meet certain qualification requirements, by various deadlines.<sup>150</sup> BIE-funded schools are subject to this requirement as well. (For further discussion of teacher requirements in NCLBA, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act.*)

## **Accountability**

Schools failing to make AYP for two consecutive years or more enter a series of steps intended to enable them to make AYP. The first step, “school improvement,” includes a school plan, technical assistance, and supplemental education services (SES) from the LEA, public school choice for students in the school failing to make AYP, and LEA notification to the school’s parents.<sup>151</sup> The second step, “corrective action,” continues school improvement actions but must also include at least one of the following actions: replacement of school staff, a new curriculum, a decrease in school management’s authority, advice from outside experts, extended school day or year, or internal school reorganization.<sup>152</sup> The third step, “restructuring,” continues school choice, SES, and planning, but requires the LEA to implement one of the following: making the school a public charter school, replacing all school staff, contracting school operations to an outside entity, a takeover by the SEA, or other fundamental reforms in school governance.<sup>153</sup> States must review LEAs annually to determine if their schools are making AYP.<sup>154</sup>

NCLBA makes BIE-funded schools subject to these three accountability steps,<sup>155</sup> but with some exceptions or added options. BIE-funded schools are excluded from the requirements for public school choice, SES, and annual state reviews.<sup>156</sup> Responsibility for development of the school plan in the school improvement step, and for all corrective actions and restructuring, is assigned to the BIA for BIE-operated schools and to the school board for BIE-funded contract and grant schools.<sup>157</sup> Technical assistance for both types of schools, however, is the BIA’s responsibility.<sup>158</sup>

## **BIE-Funded Schools Accreditation Sanctions**

Title X, Part D, of NCLBA amended one of the major BIA education laws, the Education Amendments of 1978 (see “Statutory Authority for BIE Elementary-Secondary Schools,” above), to subject BIE-funded schools that are neither accredited nor candidates for accreditation, by

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<sup>150</sup> 20 U.S.C. 6319.

<sup>151</sup> 20 U.S.C. 6316(b)(1)(E), (b)(3)-(6).

<sup>152</sup> 20 U.S.C. 6316(b)(7)(C)(iv).

<sup>153</sup> 20 U.S.C. 6316(b)(8)(B).

<sup>154</sup> 20 U.S.C. 6316(c).

<sup>155</sup> 20 U.S.C. 6316(g)(2).

<sup>156</sup> *Ibid.*

<sup>157</sup> 20 U.S.C. 6316(g)(3)-(4).

<sup>158</sup> 20 U.S.C. 6316(g)(3).

certain accrediting agencies, to actions similar to ESEA's accountability actions.<sup>159</sup> Parallels include school plans, technical assistance, parental notification, school choice options to transfer to other BIE-funded schools or public schools (with transportation provided), staff or administrative changes, tribal option to take over BIE-operated schools, and school operation by an outside contractor.<sup>160</sup> These sanctions must be waived, however, if the school's failure to become accredited, or be a candidate for accreditation, is due to certain circumstances beyond the school board's control, such as a significant decline in financial resources, a natural disaster, or the poor condition of the school's facilities, vehicles, or other property.<sup>161</sup>

## Indian Education Issues

Most significant issues for Indian education concern NCLBA provisions in the ESEA that affect both public and BIE schools. According to the BIE, 70% of BIE schools failed to make AYP in SY2004-2005;<sup>162</sup> this compares with 26% of all U.S. schools that failed to make AYP in the same school year.<sup>163</sup> Congress is currently addressing the reauthorization of NCLBA, and the National Indian Education Association (NIEA) has proposed a number of amendments to NCLBA provisions in ESEA on many topics, discussed below.<sup>164</sup>

### Bureau of Indian Education Issues

BIE issues include the Administration's reorganization of the BIE school system (proposed in response to the widespread failure among BIE schools to make AYP), the definition of AYP for BIE schools, and the assessments used to measure AYP in BIE schools.

