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Indian Elementary-Secondary Education: Programs, Background, and Issues

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Specialist in Education Policy

Updated June 16, 2017

Congressional Research Service
7-....
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RL34205

CRS REPORT
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 (DOI), 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 American Indians/Alaska Natives (AI/ANs), as identified by race/ethnicity. Most of this Indian education population attends public schools. Most federal data on Indian students are based on race/ethnicity, however, which complicates analysis of results for the population served by federal Indian education programs.

The BIE was originally part of the Bureau of Indian Affairs (BIA) in DOI. 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 19th century, the BIA began placing a few students in public schools, a trend that accelerated after about 1910. At present, over 90% of the Indian student population attends public schools.

The BIE-funded education system for Indian students includes 169 schools (and 14 "peripheral dormitories" for students attending public schools nearby). Schools and dorms may be operated by the 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 single BIE program. Most of the ED funds are authorized under the Elementary and Secondary Education Act (ESEA) and Individuals with Disabilities in Education Act (IDEA).

A perennial issue regarding Indian education is comparatively poor academic achievement among students in BIE schools and AI/AN students in public schools. Since the 1970s, federal policies to address this issue include permitting greater tribal control and influence through tribally operated BIE schools and culturally relevant educational curriculum and language instruction, and encouraging collaboration between states, local educational agencies, and public schools and tribes and parents of Indian students. ESEA standards and accountability requirements also aim to promote the academic achievement of students. With respect to BIE schools, Congress has wrestled to find a BIE administrative structure that will support greater academic achievement of BIE students. Other issues that Congress and Administrations have attempted to address are the condition of school facilities, the incidence of violence and alcohol and drug use among Indian students, the differential administration of discipline in public schools, and the adequacy of funding.

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Introduction

The federal government provides elementary and secondary education and educational assistance to Indian[1] children, either directly through federally funded schools or indirectly through educational assistance to public schools. The Bureau of Indian Education (BIE)[2] in the U.S. Department of the Interior (DOI) oversees the federally funded BIE system of elementary and secondary schools. The BIE system is funded primarily by the BIE but also receives considerable funding from the U.S. Department of Education (ED). The public school systems of the states receive federal funding from ED, the BIE, and other federal agencies.

Federal provision of educational services and assistance to Indian children is based not on race/ethnicity but primarily on their membership in, eligibility for membership in, or familial relationship to members of Indian tribes, which are political entities. Federal Indian education programs are intended to serve Indian children who are members of, or, depending on the program, are at least second-degree descendants of members of, one of the 567 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian tribes.[3] The federal government considers its Indian education programs to be based on its trust relationship with 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).[4] Despite this trust relationship, Indian education programs are discretionary and not an entitlement like Medicare.

Indian children, as enrollees in public education, are also eligible for the federal government's general programs of educational 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 students served by these programs, an overview of programs and their funding, and brief discussions of selected issues in Indian education.

[1] In this report, the term "Indian" means American Indians and Alaska Natives (the latter term includes American Indians, Alaska Natives, Eskimos (Inuit and Yupik), and Aleuts of Alaska).

[2] 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.

[3] The list of federally recognized tribal entities is published annually in the *Federal Register*. The most recent list is U.S. Department of the Interior, Bureau of Indian Affairs, "Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs," 82 *Federal Register* 4915-4920, January 17, 2017.

[4] Decisions of the U.S. Supreme Court have characterized the role of the federal government with respect to Indian tribes as involving a trust relationship. Having identified the trust relationship, the Court has upheld congressional power to provide special treatment for Indians, declaring that "[a]s long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed" (Morton v. Mancari, 417 U.S. 535, 555 (1974)). However, the Court has never interpreted the trust relationship to require any definite action on the part of Congress. When called upon to decide whether an administrative agency has breached its trust obligation or when called upon to enforce the trust obligation against an agency of the Executive Branch, moreover, the Court confines its review to whether the agency has a trust obligation imposed upon it by statute. See, for example, United States v. Mitchell, 463 U.S. 206 (1983).

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.[5] Through the rest of the 18th century, the 19th century, and much of the 20th century, Congress's 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.[6]

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 for a tribe—in this case, vocational—was in 1794.[7] The first treaty providing for academic instruction for a tribe was in 1803.[8] Altogether over 150 treaties with individual tribes provided for instructors, teachers, or schools, whether vocational, academic, or both, either permanently or for a limited period of time.[9] The first U.S. statute authorizing appropriations to "promote civilization" among Indian tribes was the Indian Trade and Intercourse Act of 1793,[10] but the Civilization Act of 1819 was the first authorization and appropriation specifically for instruction of Indian children near frontier settlements in reading, writing, and arithmetic.[11] 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.[12]

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 DOI's BIA with central policies and oversight.[13] In 1869, the Board of Indian Commissioners—a federally appointed board that

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[5] Worthington Chauncey Ford, 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.

[6] Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), pp. 135-136.

[7] 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, 48th Cong., 2nd sess. (Washington: GPO, 1888), p. 162.

[8] Treaty with the Kaskaskia, Art. 3d, August 13, 1803, 7 Stat. 78, 79.

[9] Nell Jessup Newton, 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.

[10] §9, Act of March 1, 1793, Chap. 19, 2nd Cong., 2nd 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.

[11] Act of March 3, 1819, Chap. 85, 15th Cong., 2nd sess., 3 Stat. 516. Previous appropriations for Indian affairs would have funded education only for children of tribes that signed treaties providing for education.

[12] Fletcher, *Indian Education and Civilization*, p. 197.

[13] 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.

jointly controlled with DOI the disbursement of certain funds for Indians[14]—recommended the establishment of government schools and teachers.[15] In 1870, Congress passed the first *general* appropriation for Indian schools not provided for under treaties.[16] The initial appropriation was $100,000, but both the amount appropriated and the number of schools operated by the BIA rose swiftly thereafter.[17] 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).[18] Most BIA students attended on- or off-reservation boarding schools.[19] BIA schools were chiefly elementary and vocational schools.[20]

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.[21] The education of Alaska Native children, however, along with that of other Alaskan children, was assigned in 1885 to DOI's Office of Education, not the BIA.[22] Mission, tribal,[23] 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.[24]

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.[25] After 1910, the BIA pushed to move Indian children to nearby public schools and to close BIA schools.[26] 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.[27]

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[14] The Board of Commissioners was created by the April 10, 1869, act (16 Stat. 40).

[15] Fletcher, *Indian Education and Civilization*, p. 167.

[16] An Act Making Appropriations for the Current and Contingent Expenses of the Indian Department ..., Act of July 15, 1870, Chap. 296, 41st Cong., 2nd 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.

[17] Paul Stuart, *Nations Within a Nation: Historical Statistics of American Indians* (New York: Greenwood Press, 1987), pp. 135, 165.

[18] 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.

[19] Prucha, *Great Father*, pp. 815-816.

[20] Szasz and Ryan, "American Indian Education," pp. 290-294.

[21] Edward E. Hill, 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.

[22] 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, 48th Cong. 1st sess., 23 Stat. 24, 27-28.

[23] 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.

[24] Szasz and Ryan, "American Indian Education," p. 291.

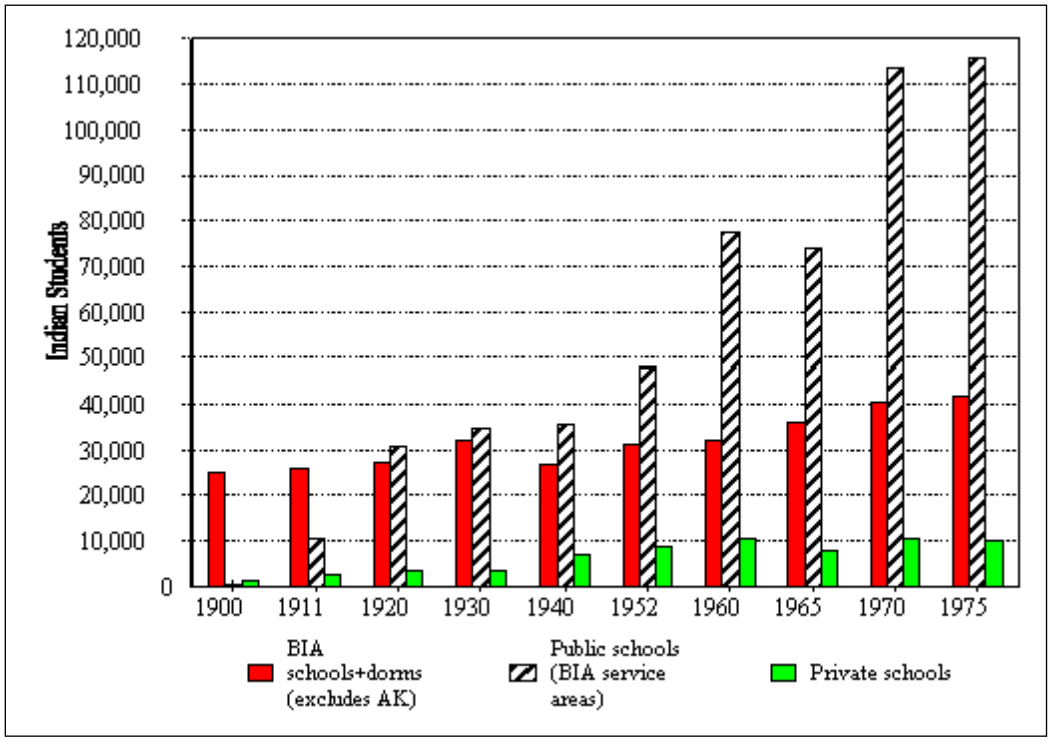
[25] U.S. Department of the Interior, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs [Fiscal Year 1890-1891]* (Washington: GPO, 1891), p. 71.

[26] Prucha, *Great Father*, pp. 823-825.

[27] Prucha, *Great Father*, pp. 824-825.

By 1920, more Indian students were in public schools than BIA schools.[28] **Figure 1** displays the changing number of Indian students in BIA, 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.[29] Comparable data are no longer available.

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 1 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.

In 1921, Congress passed the Snyder Act[30] 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.

[28] 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.

[29] Marlita A. Reddy, 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.

[30] Act of November 2, 1921, 42 Stat. 208, as amended; 25 U.S.C. §13.

In 1934, to simplify the reimbursement of public schools for educating Indian students, Congress passed the Johnson-O'Malley (JOM) Act,[31] authorizing the BIA to contract with the states, except Oklahoma, and the territories for the education of Indians (and other services to Indians).[32]

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 from solely Euro-American subjects to include Indian culture and vocational education.[33] In addition in 1931, responsibility for Alaska Native education was transferred to the BIA.[34]

The first major non-DOI federal funding for Indian education in the 20th century began in 1953, when the Federal Assistance for Local Educational Agencies Affected by Federal Activities program,[35] now known as Impact Aid, was amended to cover Indian children eligible for BIA schools.[36] Impact Aid pays public school districts to help fund the education of children in "federally impacted areas." Further changes to the Impact Aid law in 1958 and the 1970s increased the funding that was allocated according to the number of children on Indian lands.[37] Congressional appropriations for Impact Aid increased as the JOM funding decreased.

In 1966 Congress added further non-DOI funding for Indian education by amending the Elementary and Secondary Education Act (ESEA) of 1965,[38] the major act authorizing federal education aid to public school districts, to add set-asides for BIA schools to the program of grants to help educate students from low-income families; school library resources, textbook, and instructional materials; and supplementary educational centers and services.[39]

A congressional study of Indian education in 1969[40] that was highly critical of federal Indian education programs led to further expansion of federal non-DOI assistance for Indian education, embodied in the Indian Education Act of 1972, now known as ESEA Title VI.[41] The Indian Education Act established the Office of Indian Education (OIE) within the Department of Health, Education and Welfare and authorized OIE to make grants to local educational agencies (LEAs)

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[31] P.L. 73-167, Act of April 16, 1934, 48 Stat. 596, as amended; 25 U.S.C. §452-457.

[32] Szasz and Ryan, "American Indian Education," p. 295.

[33] Szasz and Ryan, "American Indian Education," pp. 294-295; Prucha, *Great Father*, pp. 836-839, 977-983; and Margaret Connell Szasz, "W. Carson Ryan: From the Meriam Report to the Indian New Deal," in *Education and the American Indian: The Road to Self-Determination Since 1928*, 2nd ed. (Albuquerque: University of New Mexico Press, 1977), pp. 16-36. 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)).