### BIE Reorganization

BIE's organization had consisted of a central office; 23 education line offices (ELOs), each run by an education line officer, which oversee schools in a particular area; and the 170 individual schools, each with its school board. The Administration argues that BIE had too few high-level administrators in the central office and the ELOs, too few educational specialists in the ELOs to assist schools, and an imbalance in the numbers of schools assigned each ELO, and that these insufficient management resources made it impossible to oversee schools closely enough to bring

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<sup>159</sup> Native American Education Improvement Act of 2001, P.L. 107-110, Title X, Part D, §1042, Act of January 8, 2002, 115 Stat. 1439, 2007, as amended; 25 U.S.C., Chap. 22, §§2000 *et seq.*

<sup>160</sup> 25 U.S.C. 2001(b)(3), (7)-(8).

<sup>161</sup> 25 U.S.C. 2001(b)(8)(B).

<sup>162</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Year 2008: Indian Affairs* (Washington: The Department, 2007), p. IA-EDUC-7. For SY2005-2006 the percentage failing to make AYP is 69% (BIE, telephone conversation, October 4, 2007).

<sup>163</sup> U.S. Department of Education, National Center for Educational Statistics, *State Education Reforms*, Table 1.6, available at [http://nces.ed.gov/programs/statereform/saa\\_tab6.asp?referrer=tables](http://nces.ed.gov/programs/statereform/saa_tab6.asp?referrer=tables). According to this table, state percentages of schools failing to make AYP vary from 2% (Wisconsin) to 66% (Hawaii).

<sup>164</sup> See National Indian Education Association, "National Indian Education Association's Proposed Amendments to the Elementary and Secondary Education Act," March 30, 2007, available at <http://www.niea.org/>.

them up to AYP. The BIE reorganization involves adding high-level “educational, financial, and administrative managers” at the central office, upgrading ELOs “to attract skilled educational professionals,” rearranging ELO areas to balance the number of schools assigned each ELO, reducing the number of ELOs (currently 21), and adding more “specialists in education program delivery, special education, residential programs” and other skills to better assist BIE schools.<sup>165</sup> A large number of Indian tribes have objected to the reorganization, arguing that the BIE did insufficient consultation with tribes before beginning to implement the reorganization, that rearrangement of ELO areas would in many cases move an ELO too far from the communities whose schools the ELO was overseeing, that funds were being transferred from education programs to finance the reorganization, and that spending the reorganization funds at the school level would better assist schools to make AYP. In New Mexico and the Dakotas, tribes got federal district courts to suspend BIE reorganization.<sup>166</sup>

Questions for Congress on the BIE reorganization may include whether BIE schools will benefit more from increased administrative resources or increased spending at the school level, whether the reorganization would improve schools’ chances of making AYP, and whether to specify BIE structure in the reauthorization of the major statute governing BIE education programs, the Education Amendments of 1978.<sup>167</sup>

## **Definition of AYP for BIE Schools**

As noted above, under ESEA as amended by NCLBA, the Secretary of the Interior defines AYP for BIE schools, but a tribe or school board may seek a waiver and an alternative AYP definition.<sup>168</sup> The NIEA seeks to allow not only tribes or school boards but also consortia of these entities to seek AYP waivers; to create an approval process with deadlines (with automatic approval if the Secretary misses a deadline), written notifications and responses, and explicit explanations for disapprovals; and to eliminate the Secretary of Education in the approval of an alternative AYP definition.<sup>169</sup>

## **BIE School Assessments**

As noted above, the assessments applied to BIE schools depend on the accrediting agency. The NIEA proposes that BIE schools granted AYP waivers be allowed to choose the assessments they think appropriate for their definition of AYP.<sup>170</sup>

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<sup>165</sup> U.S. Department of the Interior, *The Interior Budget In Brief, Fiscal Year 2008* (Washington: The Department, 2007), p. DH-49.

<sup>166</sup> Martin Salazar, “Tribes Sue Over Restructuring; Federal Officials Want to Revamp Agency That Oversees Indian Education,” *Albuquerque Journal*, October 16, 2006, p. 1; and David Melmer, “Schreier: Reorganization Must Stop,” *Indian Country Today*, August 2, 2006, p. B1.

<sup>167</sup> See “Statutory Authority for BIE Elementary-Secondary Schools,” above.

<sup>168</sup> ESEA, §1116(g) (20 U.S.C. 6316(g)). As yet, no AYP waivers have been granted, although BIE reports that one consortium of schools has applied and at least one other school is interested (telephone conversation, October 4, 2007).