[34] Szasz and Ryan, "American Indian Education," p. 297.

[35] P.L. 81-874, Act of September 30, 1950, 64 Stat. 1100, as amended; currently codified as Title VII of the Elementary and Secondary Education Act (ESEA).

[36] P.L. 83-248, Act of August 8, 1953, 67 Stat. 530.

[37] Larry LaCounte, *Tribal Perspective of the Impact Aid Program* (Washington: National Indian Policy Center, 1993), pp. 3-5.

[38] P.L. 89-10, Act of April 11, 1965, 79 Stat. 27, as amended.

[39] §102, Elementary and Secondary Education Amendments of 1966, P.L. 89-750, Act of Nov 3, 1966, 80 Stat 1191.

[40] 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).

[41] 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 as ESEA Title VI-A.

with Indian children.[42] The OIE was the first organization outside of DOI (since DOI's birth in 1849) that was created expressly to oversee a federal Indian education program.

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 school (the Rough Rock Demonstration School on the Navajo Reservation).[43] In 1975, through enactment of the Indian Self-Determination and Education Assistance Act (ISDEAA),[44] 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."[45] 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.[46] Ten years later, the Tribally Controlled Schools Act (TCSA) of 1988[47] authorized grants to tribes and tribal organizations to operate their BIA schools. 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.[48]

Indian control in public schools received an initial boost from the 1972 Indian Education Act. The ESEA Title VI requires that public school districts applying for its grants prove adequate participation by Indian parents and tribal communities in program development, operation, and evaluation.[49] The 1972 Indian Education Act also amended the Impact Aid program to mandate Indian parents' consultation in school programs funded by Impact Aid.[50] In 1975, the ISDEAA added to the JOM 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.[51] Finally, the Improving America's Schools Act of 1994 (P.L. 103-382, Section 9112(b)) and the Every Student Succeeds Act (ESSA; P.L. 114-95) have expanded eligibility under the current ESEA Title VI formula grant program to Indian tribes; Indian organizations; Indian community-based organizations; and consortia of LEAs, Indian tribes, Indian organizations, and Indian community-based organizations.

Starting in the 1960s, the number of schools in the BIA school system began to shrink through administrative consolidation and congressional closures. For example, all BIA-funded schools in Alaska were transferred to the state of Alaska between 1966 and 1985, removing an estimated 120 schools from BIA responsibility.[52] The number of BIA-funded schools and dormitories stood

[42] The OIE was transferred to the new Department of Education in 1980.

[43] Prucha, *Great Father*, p. 1102.

[44] P.L. 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended; 25 U.S.C. §450 *et seq.*

[45] 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).

[46] Prucha, *Great Father*, p. 1146.

[47] P.L. 100-297, Title V, Act of April 28, 1988, 102 Stat. 130, 385, as amended; 25 U.S.C., Chap. 27.

[48] Provisions are currently codified at 25 U.S.C. §2007 and 25 U.S.C. §2503.

[49] §421(a) of the 1972 act; currently codified at ESEA §6114(c)(4).

[50] P.L. 92-318, §411(a),(c)(2), 86 Stat. 334-339; currently codified, as amended, at ESEA §7004. See also Szasz and Ryan, "American Indian Education," p. 298.

[51] 25 U.S.C. §456.

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

at 233 in 1930[53] and 277 in 1965,[54] but fell to 227 in 1982 and to 180 in 1986 before rising to 185 by 1994;[55] it currently stands at 183.[56] Since the 1990s, Congress has limited both the number of BIA schools and the grade structure of the schools.[57] The number of Indian students educated at BIA schools has numbered approximately 48,000 over the last 15 years.[58] In 2006, the Secretary of the Interior separated the BIA education programs in the Office of Indian 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.[59]

Students Served by Federal Indian Education Programs

It is commonly estimated that BIE schools serve less than 10% of Indian students, public schools serve over 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). In addition, it is unlikely that every school or school district that enrolls at least one Indian student receives funding from a federal program designed to serve Indian students or funded based on numbers of Indian students.

Although different federal Indian education programs have different eligibility criteria, none of the eligibility criteria are based solely on race/ethnicity. 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 who are 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.[60] Many Indian tribes allow 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 JOM program, according to its regulations, serves students in public schools who are at least one-fourth degree Indian blood and recognized by the BIA as eligible for BIA services.[61]

The ED ESEA Title VII-A programs, on the other hand, serve a broader set of students: (1) members of federally recognized tribes and their first and second degree descendants; (2) members of two types of nonfederally recognized tribes, state-recognized tribes and tribes whose

[53] 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.

[54] 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.

[55] U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, *Fiscal Year 1995 Annual Education Report* (Washington: The Bureau, no date), p. vi.

[56] U.S. Department of the Interior, Indian Affairs, *Budget Justifications Fiscal Year 2018* (hereinafter referred to as the *FY2018 Budget*). p. IA-BIE-8.

[57] The limitations are in the annual BIA appropriations acts.

[58] *Budget Justifications FY2003–FY2018.*

[59] U.S. Department of the Interior, Indian Affairs, *Budget Justifications Fiscal Year 2008*, pp. IA-EDUC-5 to -6

[60] 25 U.S.C. §2007(f). "One-fourth degree" is the equivalent of one "full-blood" grandparent out of four. In certain circumstances, non-Indian students may attend BIE schools.

[61] 25 C.F.R. 273.12.

federal recognition was terminated after 1940, and their first and second degree descendants; (3) members of an organized Indian group that received a grant under the ED Indian Education formula grant program as it was in effect before the passage of the Improving America's Schools Act of 1994;[62] (4) Eskimos, Aleuts, or other Alaska Natives; and (5) individuals considered to be Indian by the Secretary of the Interior, for any purpose.[63] Public school districts must have a minimum number or percentage of ESEA Title VII-eligible Indian students to receive a grant. The ESEA Title VII grants are administered by ED, so ED is the source of data on the ESEA Title VII students.

Another major ED program, the Impact Aid program, funds public schools whose students reside on "Indian lands" or are federally connected children.[64] The students residing on Indian lands for whom Impact Aid is provided need not, however, be Indian.

Status of Indian and American Indian/Alaska Native Education

Although there is no source for the status of Indian educational achievement nationally, the educational environment and achievements of BIE students and American Indian/Alaska Native (AI/AN) students are reported. Students who identify their race/ethnicity as AI/AN may not be members or descendants of members of federally recognized Indian tribes, and not all members of such tribes may identify as AI/AN. 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),[65] publishes reports on AI/AN students' characteristics and academic achievements. NCES data are based on race/ethnicity (except most data on BIE students), so the data will include students who identify as AI/AN even though they are not members of tribes and do not fall into the eligibility categories of federal Indian education programs. NCES's race/ethnicity-based AI/AN student population is not the same as the student population served by federal Indian education programs. The two populations overlap, but the degree of overlap has not been determined. NCES data based on race/ethnicity, then, cannot be assumed to accurately represent the Indian student population served by federal Indian programs.

BIE Schools and Students

The BIE funds a system consisting of elementary and secondary schools, which provide free education to eligible Indian students, and "peripheral dormitories" (discussed below).[66] In 2014 and before, the BIE system was administered by a director and headquarters offices in Washington, DC, and Albuquerque, NM; three Associate Deputy Directors (ADDs) in the west, east, and Navajo area; and 22 education line offices (ELOs) across Indian Country. ELOs provided leadership, technical support, and instructional support for the schools and peripheral dorms.[67] Starting in June 2014, the Secretary began restructuring the BIE in an effort to increase

[62] P.L. 103-382, Act of October 20, 1994, 108 Stat. 3518.

[63] ESEA §7151(3).

[64] 25 U.S.C. §7703(a)(1).

[65] NAEP is often known as "the nation's report card."

[66] 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.

[67] *FY2013 Budget*, p. IA-BIE-40.

tribal capacity to operate schools and improve educational outcomes. The planned structure maintains a director in Washington, DC. It has separate oversight through three ADDs—one serving schools serving the Navajo nation, one serving the remaining BIE operated schools, and one serving tribally operated schools. Fifteen Education Resource Centers (ERC), renamed and restructured ELOs, report to the ADDs.[68]

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. Approximately one-third of BIE schools are K-8; while another one-third are either K-12 or K-6.[69] Peripheral dormitories house students who attend nearby public or BIE schools; these dorms are also located both on and off reservations.

Elementary and 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, respectively. (See the discussion of these two acts in "Statutory Authority for BIE Elementary and Secondary Schools," below.) In addition, some schools are operated through a cooperative agreement with a public school district.[70] In accordance with state law, the three BIE schools in Maine receive state funding.[71] There are eight charter schools co-located at BIE schools.[72]

BIE funds 169 schools and 14 peripheral dorms. **Table 1** shows the number of BIE-funded schools and peripheral dorms, by type of operator. The majority of BIE-funded schools are tribally operated.[73]

[68] Sally Jewel, Secretary of the Interior to Restructuring the Bureau of Indian Education, Order No. 3334, June 12, 2014.

[69] U.S. Department of the Interior, Bureau of Indian Education, *National Directory*, updated February 2017.

[70] The Turtle Mountain Elementary and Middle schools in North Dakota are operated by a cooperative agreement between a public school district and the BIE (For a history of the schools, see http://www.belcourt.k12.nd.us/education/components/scrapbook/default.php?sectiondetailid=1258). The Standing Rock Community School is operated through a Joint Powers Agreement between the Standing Rock Tribal Grant School and the Fort Yates Public School District (See U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *American Indian and Alaska Native Public Witness Hearing*, Testimony of The Standing Rock Sioux Tribe, 115th Cong., 1st sess., May 17, 2017).

[71] Lawrence O. Picus, Allan Odden, and Michael Goetz, et al., *An Independent Review of Maine's Essential Programs and Services Funding Act: Part 1*, Lawrence O. Picus and Associates, Presented to the Maine Legislature's Joint Standing Committee on Education and Cultural Affairs, North Hollywood, CA, April 1, 2013.

[72] The schools are Blackwater Community School in Coolidge, AZ; Kin Dah Lichi'i Olta' (Kinlichee) in Ganado, AZ; Little Singer Community School in Winslow, AZ; Nazlini Community School in Ganado, AZ; Seba Dalkai Boarding School in Winslow, AZ; Shonto Preparatory School in Shonto, AZ; Hannahville Indian School in Wilson, MI; and Joseph K. Lumsden Bahweting Anishnabe Academy in Sault Ste. Marie, MI.

[73] *FY2018 Budget*.

Table 1. Number of BIE-Funded Schools and Peripheral Dormitories, FY2017

Schools and Peripheral Dormitories	Tribally Operated	BIE-Operated	Total
Total	130	53	183
Elementary/Secondary Schools	117	52	169
Day schools	92	26	118
Boarding schools	25	26	51
Peripheral Dormitories	13	1	14

Source: U.S. Department of the Interior, Indian Affairs, *Budget Justifications Fiscal Year 2018* (hereinafter referred to as the *FY2018 Budget*).

In the mid-1990s, Congress became 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."[74] As a consequence, the total number of BIE schools and peripheral dorms, the class structure of each school, and co-located charter schools has been limited by Congress. Through annual appropriation acts from FY1994 through FY2011, Congress prohibited BIE from funding schools that were not in the BIE system as of September 1, 1996, and from FY1996 through FY2011 prohibited the use of BIE funds to expand a school's grade structure beyond the grades in place as of October 1, 1995. Appropriations acts since FY2000 have prohibited the establishment of co-located charter schools.

Beginning in FY2012, Congress has begun to loosen restrictions on the size and scope of the BIE school system. The FY2012 appropriations act maintained the aforementioned prohibitions except in the instance of schools and school programs that were closed and removed from the BIE school system between 1951 and 1972 and whose respective tribe's relationship with the federal government was terminated.[75] As a result in July 2012, BIE began funding grades 1-6 of Jones Academy in Hartshorne, OK. Jones Academy was previously funded by BIE as a peripheral dormitory for students attending schools in grades 1-12, and by the local public school district as a grades 1-6 elementary school. The appropriations acts since FY2014 have authorized the Secretary to support the expansion of up to one additional grade to accomplish the BIE's mission. As a result, in 2014 the BIE approved funding for the tribally funded 6th grade of the otherwise BIE-funded Shoshone-Bannock Junior High.[76] Finally, appropriations acts since FY2015 have authorized the BIE to approve satellite locations of BIE schools at which an Indian tribe may provide language and cultural immersion educational programs as long as the BIE is not responsible for the facilities-related costs. Accordingly, in AY2015-2106 the Nay-Ah-Shing School in Minnesota opened the Pine Grove Satellite Learning Center using broadband and reducing transportation times and costs.[77]

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

[75] The Consolidated Appropriations Act, 2012 (P.L. 112-74).

[76] U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *American Indian and Alaska Native Public and Outside Witness Hearing*, Mr. Nathan Small, Chairman, Shoshone-Bannock Tribes of the Ft. Hall Reservation Testimony, 114th Cong., 1st sess., March 24, 2015.

[77] Holland & Knight, "Launching a Tribal Satellite School Expansion Plan," https://m.hklaw.com/ourprofile/casestudies/tribalsatelliteschoolexpansionplan/, as downloaded by CRS on April 3, 2017.

Only Indian children attend the BIE school system, with few exceptions. In SY2016-2017, BIE-funded schools and peripheral dorms serve approximately 48,000 Indian students representing almost 250 tribes in 23 states.[78] For SY2012-2013–SY2014-2015, approximately 62% of BIE-funded schools and dorms averaged 200 or fewer children in attendance.[79]

BIE schools and dormitories are not evenly distributed across the country. From SY2012-2013 to SY2014-2015, almost 66% of BIE schools and dormitories and approximately 65% of BIE students were located in 3 of the 23 states: Arizona (29% of students), New Mexico (21%), and South Dakota (16%). **Table 2** shows the distribution of BIE schools and students across the 23 states. There are no BIE schools or students in Alaska, a circumstance directed by Congress (see "Brief History of Federal Indian Education Activities," above).[80]

Table 2. BIE Schools and Peripheral Dormitories and Students: Number and Percent, by State, Average SY2012-2013 to SY2014-2015

Descending order by the number of students

	Schools and Dorms		Students	
State	Number	Percentage	Number	Percentage
Arizona	54	30%	11,892	29%
New Mexico	44	24%	8,551	21%
South Dakota	22	12%	6,438	16%
North Dakota	11	6%	3,674	9%
Mississippi	8	4%	2,100	5%
Washington	8	4%	1,696	4%
Oklahoma	5	3%	1,165	3%
North Carolina	1	1%	971	2%
Wisconsin	3	2%	854	2%
Minnesota	4	2%	612	1%
California	2	1%	464	1%
Montana	3	2%	436	1%
Michigan	2	1%	397	1%
Oregon	1	1%	344	1%
Maine	3	2%	293	1%
Iowa	1	1%	258	1%
Utah[a]	2	1%	254	1%
Florida	2	1%	251	1%
Idaho	2	1%	198	0%

[78] *FY2017 Budget*.

[79] Percentage calculated by CRS based on *FY2017 Budget*, Appendix 2.

[80] 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, for example, P.L. 110-161 (121 Stat. 2113).

State	Schools and Dorms		Students	
	Number	Percentage	Number	Percentage
Wyoming	1	1%	188	0%
Louisiana	1	1%	93	0%
Nevada	2	1%	79	0%
Kansas	1	1%	54	0%
Total[b]	183	100.0%	41,263	100.0%

Source: *FY2017 Budget*, Appendix 2.

Notes: Student counts are based on the three-year average daily membership, which counts students attendance during the entire year.

a. Student counts and number of schools and dorms exclude Sevier-Richfield Public Schools in Utah, which receive BIE funds for the education of out-of-state students residing at the BIE-funded Richfield Dormitory.

b. Totals may not add due to rounding.

One measure of a school system's quality and the academic achievement of students is the average score of students on the National Assessment of Educational Progress (NAEP) reading and mathematics assessments.[81] **Table 3** indicates that, on average, students in BIE schools score below students in public schools on the NAEP assessment. For example, on the 4th grade 2013 NAEP reading assessment all BIE school students scored an average of 181 while all public school students scored an average of 221.

Table 3. Average Scores in NAEP Reading and Math, by Assessment, and Type of School: 2013 and 2015

Type of School	Average NAEP Score			
	Grade 4 Reading	Grade 8 Reading	Grade 4 Math	Grade 8 Math
2013				
BIE schools	181	235	212	250
Public schools	221	266	241	284
2015				
BIE schools	NA	236	NA	252
Public schools	221	264	240	281

Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP) Data Explorer, available at http://nces.ed.gov/nationsreportcard/naepdata/.

Notes: NA means reporting standards not met.

[81] The NAEP, directed by the U.S. Department of Education, is the largest nationally representative and continuing assessment of what America's students know and can do in various subject areas. Since NAEP assessments are administered uniformly across the nation, NAEP results serve as a common metric.

Public Schools and AI/AN Students

There were approximately 50 million public school students enrolled in elementary and secondary schools in fall 2013, and 523,000 (1.0%) were AI/ANs.[82] In fall 2013 (the latest data available), approximately 80% of AI/AN students lived in 16 states. These states, presented in descending order of their number of AI/AN students, are Oklahoma, Arizona, California, New Mexico, Alaska, North Carolina, Texas, Montana, New York, South Dakota, Minnesota, Washington, Michigan, Wisconsin, Oregon, and Florida.[83] A greater than average proportion of AI/AN students live in poverty and require services for students with disabilities.[84] The percentage of AI/AN children under age 18 in families living in poverty was 35% in 2014.[85] In SY2013–2014, the percentage of AI/AN children ages 3–21 who were served under the Individuals with Disabilities Education Act (IDEA) as a percentage of total enrollment in public schools was highest for AI/AN students (17%), the highest among all racial/ethnic groups.[86] The percentage of 16- through 24-year-old AI/AN students who were not enrolled in school and had not earned a high school credential was 12% in 2014, compared to 6% for all 16- through 24-year-olds.[87]

The educational achievement of AI/AN students in public schools can be deduced from the average scores of AI/AN and non AI/AN students on the NAEP. **Table 4** presents results of the 2015 NAEP for AI/AN and non AI/AN students in grades 4, 8, and 12. The average NAEP score for AI/AN students is consistently lower than that for white and Asian/Pacific Islander students. Although it is generally above the scores for black students and similar to the scores of Hispanic students.

[82] G. Kena, W. Hussar, J. McFarland, C. de Brey, L. Musu-Gillette, X. Wang, J. Zhang, A. Rathbun, S. Wilkinson-Flicker, M. Diliberti, A. Barmer, F. Bullock Mann, and E. Dunlop Velez, *The Condition of Education 2016* (NCES 2016-144), U.S. Department of Education, National Center for Education Statistics. Washington, DC, 2016. Retrieved April 4, 2017, from http://nces.ed.gov/pubsearch, Table 203.50.

[83] Ibid, Tables 203.20 and 203.70.

[84] G. Kena, W. Hussar, J. McFarland, C. de Brey, L. Musu-Gillette, X. Wang, J. Zhang, A. Rathbun, S. Wilkinson-Flicker, M. Diliberti, A. Barmer, F. Bullock Mann, and E. Dunlop Velez, *The Condition of Education 2016* (NCES 2016-144), U.S. Department of Education, National Center for Education Statistics. Washington, DC, 2016. Retrieved April 6, 2017, from http://nces.ed.gov/pubsearch., Tables 102.60 and 204.50.

[85] Ibid.

[86] Ibid.

[87] T.D. Snyder, C. de Brey, and S.A. Dillow, *Digest of Education Statistics 2015* (NCES 2016-014), National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC, 2016. Table 219.80.

Table 4. Average Public School Scores in NAEP Reading and Math, by Assessment and Student Race/Ethnicity: 2015

Student Race/Ethnicity	Average NAEP Score					
	Grade 4 Reading	Grade 8 Reading	Grade 12 Reading	Grade 4 Math	Grade 8 Math	Grade 12 Math
AI/AN	206	253	278	228	267	137
White	232	273	294	248	291	159
Black	206	247	265	224	260	129
Hispanic	208	253	275	230	229	138
Asian/Pacific Islander	238	279	297	256	305	169

Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP) Data Explorer, available at http://nces.ed.gov/nationsreportcard/naepdata/.

Notes: AI/AN means American Indian/Alaska Native.

Federal Indian Elementary and Secondary Education Programs and Services

Federal Indian elementary and secondary education programs serve Indian elementary and secondary students in public schools, private schools, and the BIE system. Except for one BIE program, public schools do not generally 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 the BIE and from ED. The BIE estimates that it provides about 75% of BIE-funded schools' overall federal funding, and ED provides the remainder.[88] This section of the report profiles first the BIE programs and second those ED programs that provide significant funding for Indian education.

Statutory Authority for BIE Elementary and 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[89]

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,

[88] *FY2018 Budget*, p. IA-BIE-11.

[89] Act of November 2, 1921, 42 Stat. 208, as amended; 25 U.S.C. §13.

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 (ISDEAA)[90]

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" or Title IV "self-governance compacts" with BIE. 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.[91] As of February 2017, only one BIE school, Miccosukee Indian School in Florida, is funded through an ISDEAA contract.[92]

Education Amendments Act of 1978[93]

Title XI of this act, as amended by the No Child Left Behind Act (NCLB; P.L. 107-110), "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 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[94]

TCSA added grants as another means, besides ISDEAA contracts, by which Indian tribes and tribal organizations may 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.[95]

BIE Elementary and Secondary Education 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'

[90] P.L. 93-638, act of January 4, 1975, 88 Stat. 2203, as amended; 25 U.S.C. §5301 et seq.

[91] BIE's formula funding for schools is excluded from "self-governance compacts" (25 U.S.C. §5363(b)(4)(B)).

[92] Department of the Interior, Bureau of Indian Education, *National Directory*, updated February 2017.

[93] 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 (25 U.S.C. §2000 *et seq.*).

[94] P.L. 100-297, Title V, Act of April 28, 1988, 102 Stat. 130, 385, as amended; 25 U.S.C., Chap. 27.

[95] *Cohen's Handbook of Federal Indian Law 2005 Edition*, p. 1361.

appropriations for a *fiscal* year are used to fund the *school* year that begins during that fiscal year.[96] Forward funding in the case of elementary and secondary education programs was designed to allow additional time for school officials to develop budgets in advance of the beginning of the school year. These forward-funded appropriations are specified through provisions in the annual appropriations bill.

Indian School Equalization Program (ISEP)[97]

The Indian School Equalization Program (ISEP) is the formula-based grant program through which congressional appropriations for BIE-funded schools' academic (and, if applicable, residential) operating costs are allocated among the schools. ISEP grant funds are the primary funding for basic and supplemental educational programs for Indian students attending BIE-funded schools. In addition, ISEP grant funds pay tuition to Sevier Public Schools in Utah for out-of-state Indian students living in the nearby BIE Richfield peripheral dormitory. The ISEP allocation formula, although authorized under the Education Amendments of 1978, 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 schools' grade levels and students' 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, supplemental education programs, and a school's size. The final weighted figure is called the "weighted student unit" (WSU). A three-year WSU average is calculated for each school and nationally. Each school receives a portion of the ISEP appropriation that is the same proportion that the school's three-year WSU average is to the national three-year average WSU.[98]

Before allocation under the funding formula, part of ISEP funds are set aside for program adjustments, contingencies, and appeals. In recent years, program adjustments have funded safety and security projects, behavior intervention programs, targeted education projects to increase academic achievement, police services, and parental participation projects. The targeted education project from SY2005-2006 to SY2015-2016 was the FOCUS program, which supported at-risk students in schools that were close to making adequate yearly progress (AYP) by providing for technical assistance on effective teaching practices and data-driven instructional decision-making.[99] The targeted program starting in SY2016-2017 is intended to build school staff capacity with respect to budget and programming.

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

[96] 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 *FY*2012 (October 1, 2011-September 30, 2012) will be used to fund *SY*2012-2013 (July 1, 2012-September 30, 2013).

[97] 25 U.S.C. §2007.

[98] 25 C.F.R. Part 39, Subparts A-C.

[99] Title I-A of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (P.L. 107-110) included accountability requirements that required states to implement content and performance standards and assessments aligned with standards for reading/language arts and mathematics for multiple grades. The results of these assessments were used to determine whether each public school and local educational agency (LEA) made annual adequate yearly progress (AYP). A series of increasingly substantial consequences were applied to schools and LEAs that failed to meet the AYP standards for two consecutive years or more. ESEA, as amended by the Every Student Succeeds Act (ESSA; P.L. 114-95), does not include the same accountability requirements.