<sup>169</sup> NIEA, “Proposed Amendments,” *op.cit.*

<sup>170</sup> NIEA, “Proposed Amendments,” *op.cit.*

## **Indian Education Issues for Public Schools**

Indian education issues in public schools include the definition of AYP, consultations with Indian tribes, the role of Indian cultures and languages, teacher development, and the uses of grants under the Indian Education Act (IEA).<sup>171</sup> Many of the issues raised for schools with Indian students may overlap with NCLBA issues for all students; see CRS Report RL33749, *The No Child Left Behind Act: An Overview of Reauthorization Issues for the 110<sup>th</sup> Congress*, for discussion of these wider issues.

### **Definition of AYP**

Like many other educators, Indian educators have proposed use of “growth models” to measure achievement of AYP.<sup>172</sup> See CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*, for analysis of the issues raised by growth models.

### **Consultation with Indian Tribes**

NIEA proposals would add requirements or commitments that SEAs and LEAs consult with Indian tribes under numerous provisions in ESEA as amended by NCLBA. SEA consultation with tribes is proposed during SEA development and implementation of state plans required by ESEA, on state practitioner committees required to advise the state in its performance of its ESEA duties, and during the development of activities under state teacher quality enhancement grants. LEA consultations with tribes are proposed during the development and implementation of the LEA plans required by ESEA, in the development of school improvement plans, and for the plans, applications, and activities under LEA teacher quality enhancement grants. NIEA also proposes that Indian parents receive special attention in each LEA’s required annual evaluations of its parental involvement policy.<sup>173</sup>

### ***Indian Cultures and Languages***

Indian educators and parents have for many years argued for greater inclusion of Indian cultures and Indian languages in both public and BIE schools, as subjects in curricula and (for languages) as media of instruction. NIEA proposes amending ESEA to incorporate “activities that meet the unique cultural, language, and educational needs of Indian students” in LEA improvement plans. It also proposes strengthening the emphasis on Indian cultures and languages in IEA programs (see below).<sup>174</sup>

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<sup>171</sup> The Indian Education Act is Title VII, Part A, of ESEA.

<sup>172</sup> NIEA, *Briefing Papers*, “Policy Recommendations on Reauthorization of No Child Left Behind, March 6, 2006,” available at [http://www.niea.org/sa/uploads/policyissues/18.42.NIEABriefingPapers\\_06.pdf](http://www.niea.org/sa/uploads/policyissues/18.42.NIEABriefingPapers_06.pdf).

<sup>173</sup> NIEA, “Proposed Amendments,” *op.cit.*

<sup>174</sup> NIEA, “Proposed Amendments,” *op.cit.*

## **Teacher Development**

Indian educators argue that there are unmet needs for more Indian teachers, and for improving non-Indian teachers' skills in teaching Indian students. NIEA proposes amending ESEA's LEA teacher quality enhancement subgrants to add to the grants' uses the recruitment and preparation of teachers who are Indian or live in Indian communities or are likely to succeed at teaching Indian students, and also professional development activities that improve teachers' ability to meet Indian students' unique needs.<sup>175</sup>

## **Indian Education Act (IEA) Programs**

Indian education proponents have complained that IEA formula grants (see program description in "ED Indian Programs for Public Schools," above) were being used by LEAs for general remedial programs for Indian students and not for Indian language or cultural needs, and that IEA funding was insufficient.<sup>176</sup> The NIEA's proposals would restrict IEA's purposes to meeting Indian students' unique cultural and language needs and would delete current provisions referring to state standards and the general education of Indian students. They would authorize Indian language immersion programs, traditional language teachers, parental involvement, and technical assistance, and would also make it easier for Indian tribes to apply for formula grants (where an LEA does not) by lowering the percentage of Indian students the tribe is required to represent. Finally, the NIEA proposals would increase the amount of appropriations authorized for IEA, by 35% for formula grants (to \$130 million) and by 42% for other grants (to \$34 million).

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<sup>175</sup> NIEA, "Proposed Amendments," *op.cit.*

<sup>176</sup> National Indian Education Association, *Preliminary Report on No Child Left Behind in Indian Country*, October 10, 2005, available at [http://www.niea.org/sa/uploads/policyissues/29.23.NIEANCLBreport\\_final2.pdf](http://www.niea.org/sa/uploads/policyissues/29.23.NIEANCLBreport_final2.pdf).