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).[100]

Early Child and Family Development

BIE's early childhood development program provides grants to tribes and tribal organizations for services for pre-school Indian students and their parents.[101] The program includes early childhood education for children under six 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. From 1991 to 2013, FACE served over 19,000 adults and 21,000 children at 61 different schools.[102] In SY 2015-2016, the last full year for which data are available, 2,129 adults and 2,265 children were served.[103]

Tribal Grant Support Costs (Administrative Cost Grants)

Tribal grant support costs,[104] formerly known as administrative cost grants, pay administrative and indirect costs for tribally operated TCSA-grant schools. Administrative costs for BIE-operated schools are funded through BIE program management appropriations. 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. For the first time in FY2016, appropriations fully funded the statutorily determined grant amounts without the need for a ratable reduction.

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. This is not a forward-funded program. These funds are available at the beginning of the fiscal year for a period of 24 months.

Facilities Maintenance

This program funds preventive, routine cyclic, and unscheduled maintenance for all school buildings, equipment, utility systems, and ground structures. Like facilities operations funds, the funds are available at the beginning of the fiscal year for a period of 24 months. Appropriations

[100] 25 C.F.R. Part 39, Subpart G.

[101] 25 U.S.C. §2019.

[102] Vicki Yarnell, Theodora Lambson, and Judy Pfannenstiel, *BIE Family and Child Education Program: 2013 Report*, Research & Training Associates, Inc., Report Prepared for: U.S. Department of the Interior, May 2014, p. 12.

[103] *FY2018 Budget*, pp. IA-BIE-17.

[104] 25 U.S.C. §2008.

for facilities maintenance were transferred from the BIA Construction account to the BIE account in FY2012.

Education Program Enhancements

Education Program Enhancements receive a line item in the appropriations request. This program allows the BIE discretion to provide targeted improvements and interventions. Examples of activities funded in recent years include supporting BIE reorganization efforts, providing leadership training and professional development, funding the Sovereignty in Indian Education (SIE) Enhancement program, and developing partnerships with tribally controlled colleges. In addition, funding has been used to develop tribal education departments.

Residential Education Placement Program

The Residential Education Placement program ensured that eligible Indian students with disabilities or social or emotional needs received an appropriate education in the least restrictive environment and as close to home as possible. Services included physical and occupational therapy, counseling, and alcohol and substance abuse treatment. In SY2008-2009, the BIE served 59 institutionalized students.[105] The program was last funded in FY2011.

Juvenile Detention Education

The Juvenile Detention Education program supported educational services for children in BIA-funded detention facilities. This is not a forward-funded program. The program was funded in FY2007-FY2011 and then again in FY2016.

Tribal Education Department Grants[106]

The Secretary is authorized to make grants and provide technical assistance to tribes for the development and operation of tribal departments of education (TEDs) for the purpose of planning and coordinating all educational programs of the tribe. Beginning in FY2015, funds have been awarded under the authority to promote tribal control and operation of BIE-funded schools on their reservations. Funds have also been awarded to begin restructuring school governance, build capacity for academic success, and develop academically rigorous and culturally relevant curricula.

Johnson O'Malley Program (BIE Assistance to Public Schools)[107]

There is one program by which the BIE provides assistance to tribes, tribal organizations, states, and LEAs for Indian students attending public schools. The Johnson O'Malley (JOM) program provides supplementary financial assistance, through contracts, to meet the unique and specialized educational needs of eligible Indian students in public schools and non-sectarian private schools. Eligible Indian students, according to BIE regulations, are students in public schools who are at least one-quarter degree Indian blood and recognized by the BIA as eligible for BIA services.[108] BIE contracts with tribes and tribal organizations to distribute funds to

[105] U.S. Department of the Interior, Indian Affairs, *Budget Justifications Fiscal Year 2011*. p. IA-EDU-21.

[106] 25 U.S.C. §2020.P.L. 95-561, as added byP.L. 107-110.

[107] 25 U.S.C. §452.

[108] 25 C.F.R. 273.12.

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—88% as of FY2012.[109] Prospective contractors must have education plans that have been approved by an Indian education committee made up of parents of Indian students. Funds 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, and enrollment in the district is at least 70% eligible Indian students.[110] This is not a forward-funded program.

BIA School Facilities Repair and Construction and Faculty Housing

The BIA funds repair, improvement, and construction activities for BIE schools and school facilities. Activities may include replacing all facilities on an existing BIE school campus, replacing individual buildings, or making minor and major repairs and improvements. Included in the education construction program is improvement and repair of BIE employee housing units. Construction may be administered either by the BIA or by tribes under the ISDEAA or the TCSA. In order to prioritize projects and guide expenditures, the BIA maintains an aggregate Facilities Condition Index (FCI), Asset Priorities Index (API), a Replacement School Construction Priority list, a Five Year Deferred Maintenance and Construction Plan, an Asset Management Plan (AMP), a list of necessary emergency repairs, and a list of deficiencies with respect to the Americans with Disabilities Act (ADA; 42 U.S.C. §12101 et seq.), Uniform Federal Accessibility Standards (UFAS; 42 U.S.C. §§4151-4157), Environmental Protection Agency (EPA), National Fire Protection Association (NFPA), and other requirements.

BIE and BIA Elementary and Secondary Education Appropriations

Indian affairs (the budgetary combination of BIA and BIE functions) appropriations for elementary and secondary education are divided between program funds, expended through the BIE, and construction and related spending carried out through the BIA. **Table 5** shows detailed appropriations for BIE programs and BIA education construction for FY2007-FY2016.

In nominal dollars, total BIA and BIE spending on elementary-secondary education and construction has increased 10% over the 10-year period, from $754 million to $831 million. In constant FY2016 dollars, total BIA and BIE spending on elementary-secondary education and construction has decreased 5% over the same 10-year period.[111] Educational programming appropriations in nominal dollars for BIE elementary-secondary programs have risen 26% over the same period, from $549 million in FY2007 to $693 million in FY2016 in nominal dollars.[112] Most of the increase is attributable to increased appropriations for ISEP and Tribal Grant Support Costs, and transferring appropriations for facilities maintenance from the BIA Education Construction account to the BIE Elementary-Secondary Education account. As illustrated in **Figure 2**, and with the exception of FY2009, BIA education construction appropriations in

[109] *FY2013 Budget*, p. IA-BIE-31.

[110] 25 C.F.R. Part 273.13.

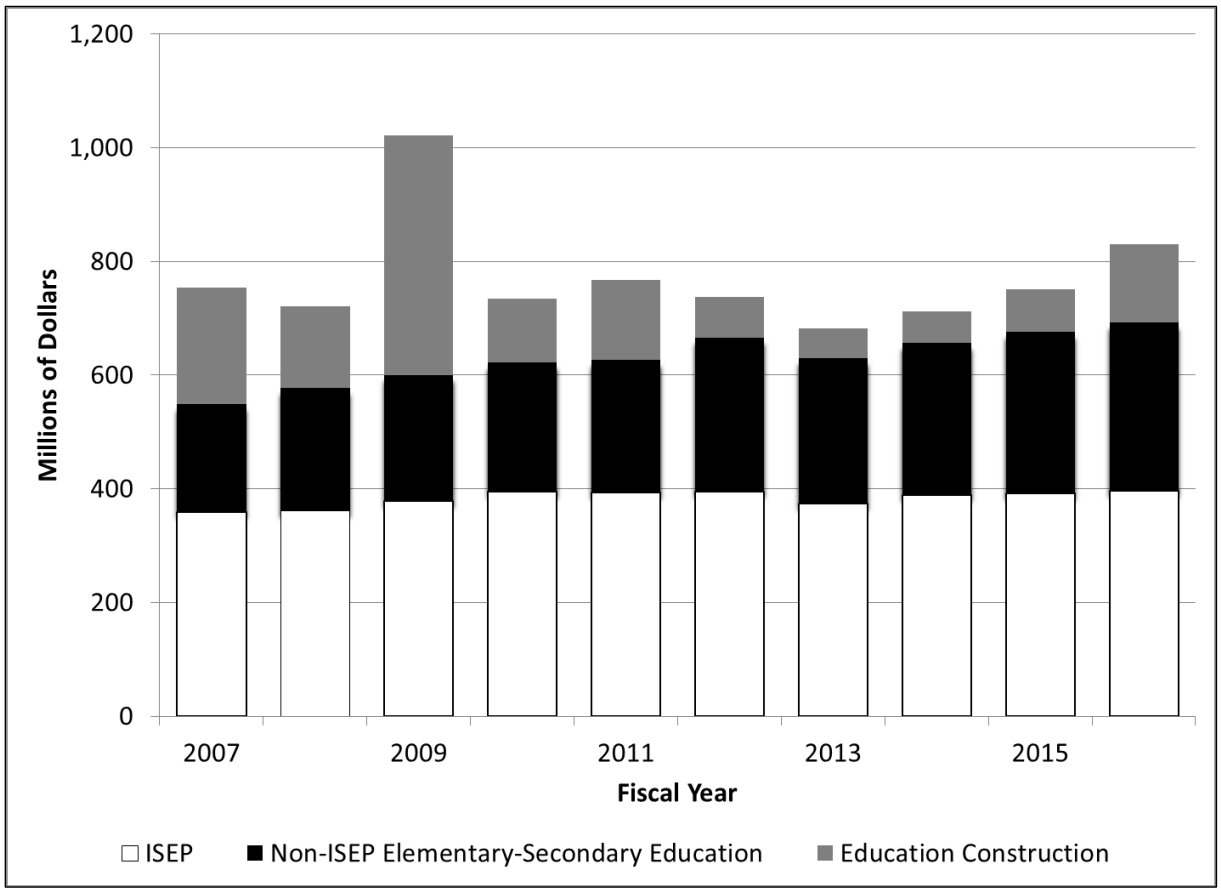
[111] FY2016 dollars calculated by CRS using the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, all items, Annual Average for the corresponding calendar year as published in the U.S. Department of Labor, Bureau of Labor Statistics, *CPI Detailed Report: Data for February 2017*.

[112] Totals for the BIE elementary-secondary education program were calculated by CRS.

nominal dollars have fallen 33%, from $205 million in FY2007 to $138 million in FY2016. Besides the facilities maintenance appropriation account transfer, this decrease is a result of lower appropriations for school and facility construction.

Figure 2. Appropriations for BIE Operations and BIA Education Construction, FY2007-FY2016

(in current dollars)



Source: Figure prepared by CRS based on U.S. Department of the Interior, Indian Affairs, *Budget Justifications and Performance Information, Fiscal Years 2007-2017.*

Notes: BIA Education Construction includes a small amount of funds for BIA postsecondary institutions. The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) appropriated $292 million for replacement school construction and facilities improvement and repair.

Table 5. Appropriations for BIE Elementary-Secondary Education Programs and BIA Education Construction, FY2007-FY2016

(current dollars in thousands)

	FY2007	FY2008	FY2009	FY2009 ARRA[a]	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
BIE Elementary-Secondary Education	**549,293**	**577,863**	**600,881**	**—**	**622,609**	**626,903**	**666,752**	**630,285**	**657,074**	**676,556**	**692,872**
Elementary/Secondary (forward-funded)	458,310	479,895	499,470	—	518,702	520,048	522,247	493,701	518,318	536,897	533,458
ISEP Formula Funds	351,817	358,341	375,000	—	391,699	390,361	390,707	368,992	384,404	386,565	391,837
ISEP Program Adjustments	7,533	3,205	3,266	—	3,338	3,331	5,278	5,019	5,324	5,353	5,401
Tribal Education Departments (TEDs)	—	—	—	—	—	—	—	—	—	2,000	2,000
Student Transportation	42,833	47,844	50,500	—	52,808	52,692	52,632	49,870	52,796	52,945	53,142
Early Childhood Development	12,067	15,024	15,223	—	15,374	15,341	15,345	14,564	15,451	15,520	15,620
Tribal Grant Support Costs[b]	44,060	43,373	43,373	—	43,373	46,280	46,253	43,834	48,253	62,395	73,276
Education Program Enhancements	—	12,108	12,108	—	12,110	12,043	12,032	11,422	12,090	12,119	12,182
Elementary/Secondary Programs	72,390	74,621	75,126	—	77,379	76,939	122,534	116,326	118,402	119,195	134,263
Facilities Operation	56,047	56,504	56,972	—	59,410	59,149	58,565	55,521	55,668	55,865	63,098
Facilities Maintenance[c]	—	—	—	—	—	—	50,665	48,190	48,396	48,591	55,887
Residential Education Placement Program[d]	3,713	3,715	3,737	—	3,760	3,755	—	—	—	—	—
Juvenile Detention Education	630	620	620	—	620	619	—	—	—	—	500
Johnson-O'Malley Program	12,000	13,782	13,797	—	13,589	13,416	13,304	12,615	14,338	14,739	14,778
Education Management	18,593	23,347	26,285	—	26,528	29,916	21,971	20,258	20,354	20,464	25,151

	FY2007	FY2008	FY2009	FY2009 ARRA[a]	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
BIA Education Construction[e]	**204,956**	**142,935**	**128,837**	**292,311**	**112,994**	**140,509**	**70,826**	**52,779**	**55,285**	**74,501**	**138,245**
Replacement School Construction	83,891	46,716	22,405	141,634	5,964	21,463	17,807	—	954	20,165	45,504
Replacement Facility Construction	26,873	9,748	17,013	—	17,013	29,466	—	—	—	—	11,935
Employee Housing Repair	1,973	1,942	4,445	—	4,451	4,438	4,428	4,405	11,935	3,823	7,565
Education Facilities Improvement and Repair	92,219	84,529	84,974	150,677	85,566	85,142	48,591	48,374	50,513	50,513	73,241
Total: BIE Elementary-Secondary Education and Education Construction	**754,249**	**720,798**	**729,718**	**292,311**	**735,603**	**767,412**	**737,578**	**683,064**	**712,359**	**751,057**	**831,117**

Source: "Annual comprehensive budget table," in U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Years 2007-2017*.

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. N/A = not applicable.

Abbreviations:

BIA—Bureau of Indian Affairs

BIE—Bureau of Indian Education

ISEP—Indian School Equalization Program

a. FY2009 ARRA funds were appropriated by the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5).

b. Tribal grant support costs were previously entitled *Administrative Cost Grants.*

c. Appropriations for facilities maintenance were transferred from the BIA Education Construction account to the BIE Elementary-Secondary Education account in FY2012.

d. The Residential Education Placement Program was formerly called the *Institutionalized Disabled Program.*

e. Education construction includes a small amount of funds for BIA postsecondary education institutions.

U.S. Department of Education Elementary and Secondary Indian Education Programs

The U.S. Department of Education (ED) provides funding specifically for Indian elementary and secondary education to both public and BIE schools. About three-quarters of this Indian education-specific funding goes to public schools and related organizations (see **Table 6** below).

ED's assistance specifically for Indian education is not to be confused with its general assistance to elementary and secondary education nationwide. Indian students benefit from ED's *general* assistance as they attend public schools. This section covers ED Indian assistance—that is, assistance statutorily specified for Indians or allotted according to the number of Indians—not general ED assistance that may also benefit Indian students.

ED Indian education funding to public and BIE schools flows through a number of programs, most authorized under the Elementary and Secondary Education Act (ESEA) or the Individuals with Disabilities Education Act (IDEA), although other acts also authorize Indian education assistance. ESEA amendments enacted through the Every Student Succeeds Act (ESSA; P.L. 114-95) become effective for AY2017-2018 for the programs described herein. For more information on IDEA programs, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by (name redacted) ; and CRS Report R43631, *The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities*, by (name redacted) .

Major ED Indian programs are profiled below. Some general ED programs have set-asides for BIE schools, while other programs 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. In many instances, BIE schools are included in the definition of local educational agency (LEA) in the ESEA[113] and IDEA,[114] 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, but these programs are not discussed here. Tribes, tribal organizations, the BIE, and BIE schools are also specifically eligible to apply for certain programs, which are not described here.

ESEA Title I-A Grants to Local Educational Agencies

Title I, Part A, of the ESEA authorizes formula grants to LEAs for the education of disadvantaged children. ESEA Title I-A grants provide supplementary educational and related services to low-achieving and other students attending pre-kindergarten through grade 12 schools with relatively high concentrations of students from low-income families. ESEA, as amended by ESSA, reserves 0.4% for the outlying areas and 0.7% for DOI unless the set-asides result in the states receiving less than their aggregate FY2016 amount, in which case the provisions under ESEA prior to the enactment of ESSA are in effect.[115] DOI funds are for BIE schools and for out-of-state Indian

[113] ESEA, §8101(30)(C).

[114] IDEA, §602(19)(C).

[115] ESEA Title I-A, as in effect prior to the enactment of the ESSA, provided a set-aside of 1% of Title I-A appropriations for DOI and the outlying areas. The portion of the 1% provided to DOI was the amount determined by the Secretary of Education to be needed to meet the special educational needs of the Indian students. Prior to FY2017, the DOI share had been approximately 70% of the total set-aside, as calculated by CRS from "Fiscal Year 2001-2016 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.

students being educated in public schools under BIE contracts (e.g., students in peripheral dorms).

ESEA Title I-B State Assessment Grants

The ESEA authorizes formula grants to states to support the development and implementation of state assessments and standards as required under ESEA Title I-A. ESEA Title I-B, as amended by ESSA, provides a set-aside of 0.5% for BIE.

ESEA Title II-A Supporting Effective Instruction

The ESEA authorizes formula grants to states that may be used for a variety of purposes related to the recruitment, retention, and professional development of K-12 teachers and school leaders. The ESEA Title II-A program, as amended by ESSA, provides a 0.5% set-aside of appropriations for programs in BIE schools.

ESEA Title III-A English Language Acquisition

Title III, Part A of the ESEA authorizes formula grants to states to provide programs for and services to English learners (ELs), also known as limited English proficient (LEP) students, and immigrant students. The program is designed to help ensure that ELs and immigrant students attain English proficiency, develop high levels of academic achievement in English, and meet the same state academic standards that all students are expected to meet. The program provides a set-aside equal to the greater of 0.5% of appropriations or $5 million for Native American and Alaska Native Children in School. The set-aside is available to eligible Indian tribes, tribally sanctioned educational authorities, Native Hawaiian or Native American Pacific Islander native language educational organizations, BIE elementary and secondary schools, and consortia of BIE elementary and secondary schools.

ESEA Title IV-B 21st Century Community Learning Centers

Title IV, Part B, of the ESEA 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. The program provides a set-aside of no more than 1% of Title IV-B appropriations for the BIE and the outlying areas. The portion of the 1% that goes to the BIE is determined by the Secretary of Education.

ESEA Title VI-A Indian Education Programs

Title VI, Part A, Subpart 1 of the ESEA, as amended by ESSA, authorizes formula grants for supplementary education programs to meet the educational and cultural needs of Indian students. LEAs, Indian tribes, Indian organizations, Indian community-based organizations, consortia of the aforementioned entities, and BIE schools are eligible for grants. For an LEA to be eligible, at least 10 Indian students must be enrolled or at least 25% of its total enrollment must 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 committee of family members of Indian students and other stakeholders.

The Indian Education programs also authorize special competitive grant programs. One provides demonstration grants to develop innovative services and programs to improve Indian students' educational opportunities and achievement. 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 Indian Education programs authorize national programs. For example, grants to tribes for education administrative planning and development are authorized. Funds are also authorized for the National Advisory Council on Indian Education (NACIE), which advises the Secretary of Education and Congress on Indian education.

ESEA Title VI-C Alaska Native Education Equity

Title VI, Part C, of the ESEA 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.

ESEA Title VII Impact Aid

Title VII of the ESEA, as amended by ESSA, authorizes Impact Aid Basic Support Payments. Impact Aid 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,"[116] which is defined as Indian trust and restricted lands,[117] lands conveyed to Alaska Native entities under the Alaska Native Claims Settlement Act of 1971,[118] public lands designated for Indian use, and certain lands used for low-rent housing. Impact Aid funds are distributed by formula directly to LEAs and are used for basic operating costs, special education, and facilities construction and maintenance. There is no requirement that the funds be used specifically or preferentially for the education of Indian students. There is, however, a requirement that Indian children participate on an equal basis with non-Indian children in all of the educational programs and activities provided by the LEA, including but not limited to those funded by Impact Aid. There is also a requirement that the LEA consult with the parents and tribes of children who reside on "Indian lands" concerning their education and to ensure that these children receive equal educational opportunities. A few BIE schools receive Impact Aid funding. ED indicates that about 113,000 students residing on Indian lands were used to determine formula allocations under Impact Aid for FY2015.[119] The amount of Impact Aid funding going to LEAs based on the number of children residing on Indian lands makes it the largest ED Indian education program.

IDEA Part B Special Education Grants to States

Part B of the IDEA 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

[116] ESEA, §7013(7).

[117] 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.

[118] P.L. 92-203, Act of December 18, 1971, 85 Stat. 688; 43 U.S.C. §1601 *et seq.*

[119] U.S. Department of Education, Fiscal Year 2017 Budget Request.

for salaries of teachers or other special education personnel, education materials, transportation, special education services, and occupational therapy or other related services. Section 611(b)(2) of the IDEA reserves 1.226% of state-grant appropriations for DOI. Each appropriations act since the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006 (P.L. 109-149) has limited the DOI set-aside to the prior-year set-aside amount increased for inflation.[120] As a consequence, in FY2016 the DOI set-aside is 0.79%. Section 611(h) of the IDEA directs the Secretary of the Interior 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.

IDEA Part C Early Intervention for Infants and Toddlers with Disabilities

Part C of the IDEA authorizes a grant program to aid each state in implementing a system of early intervention services for infants and toddlers with disabilities and their families. Section 643(b) of the IDEA reserves 1.25% of state-grant appropriations for DOI to distribute to tribes and tribal organizations for the coordination of assistance in the provision of early intervention services by the states to infants and toddlers with disabilities and their families on reservations served by BIE schools.

MVHAA Education for Homeless Children and Youths

Title VII, Part B, of the McKinney-Vento Homeless Assistance Act (MVHAA; 42 U.S.C. §§11431-11435) authorizes the Education for Homeless Children and Youth (EHCY) program. The program provides assistance to SEAs to ensure that all homeless children and youth have equal access to the same free appropriate public education, including public preschool education that is provided to other children and youth. The program provides a 1.0% set-aside of the appropriation to DOI for services provided by BIE to homeless children and youth.

Perkins Native American Career and Technical Education Program (NACTEP)

Title I of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV; P.L. 109-270) authorizes formula grants to states to support the development of career and technical skills among students in secondary and postsecondary education. The program provides a 1.25% set-aside for the Native American Career and Technical Education Program (NACTEP). Eligible entities for NACTEP funds include federally organized Indian tribes, tribal organizations, Alaska Native entities, and consortia of such, as well as BIE schools.[121]

ED Elementary and Secondary Indian Education Funding

ED Indian education funding primarily supports public schools. With the exception of FY2009, less than a quarter of ED Indian education funds are set aside for BIE schools (see **Figure 3**); however, this constitutes a significant source of BIE school funding. FY2009 funding was augmented by additional appropriations from the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5).

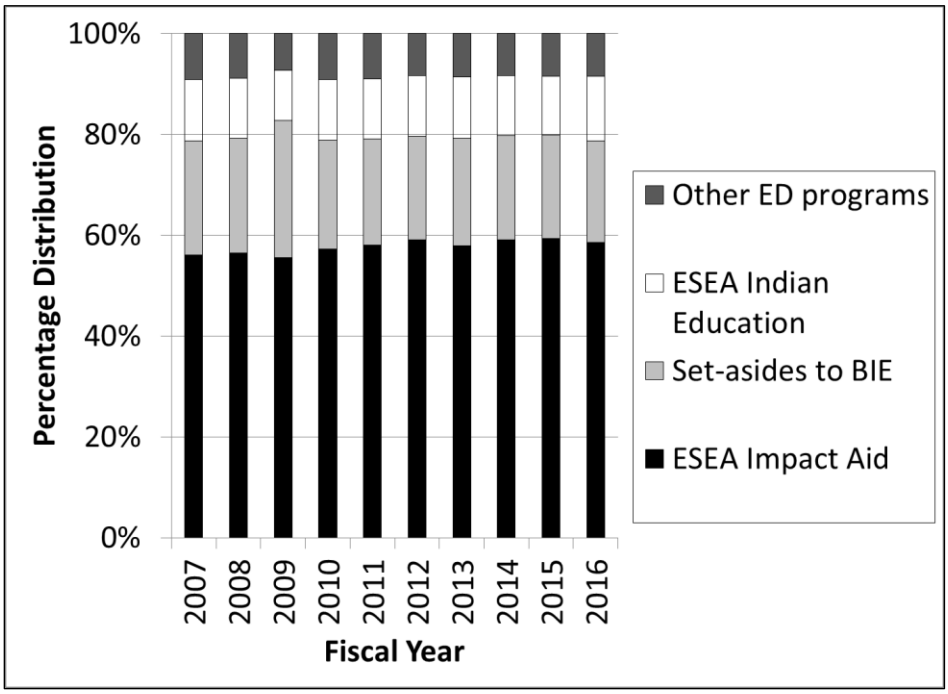
[120] The inflation index has been either as specified in Section 619(d)(2)(B) of the IDEA or the percent change in the IDEA appropriations from the prior year.

[121] BIE schools may not carry out secondary-level CTE programs with NACTEP funds, because they are eligible to receive money through the states.

In nominal dollars, the total ED Indian education program funding pattern during FY2007-FY2016 showed a steady increase, excluding funding from ARRA, from FY2007 ($.981 billion) to FY2012 ($1.084 billion), followed by a 6% decline in FY2013. The FY2013 decline was primarily a result of sequestration.[122] Funding has increased since FY2013 to a 10-year high in nominal dollars in FY2016 ($1.119 billion), excluding funding from ARRA (see **Table 6**). In constant FY2016 dollars, total ED Indian education program spending on elementary-secondary education has decreased 1% over the same 10-year period.[123]

Impact Aid is the largest single ED elementary and secondary Indian education program, as **Figure 3** illustrates. The second-largest funding stream is the BIE set-asides from several ESEA formula grant programs, especially IDEA Part B and ESEA Title I-A. The ESEA Indian Education programs provide over 10% of the total funding. Other ED programs—focused on Alaska Natives, career and technical education, early childhood education, and English language acquisition—account for about 8% of the ED funding provided for Indian education.

Figure 3. Distribution of ED Funding for Indian Education Programs, FY2007-FY2016



Source: Figure prepared by CRS based on U.S. Department of Education, Budget Service, unpublished tables, transmitted on various dates, 2008-2017. The most recent table was transmitted February 13, 2017.

[122] For FY2013, the Budget Control Act of 2011 (BCA,P.L. 112-25) called for sequestration of both mandatory and discretionary spending. In general, the Office of Management and Budget (OMB) estimated that the joint committee sequester would require a 5.0% reduction in non-exempt nondefense discretionary funding. These reductions were later applied to full-year FY2013 funding levels following the enactment of full-year funding in the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6).

[123] FY2016 dollars calculated by CRS using the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, all items, Annual Average for the corresponding calendar year as published in the U.S. Department of Labor, Bureau of Labor Statistics, *CPI Detailed Report: Data for February 2017*.

Table 6. Estimated Funding for Department of Education's Indian Elementary-Secondary Education Programs, in Descending Order of FY2015 Funding: FY2007-FY2016

(current dollars in thousands)

Education Department (ED) Programs	FY2007	FY2008	FY2009	FY2009 ARRA[a]	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Total ED Indian Elementary-Secondary Education Programs	**980,780**	**1,003,941**	**1,059,633**	**170,457**	**1,059,807**	**1,070,522**	**1,084,371**	**1,017,562**	**1,049,657**	**1,060,280**	**1,119,481**
Subtotal of ED Funds Set-Aside for the BIE	**222,078**	**228,676**	**235,295**	**98,758**	**229,009**	**225,986**	**223,480**	**216,666**	**217,872**	**216,883**	**225,198**
Percentage of Total	*23%*	*23%*	*22%*	*58%*	*22%*	*21%*	*21%*	*21%*	*21%*	*20%*	*20%*
ESEA Title I-A Grants to Local Educational Agencies	91,754	96,688	101,126	72,314	100,671	101,456	98,209	93,299	92,597	93,711	99,640
IDEA Part B Special Education Grants to States	87,433	88,767	92,012	-	92,012	92,012	92,910	92,910	93,805	94,009	94,170
ESEA Title II-A Improving Teacher Quality State Grants	14,365	14,603	14,665	-	14,665	12,263	12,271	11,631	11,690	11,690	11,690
ESEA Title IV-B 21st Century Community Learning Centers	7,129	8,070	8,163	-	8,433	8,304	8,416	7,650	8,055	7,892	8,244
IDEA Part C Grants for Infants and Families with Disabilities	5,388	5,378	5,623	-	5,623	5,291	5,342	5,181	5,414	5,414	5,661

Education Department (ED) Programs	FY2007	FY2008	FY2009	FY2009 ARRA[a]	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
ESEA Title I, Section 1003 School Improvement Grants[b]	877	3,322	3,793	20,870	3,682	3,671	3,332	3,152	3,091	3,091	2,808
ESEA State Assessment Grants	2,000	2,000	2,000	-	2,000	1,900	1,900	1,801	1,845	-	1,845
MVHAA Title VII-B Homeless Children and Youth	619	641	654	700	654	653	652	618	650	650	700
ESEA Title VI-B Rural Education	422	430	430	-	437	436	448	425	425	425	440
ESEA Title IV-A Safe and Drug-Free Schools[c]	4,750	4,750	4,750	-	-	-	-	-	300	-	-
ESEA Title II-D Educational Technology State Grants[c]	2,001	1,966	1,984	4,875	735	-	-	-	-	-	-
ESEA Title I-B-4 Literacy through School Libraries[b]	195	96	96	-	96	-	-	-	-	-	-
ESEA Title I-B Reading First[b]	5,146	1,965	-	-	-	-	-	-	-	-	-
Subtotal of Other ED Funds for Indian Education	**758,702**	**775,265**	**824,339**	**71,698**	**830,798**	**844,536**	**860,891**	**800,897**	**831,785**	**843,396**	**894,282**
Percentage of Total	*77%*	*77%*	*78%*	*42%*	*78%*	*79%*	*79%*	*79%*	*79%*	*80%*	*80%*
ESEA Impact Aid—Basic Support[d]	520,436	528,558	573,448	-	577,105	592,445	602,846	555,688	591,392	592,642	626,138

Education Department (ED) Programs	FY2007	FY2008	FY2009	FY2009 ARRA[a]	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
ESEA Indian Education—LEA Grants	95,331	96,613	99,331	-	104,331	104,122	105,851	100,381	100,381	100,381	100,381
Voc. Rehab. For AIs with Disabilities	34,444	34,892	36,113	-	42,899	43,550	37,898	37,224	37,201	39,160	43,000
ESEA Indian Education—Special Programs	19,399	19,060	19,060	-	19,060	19,022	18,796	17,993	17,993	17,993	37,993
ESEA Alaska Native Education Equity	33,907	33,315	33,315	-	33,315	33,248	32,853	31,453	31,453	31,453	32,453
ESEA Impact Aid—Disabilities	21,345	20,972	21,163	-	20,676	20,293	20,047	21,550	19,827	19,827	20,688
Perkins Native American Career and Technical Education Program	14,780	14,511	14,511	-	14,511	14,027	14,038	13,306	13,970	13,970	13,970
ESEA Impact Aid—Construction “Formula"	8,910	-	-	21,208	8,755	8,737	-	-	8,703	-	8,703
ESEA Indian Education—National Programs	3,960	3,891	3,891	-	3,891	3,883	5,852	5,565	5,565	5,565	5,656
ESEA Title III-A English Language Acquisition	5,000	4,990	5,000	-	5,000	4,950	5,000	5,000	5,000	5,000	5,000
Special Ed. Parent Info. Centers	-	-	-	-	259	259	269	209	300	-	300

Education Department (ED) Programs	FY2007	FY2008	FY2009	FY2009 ARRA[a]	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
ESEA Impact Aid—Construction "Discretionary"[e]	-	17,509	17,509	50,490	-	-	17,441	12,529	-	17,406	-
ESEA Title I-B-3 Even Start[b]	1,189	954	997	-	997	-	-	-	-	-	-

Source: U.S. Department of Education, Budget Service, unpublished tables, transmitted on various dates, 2008-2017. The most recent table was transmitted February 13, 2017.

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

Abbreviations:

ED—U.S. Department of Education

ESEA—Elementary and Secondary Education Act.

IDEA—Individuals with Disabilities Education Act

LEA—Local educational agency (school district)

MVHAA—McKinney-Vento Homeless Assistance Act

Perkins—Carl D. Perkins Career and Technical Education Act of 2006.

a. FY2009 ARRA funds were appropriated by the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5).

b. This program was not reauthorized by the Every Student Succeeds Act (ESSA; P.L. 114-95).

c. This program was not specifically reauthorized by the Every Student Succeeds Act (ESSA; P.L. 114-95). The ESSA authorizes the Student Support and Academic Enrichment Grants program (Title IV-A-1), which provides a 0.5% set-aside for BIE schools to support a well-rounded education, school safety, and technology use.

d. Some grants are awarded to BIE schools.

e. Estimated by ED based on historical data.

Issues in Indian Education

Some of the issues of concern with regard to Indian education pertain to the comparatively poor academic outcomes of Indian students, Indian communities' desire for greater control of education, the effect of the Elementary and Secondary Education Act (ESEA) on Bureau of Indian Education (BIE) schools, the poor condition of BIE school facilities, and the allocation of Johnson O'Malley funds. The federal government has been actively engaged in addressing these issues in a holistic manner in hopes of ultimately increasing the academic achievement of Indian students.

In 2011, the President signed Executive Order 13592, *Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities*. The order commits Department of the Interior (DOI) and Department of Education (ED) to tribal self-determination; Native language, culture, and history education; and to working to provide a quality education for American Indians and Alaska Natives. As a consequence of the order, the departments signed a 2012 agreement to cement and designate the responsibilities of their collaboration toward fulfilling the order.

In recent years, Congress has also supported efforts to address these issues. Beginning in 2012, Congress appropriated funds specifically to promote tribal self-determination with respect to public schools. Several ESEA provisions adopted through ESSA are designed to increase Indian and tribal influence in public schools. In recent years, authorizing and appropriating committees have held hearings on the condition of BIE school facilities. In addition, Congress has required BIE to address the process for reallocating Johnson O'Malley funds.

Poor Academic Achievement and Outcomes

There are significant gaps in educational outcomes for Indian students in BIE schools and American Indian/Alaska Native (AI/AN) students in public schools compared to other students. For more information on educational outcomes, see the earlier section entitled "Status of Indian and American Indian/Alaska Native Education." As noted in the ESEA, "it is the policy of the United States to fulfill the federal government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children."[124] Title 25 of the U.S. Code also refers to "the federal responsibility for and assistance to education of Indian children."[125]

Native Language Instruction

In prior decades, there were consistent calls to increase the use of native language instruction to increase cultural relevance and improve overall academic performance. One argument contends that language, culture, and identity are intertwined and thus are important to the tribal identity. A counter argument is that native language instruction detracts from the core curriculum. In recent years, Congress has expanded program authorities and appropriated funds to permit native language instruction.

There is not consensus in the research literature regarding the relative effectiveness of native language instruction. One commonly cited review of research studies with control groups, for

[124] ESEA §6101.

[125] 25 U.S.C. §5301(b)(2).

instance, suggests that bilingual instruction in some instances was found to improve English reading proficiency in comparison to English immersion, but in other instances it had no impact. This review focused principally on studies conducted prior to 1996 and examining instruction for Spanish-speaking elementary school children, and many of the studies have limitations. The one study of Indian native language students included in the review found no significant difference in English reading outcomes between bilingual and English-immersion instruction.[126] Some longitudinal studies prior to 2007 indicated that native language immersion students achieved higher scores on assessments of English and math than native students who did not receive native language immersion.[127] However, a more recent review of the literature suggests that rigorous Native language and culture programs sustain non-English academic achievement, build English proficiency, and enhance student motivation.[128]

There are several federal programs that support native language acquisition:

- The ESEA Title III-A English Language Acquisition (see the earlier eponymous section) permits the use of both English and a child's native language to enable the child to develop and attain English proficiency. The program set-aside may be used to help Indian and AI/AN children learn and study Native American languages, except that an outcome shall be increased English proficiency.
- The ESEA Indian Education formula grant program (ESEA Title VI-A-1) allows funds to be used to support Native American language programs and Native American language restoration programs.
- The special Indian Education program for the Improvement of Educational Opportunities for Indian Children (ESEA Title VI-A-2) allows funds to be used for bilingual and bicultural projects.
- The special Indian Education program for Professional Development for Teachers and Education Professionals (ESEA Title VI-A-2) allows funds to be used to train traditional leaders and cultural experts to assist pre- and in-service Indian teachers with relevant native language and cultural mentoring, guidance, and support.
- The national Indian Education program for Native American and Alaska Native Language Immersion Schools and Programs (ESEA Title VI-A-3) support the development, maintenance, and improvement of such programs in elementary and secondary schools.
- The ESEA Alaska Native Education Equity program (ESEA Title VI-C) allows funds to be used for curricula that reflect the cultural diversity, languages, history, or the contributions of Alaska Native people, and for Alaska Native language instructional and immersion programs.
- The Department of Health and Human Services' Native American Language Preservation and Maintenance program (42 U.S.C. 2991b-3) supports the

[126] Robert E Slavin and Alan Cheung, "A Synthesis of Research on Language of Reading Instruction for English Language Learners," *Review of Educational Research*, vol. 75, no. 2 (Summer 2005), pp. 247-284.

[127] Mary Eunice Romero-Little, Teresa L. McCarty, and Larisa Warhol, et al., "Language Policies in Practice: Preliminary Findings from a Large-Scale National Study ofNative American Language Shift," *TESOL Quarterly*, vol. 41, no. 3 (September 2007), pp. 607-618.

[128] Teresa L. McCarty, Ph.D. and Alica Wiley Snell, *The Role of Native Languages and Cultures in American Indian, Alaska Native, and Native Hawaiian Student Achievement*, Arizona State University, under a contract from the U.S. Department of Education, July 2011.

survival and continuing vitality of Native American languages through grants to Indian tribes, Native American organizations, Alaska Native villages, and other entities.

In 2015, the BIE introduced a native language policy framework for BIE-operated schools, including college and preschool programs. The policy is intended to require the integration of Native language instruction to the extent that native language standards exist. Consistent with this set of aims, DOI, ED, and the Department of Health and Human Services (HHS) signed a memorandum of understanding to work together to encourage instruction in and preservation of Native languages.[129]

Discipline, Violence, Crime, and Alcohol and Drug Use

Tribal representatives have indicated that violence and alcohol and drug use are serious community issues that affect students and their ability to learn. A high incidence of substance abuse in Indian country communities contributes to or is symptomatic of high levels of depression, domestic violence, suicide, disease, death, and other situations that are not conducive to learning. Among persons aged 12 or older in 2013, American Indians or Alaska Natives had the highest rate of substance dependence or abuse (14.9%) compared to other racial/ethnic groups.[130] This environment affects Indian students enrolled in BIE and public schools.

A February 2010 evaluation of violence prevention policies and measures at BIE schools by DOI's Office of Inspector General (OIG) found areas of concern for potential violence and deficiencies in the policies and procedures for preventing and managing incidents.[131] According to the OIG evaluation, in recent years 6% of public high school students carried a weapon on campus, whereas 37% of BIE middle school students reported the same. The OIG evaluation found that many BIE schools had open campuses—little or no fencing, inadequate security access procedures, and flawed camera surveillance systems. The OIG recommended that the BIA and BIE

- establish safety policies and accurate incident tracking systems,[132]
- evaluate campus safety and security,
- correct weaknesses or require tribal operators to correct weaknesses,
- address safety as a criterion for tribes to maintain operating grants and contracts, and
- implement staff training to prevent and manage incidents.

Follow-up inspections in 2014 indicated the need for improvement in several areas. Emergency preparedness and security plans failed to cover all applicable topics. Violence prevention training

[129] Brian Drapeaux, Director, Bureau of Indian Education, Lillian Sparks, Commissioner, Administration for Native Americans, and William Mendoza, Executive Director, White House Initiative on American Indian and Alaska Native Education, *Memorandum of Agreement between the U.S. Department of the Interior, U.S. Department of Health and Human Services, and the U.S. Department of Education On Native Languages*, November 30, 2012.

[130] Substance Abuse and Mental Health Services Administration, *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-48, HHS Publication No. (SMA) 14-4863. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.

[131] U.S. Department of the Interior, Office of Inspector General, *Evaluation Report—School Violence Prevention*, Report No. NM-EV-BIE-0003-2008, Washington, DC, February 2010.

[132] The evaluation indicated that reporting of incidents in the Native American Student Information System (NASIS) is inconsistent and inaccurate.

for staff and students also failed to cover all applicable topics. Schools need to evaluate and implement necessary safety measures.[133]

ED has indicated that American Indian/Alaska Native students enrolled in public schools are overrepresented among out-of-school suspensions and expulsions.[134] Suspensions and expulsions can have negative educational consequences. ED has released a Dear Colleague Letter to schools providing resources regarding their obligation to administer discipline without discriminating on the basis of race, color, or national origin.[135]

BIE School Issues

BIE school-specific issues include how to define an effective academic accountability system for BIE schools, construction and repair of BIE schools, and insufficient grant support cost funding.

Federal Administration and Organization

The structure and administration of the BIE school system has long been considered a contributor to poor educational outcomes. A landmark 1928 report, known as the Meriam Report, found that underfunding and paternal federal policy contributed to deficient boarding school student diets, low qualification standards and salaries for teaching staff, student labor to maintain schools, and a prescriptive and unresponsive curriculum.[136] Another milestone report in 1969, known as the Kennedy report, recommended a promotion of the status of BIA within DOI but declined to make a recommendation regarding what it characterized as the long-standing and most serious issue of the ineffective internal organization of the BIA.[137] The 1969 report highlighted that education was not the BIA's highest priority and called attention to a lack of centralized authority, data, and information; a clear chain of command; educational expertise among administrators; and a high quality, motivated, and stable teaching staff. Additional organizational assessments were conducted in 1992,[138] 1999,[139] and 2012.[140]

Since 2013, the Government Accountability Office (GAO) has published several reports on DOI management of BIE schools. In 2017, GAO added DOI management of Indian education programs to its high-risk list of government programs.[141] It found fragmented administrative

[133] Kimberly Elmore, *Management Advisory - Summary of Bureau of Indian Education Violence Prevention Inspections*, Office of Inspector General, U.S. Department of the Interior, Report No. 2015-CR-074, June 15, 2016.

[134] U.S. Department of Education, Office for Civil Rights, *Protecting Civil Rights, Advancing Equity: Report to the President and Secretary of Education, Under Section 203(b)(1) of the Department of Education Organization Act, FY 13–14*, Washington, DC, 2015.

[135] U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights, "Nondiscriminatory Administration of School Discipline," Dear Colleague Letter, January 8, 2014.

[136] Lewis Meriam, *The Problem of Indian Administration*, Institute for Government Research, Report of a Survey made at the request of Honorable Hubert Work, Secretary of the Interior, and submitted to him, Baltimore, MD, February 21, 1928.

[137] U.S. Congress, Senate Committee on Labor and Public Welfare, Special Subcommittee on Indian Education, *Indian Education: A National Tragedy - A National Challenge*, Pursuant to S. Res. 80, 91st Cong., 1st sess., November 3, 1969, S.Rept. 91-501 (Washington: GPO, 1969).

[138] Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, *1992 Report to the Secretary of the Interior and the Appropriations Committees*, December 1992.

[139] National Academy of Public Administration, *A Study of Management and Administration: The Bureau of Indian Affairs*, August 1999.

[140] Bronner, *Final Report: Examination, Evaluation, and Recommendations for Support Functions*, March 2012.

[141] U.S. Government Accountability Office, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial* (continued...)

structures, a lack of clear roles and poor coordination between responsible offices, frequent turnovers in leadership, and inadequate procedures and internal controls.[142] In addition, GAO indicated that the small enrollment of many BIE schools makes it more difficult to acquire all of the necessary educational and personnel resources.[143] The BIE has an inadequate number of staff to oversee school expenditures, and staff have inadequate training and written procedures with which to fulfill their administrative obligations.[144]

Federal administration of BIE schools is complicated by statutory provisions. While the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) and Tribally Controlled Schools Act (TCSA) support the federal policy of tribal control, DOI management of tribally operated schools is necessarily limited by the two laws. In contrast, state educational agencies (SEAs) may establish standards, processes, and programs for public schools to implement. BIE administers TCSA grants, which are limited to schools, but BIA administers ISDEAA contracts, which may include other funding streams such as funds for roads and economic development. Also, the requirement for tribal consultations supports self-determination and may improve results and acceptance, but it slows change and innovation.

Several options have been considered to address these long-standing administrative, organizational, and ultimately student achievement issues.

- Similar to the transfer of BIA-funded schools in Alaska to the state of Alaska, the remaining BIE schools or students could be transferred to the states, which have established and known governance systems. AI/AN students in public schools demonstrate higher academic achievement than BIE students, which lends some support for this option. However, AI/AN students in public schools on average score lower than white and Asian/Pacific Islander students in public schools (**Table 3** and **Table 4**). In addition, AI/AN students in public schools and BIE students may not be comparable populations.
- Some stakeholders have suggested colocating or transitioning BIE schools to tribally operated charter schools. As charter schools are public-state schools, this option is similar to the aforementioned option of transferring BIE schools to the states except that charter schools provide greater autonomy to the operator than is available to traditional public schools.
- Some stakeholders have suggested transferring the BIE school system to ED because ED is the federal agency whose mission is educational excellence and

(...continued)

Efforts Needed on Others, GAO-17-407T, February 15, 2017.

[142] U.S. Government Accountability Office, *Indian Affairs: Management Challenges Continue to Hinder Efforts to Improve Indian Education*, GAO-13-342T, February 27, 2013; and U.S. Government Accountability Office, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, GAO-13-774, September 24, 2013; and U.S. Government Accountability Office, *Further Actions on GAO Recommendations Needed to Address Systemic Management Challenges with Indian Education*, GAO-15-539T, April 22, 2015.

[143] U.S. Government Accountability Office, *Indian Affairs: Management Challenges Continue to Hinder Efforts to Improve Indian Education*, GAO-13-342T, February 27, 2013; and U.S. Government Accountability Office, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, GAO-13-774, September 24, 2013.

[144] U.S. Government Accountability Office, *Bureau of Indian Education Needs to Improve Oversight of School Spending*, GAO-15-121, November 13, 2014; and U.S. Government Accountability Office, *Further Actions on GAO Recommendations Needed to Address Systemic Management Challenges with Indian Education*, GAO-15-539T, April 22, 2015.

equal access. Transferring BIE to ED may be difficult as some tribal stakeholders advocate for DOI-Indian Affairs maintaining responsibility for Indian affairs and the fact that ED does not have experience operating a school system.

- The Administration and Congress have initiated DOI reorganizations and restructurings to address the issue directly. The proposals have variously tried to centralize or decentralize authority and responsibility, improve options for high-quality personnel recruitment and retention, delineate all of the education functions into a separate or independent organization, share support functions between BIE and BIA to leverage expertise, publish policy/procedures manuals, and improve tribal participation.

In 2014 following results of the American Indian Education Study Group, DOI ordered a restructuring of BIE in order to address many outstanding issues, in particular encouraging greater tribal control, improving student achievement, and increasing communication within the BIE and with its stakeholders. The reorganization is designed to provide greater support and technical assistance to tribally operated BIE schools in order to promote more effective teachers and principals, better respond to resource needs, and foster family and community support for students. The reorganization is also designed to ensure the budget is aligned with expected outcomes and processes.[145]

During the 114th Congress, the Senate Committee on Indian Affairs approved the Reforming American Indian Standards of Education Act of 2016 (S. 2580) to create an independent Indian education agency that would be within DOI and that would be directed by a presidential appointee. The 115th Congress instructed DOI to reorganize and present a reorganization plan for Indian affairs such that all Indian education functions are administered by and accountable to the BIE.[146]

Academic Accountability Under ESEA

The ESEA, as amended by ESSA, requires DOI to develop regulations for defining BIE school standards, assessments, and an accountability system under ESEA Title I-A, and it permits BIE schools to waive such regulatory requirements if the tribal governing body or school board of a BIE school determines the regulations to be inappropriate. Should such a determination be made, the tribal governing body or school board must submit a proposal to the Secretary of the Interior that includes alternate standards, assessments, and an accountability system, if applicable, that are consistent with the requirements of ESEA Section 1111 and take into account the unique circumstances of the school.

The BIE announced and initiated the Accountability Negotiated Rulemaking Committee in January 2017.[147] The final regulations are expected to be in place for AY2017-2018. The Miccosukee Tribe and Navajo Nation had alternative standards, assessments, and accountability plans approved by DOI and ED—the Miccosukee Tribe for AY2014-2015, AY2015-2016, and AY2016-2017, and the Navajo Nation for AY2015-2016 and AY 2016-2017. The ability of the

[145] Secretary's Order 3334, "Restructuring the Bureau of Indian Education," Sally Jewell, Secretary of the Interior, June 12, 2014.

[146] U.S. Congress, House Committee on Rules, *Explanatory Statement*, To accompany House Amendment to Senate Amendments to H.R. 244 (Rules Committee Print 115-16, showing the text of the Consolidated Appropriations Act, 2017.), 115th Cong., 1st sess.

[147] Department of the Interior, Bureau of Indian Affairs, "Proposed Membership of the Bureau of Indian Education Accountability Negotiated Rulemaking Committee," 82 *Federal Register* 5473-5476, January 18, 2017.

Miccosukee Tribe and Navajo Nation to continue using the alternative systems in AY2017-2018 and beyond will likely depend on the waiver requirements established under negotiated rulemaking.

BIE School Construction and Repair

For at least 20 years, BIE school facilities have been characterized by a very large number of old facilities with a high rate of deficiencies.[148] Some facilities are in poor condition and do not meet health and safety standards.[149] Reports from students and faculty suggest that conditions affect learning and enrollment. GAO and DOI have reported several weaknesses in the management of BIE school facilities.[150] The weaknesses include a lack of consistent and complete facilities condition information, inadequate implementation of procedures to address facilities' deficiencies, insufficient staffing, inadequate staff training, inconsistent oversight, insufficient internal controls and procedures, and poor communication.

The BIA retains responsibility for BIE school construction, including replacement of all of a school's facilities, replacement of individual facilities at schools, improvement and repair of existing school facilities, and repair of education employee housing. In 2016, DOI estimated that the replacement cost of BIE school facilities exceeded $4.6 billion and that the cost to correct known deficiencies exceeded $430 million.[151] On December 31, 2009, the latest estimate available, the BIA estimated that the costs to replace, repair, construct, and improve existing facilities in poor condition, excluding facilities in fair or good condition, would be $1.3 billion.[152]

In 2011, the U.S. Environmental Protection Agency (EPA) reached a settlement with the BIA and BIE to address alleged violations of waste, water, air, toxics, and community right-to-know laws at schools and public water systems. The alleged violations are related to the labeling, storage, and release of wastes; asbestos management plans; and drinking water monitoring and contaminant levels. The original settlement required BIA and BIE to correct alleged violations at 72 schools and 27 water systems and implement an environmental compliance auditing program and an environmental management system (EMS) to improve environmental practices at all of its BIE schools. The consent agreement was modified in 2014, expanding the list of BIA/BIE facilities subject to the consent agreement.[153]

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[148] U.S. General Accounting Office, *School Facilities: Reported Condition and Costs to Repair Schools Funded by Bureau of Indian Affairs*, GAO/HEHA-98-47, December 31, 1997.

[149] U.S. Government Accountability Office, *Indian Affairs: Preliminary Results Show Continued Challenges to the Oversight and Support of Education Facilities*, GAO-15-389T, February 27, 2015.

[150] U.S. Government Accountability Office, *Indian Affairs: Preliminary Results Show Continued Challenges to the Oversight and Support of Education Facilities*, GAO-15-389T, February 27, 2015; U.S. Government Accountability Office, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, GAO-17-407T, February 15, 2017; U.S. Government Accountability Office, *Indian Affairs: Key Actions Needed to Ensure Satety and Health at Indian School Faciltities*, GAO-16-391T, March 16, 2016; and U.S. Department of the Interior, Office of Inspector General, *Condition of Indian School Facilities*, Report No.: C-EV-BIE-0023-2014, September 2016.

[151] U.S. Department of the Interior, Office of Inspector General, *Condition of Indian School Facilities*, Report No.: C-EV-BIE-0023-2014, September 2016.

[152] "Indian Affairs Funded Schools in Poor Condition as Indicated by Facility Condition Index (FCI)," provided by the BIA to CRS in February 2010.

[153] United States Environmental Protection Agency, "Consent Agreement with the US Department of Interior (DOI), Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE)," http://www2.epa.gov/enforcement/consent-agreement-us-department-interior-doi-bureau-indian-affairs-bia-and-bureau-indian.

In response to ongoing facilities needs and unsafe conditions, Congress has established requirements of DOI in an effort to facilitate addressing the issues. The No Child Left Behind Act (NCLB, P.L. 107-110) required that DOI establish a negotiated rulemaking committee to report on BIE schools' needs for school and school facilities replacement and repair, and to develop formulas to distribute funds to address these needs.[154] In 2012, the BIA published its catalog of facilities, formulas for renovation and repair, and recommendations for addressing school facilities needs.[155]

Congress has periodically directed the BIA to develop replacement school priority lists. The previous replacement school construction priority list of 14 schools was published in 2004,[156] The FY2016 appropriations act funded replacement of the last two schools on the 2004 list.[157] In 2016, the BIA published a new construction priority list of 10 schools.[158]

In addition to annual appropriations, the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) authorized Qualified School Construction Bonds (QSCBs; 26 U.S.C. §54F). QSCBs are a tax credit bond program that make bond proceeds available for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land for a public school facility. Treasury allocated $200 million in each of 2009 and 2010 to DOI for Indian tribal governments to construct or repair BIE-funded schools. As of May 2014, no tribe had taken advantage of the program partly because many tribes are unable to sell bonds because they are high risk entities; although the allocation remains available.[159]

There are a several potential options for addressing poor facilities at BIE schools. Some that are routinely suggested or have been suggested by organizations like GAO include the following:

- additional funds for maintenance, improvement, and construction could be appropriated to cover the estimated cost of bringing facilities into good condition;
- public-private partnerships could be formed to fund and/or provide expertise to affect facilities improvement and construction;[160]
- implementation of a DOI-based unit or organization that would execute appropriate communication, procedures, internal controls, oversight, and staffing to properly manage BIE facilities;[161] and
- congressional and administrative oversight of measured progress in facilities' improvement and construction may affect outcomes.[162]

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[154] 25 U.S.C. §2005(a)(5).

[155] Report of the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee, *Broken Promises, Broken Schools*, December 2011.

[156] U.S. Department of the Interior, Bureau of Indian Affairs, "Replacement School Construction Priority List as of FY 2004," 69 *Federal Register* 13870, March 24, 2004.

[157] *FY2017 Budget*.

[158] Office of the Assistant Secretary—Indian Affairs, Interior, "Office of the Assistant Secretary—Indian Affairs; School Facilities Construction List," 81 *Federal Register* 25704, April 29, 2016.

[159] Letter from Jon Tester, United States Senate, Tim Johnson, United States Senate, and Al Franken, United States Senate, to Honorable Sally Jewel, Secretary, U.S. Department of the Interior, May 19, 2014.

[160] For example, see U.S. Congress, House Committee on Rules, *Explanatory Statement*, To accompany House Amendment to Senate Amendments to H.R. 244 (Rules Committee Print 115-16, showing the text of the Consolidated Appropriations Act, 2017.), 115th Cong., 1st sess, p. 30.

[161] U.S. Government Accountability Office, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, GAO-17-407T, February 15, 2017.

Public School Indian Education Issues

Indian education issues affecting public schools include the JOM freeze and the participation of Indian parents and tribes.

Johnson O'Malley Program Freeze

By statute, JOM funds are distributed to contractors by formula, based on a count of Indian students and average per-pupil operating costs. Student counts for allocating funds have been effectively frozen since FY1995. The House and Senate reports, accompanying the DOI and Related Agencies Appropriations Act, 1995 (P.L. 103-332), instructed the BIA to transfer JOM allocations to tribal priority allocations (TPA) along with certain funds for housing improvement in an effort to stabilize funding for tribes and provide them additional control and flexibility in the use of the funds.[163] The intention was to include the JOM funds in each tribe's recurring base funding. Based on public comment and the appropriations reports, the BIA decided to use the FY1995 JOM allocations based on the FY1995 student counts to establish JOM base funding for each of the tribal contractors, excluding tribal organizations.[164] There is a statutory prohibition on changing a tribe's base funding.[165] This transfer to TPA has resulted in what is commonly referred to as the *JOM freeze*. In FY2005, JOM served about 272,000 students in 33 states.[166] At the direction of Congress, the BIE is attempting to count the current number of students served.

As a result of the 1995 freeze, the BIE no longer systematically collects data about the numbers of students served by projects, the needs of those students, the services provided, or the outcomes realized. The freeze allows pre-1995 contractors to receive funding based on their 1995 student count regardless of the number of students actually served. The freeze included each tribe's 1995 JOM allocation into its base funding or tribal priority allocation (TPA). TPA allows tribes flexibility in the management and use of funds for various programs and services. Tribes that receive JOM as part of their base funding are dependent on this as a fairly stable source of funding. Appropriations conference reports since FY2012 have directed the BIE to count the number of students eligible for (participating in) the Johnson O'Malley (JOM) program and recommend a methodology to distribute funds in the future.[167] As of May 2017, the BIE was still trying to collect an accurate and complete count.

(...continued)

[162] U.S. Government Accountability Office, *Indian Affairs: Management Challenges Continue to Hinder Efforts to Improve Indian Education*, GAO-13-342T, February 27, 2013.

[163] U.S. Congress, House Committee on Appropriations, *Department of the Interior and Related Agencies Appropriations Bill, 1995*, Report to accompany H.R. 4602, 103rd Cong., 2nd sess., June 17, 1994, H.Rept. 103-551, pp. 54-55; and U.S. Congress, Senate Committee on Appropriations, *Department of the Interior and Related Agencies Appropriations Bill, 1995*, Report to accompany H.R. 4602, 103rd Cong., 2nd sess., June 28, 1994, S.Rept. 103-294, p. 55.

[164] U.S. Department of the Interior, Bureau of Indian Affairs, "Tribal Consultation of Indian Education Topics," 60 *Federal Register* 53932, October 18, 1995.

[165] 25 U.S.C §450j-1(b)(2).

[166] U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Year 2005* (Washington, DC: Department of the Interior, 2004), p. BIA-58.

[167] U.S. House of Representatives, "Explanatory Statement Submitted by Mr. Frelinghuysen of New Jersey, Chairman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendments on H.R. 244," *Congressional Record*, vol. 163 (May 3, 2017), p. H3881.

Indian Control of Indian Education

The participation and influence of Indian parents and tribes in the education of Indian students has increased over time. The JOM, Impact Aid, and Indian Education formula grant programs require consultation with an Indian parent committee. ESEA, as amended by ESSA, requires that LEAs with substantial AI/AN or Indian student enrollment consult with Indian tribes and tribal organizations prior to submitting their applications for several ESEA formula grant programs. Since FY2012, through the ESEA Indian Education Programs, ED has awarded several demonstration grants to partnerships between tribes or tribal education departments (TEDs) and states, LEAs, or BIE schools.

There is continued interest in increasing the role of Indian tribes in an effort to increase student achievement and cultural relevance of education. Increasing the role of tribes in public schools may confront sovereignty, accountability, collective bargaining, and property ownership issues and will impact non-Indian students in public schools. For instance, the Tribal Education Departments National Assembly, Co. has proposed allowing tribal education departments (TEDs) to operate public schools, particularly public schools on or near reservations and public schools with large enrollments of tribal children.[168] Programs funded under ESEA Title VI might be viewed as incremental efforts to increase cultural relevance and tribal influence.

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Acknowledgments

This is a substantially revised version of a report originally written by (name redacted), former Specialist in American Indian Policy.

[168] Tribal Education Departments National Assembly, *The Elementary and Secondary Education Act Reauthorization Recommendations for Tribal Education Departments/Agencies*, Boulder, CO, February 11, 2011, http://www.tedna.org/articles/esea_reauthorization_recommendations.pdf.