

**TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON EDUCATION AND LABOR  
SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY AND  
SECONDARY EDUCATION  
APRIL 28, 2007**

My name is Dr. Roger Bordeaux; I am a Sicangu Lakota serving as the superintendent of Tiospa Zina Tribal School on the Sisseton Wahpeton Oyate reservation, the Executive Director of the Association of Community Tribal Schools Inc. (ACTS) and a board member of Oceti Sakowin Education Consortium. I have been the Superintendent for 17 years and the Executive Director for 22 years.

Chairman Kildee and members of the Sub-Committee on Early Childhood, Elementary and Secondary Education I would like to thank you for holding this field hearing on the NCLB impact on Indian Education. Mr. Chairman since you took over responsibility to oversee Indian Education issues for Committee on Education and Labor in 1979, you have been our staunchest advocate for American Indian Tribes and their desire for self determination. You have fought to remind America of the many treaties the federal government has with the Indian people. I remember the fights you helped us with, including keeping BIA Education out of the new Department of Education in the 1970's, arbitrary and unilateral school closure attempts of the 1980's, helping with the passage of the Tribally Controlled Schools Act of 1988, advocating for positive change to the Elementary and Secondary Education Act, through specific Indian Education amendments, in the 1990's and helping with specific Indian Education language in the No Child Left Behind Act of 2002. The Chairman of the Education and Labor Committee, Mr. George Miller, is also a strong advocate for Indian Education and showed his advocacy by visiting the Pine Ridge and Rosebud Reservation in the fall of 2006. We are blessed that at this critical time of decisions regarding Indian students, local control and the future of Self-Determination, we have our greatest advocate for Indian Education in a position to assist us.

Mr. Chairman, I'd like to remind you that you have a very close relationship with our school, Tiospa Zina. Despite the Self-Determination Act of 1975 and the Education Amendments of 1978, in 1981, Assistant Secretary Smith had the BIA place an effective "moratorium" on new schools. Since there was no authority for such an act, the BIA made

this effective by slowing down the processing of applications, in our instance losing the paperwork at least once. In 1984, you were directly responsible for cutting through this red-tape at the BIA and making sure we were offered our first contract under self-determination. This is in keeping with your long history of advocacy for Indian Tribes, Indian people, Indian children and Indian schools and we remember it. Tiospa Zina started in the spring of 1982 with 12 students as an alternative to a public schools system which showed little interest in its Indian students. Now, in excellent facilities, serves over 600 students each year. Prior to the start of Tiospa Zina the local public school drop out rate of tribal members was 75%. The drop out rate for Tiospa Zina is about 40% and we have graduated over 375 tribal students since we started.

### **TRIBAL SCHOOLS**

The tribal school movement started in 1966 with Rough Rock Demonstration School (which ironically was an Office of Economic Opportunity grant). Tribal schools were started for one primary reason – dissatisfaction with the education content and quality provided to Indian students in public and BIA operated schools. When the Education and Labor Committee jerked the BIA into the 20<sup>th</sup> Century with its sweeping changes to Indian education law in 1978, the BIA ran more than 230 schools, of which only 5 were accredited by any organization. Drop outs were expected, and going to college was a dream for many and a reality for few. Indian tribes, educators and, most of all, parents knew there had to be a better way.

In the early 1970's, Tribes and communities began to take action under many funding mechanisms. The Indian Education Act of 1972 allowed alternative schools to get started. Tribes devoted other funds and whole communities gave time and money. Originally, there were fewer than 15 tribal schools, now there are over 125 Tribal elementary and secondary education programs, serving more than 28,000 students. Many, though not all, of these schools were created by Tribal take-overs of BIA programs.

The tribal schools provided a new educational philosophy for Indian communities. We came to our task, not as outsiders, but as Members of communities who cared about, and for, our future. Expectations rose and children and parents began to see education as a means to an end – success in Life, as defined by our Indian

Community, not some other segment of society. We taught that one can be successful in the World, in America, in our States, and in our Tribal communities through recognizing who we are and making that our goal. Curricula were invented and refined – teachers became long term parts of the Children’s lives. Community school boards met and took meaningful action. Our counterparts in public schools realized our children were well educated and could do well, which made relationships between schools possible. The new relationship with the schools are decreasing drop out rates. The schools have articulation agreements with local tribal colleges. Graduation rates increased and so did college participation. As more Tribal Members went to college, we had more resources, folks with degrees and expertise which they willingly brought back to their reservations and homes. They became role models for other children, and the future has become brighter.

### **THE CHALLENGE**

We are becoming more and more successful despite the challenges we face in many Tribal communities. Mr. Chairman, I know you realize the conditions on many Indian reservations which make our success more difficult and more rewarding. You know that when we talk of poverty and lack of educational, social and learning resources, we are not just “looking for excuses to fail” or “restating past situations”. These are ongoing facts. Substandard and poor housing is a fact, and it cripples many of the abilities generally considered critical to success. Unemployment and its attended curses of alcoholism and what is recognized as an epidemic of methamphetamine abuse make it hard sometimes for children to see the way to a successful future.

We need to be sure you can communicate to Congress and the other Members, on our behalf, the reality of these situations and the fact they do make a substantial difference in our ability to meet the model of measuring success set forth in No Child Left Behind. We know that other schools have similar problems and their own concerns. However, in no other school system do we find such a conjunction of problems, which have been of such long-standing, and a history of local control which goes back less than 20 years.

The current model of a deficit school improvement program as found in NCLB is simply not applicable, especially in rural, poor, Indian reservation areas. Many of the

schools funded by the BIA that are in school improvement, corrective action, and restructuring are in the poorest counties of the United States. For instance, six of the 15 poorest counties in the United States are in South Dakota and 1 of them is in North Dakota. These counties are within the Crow Creek Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, and Standing Rock Sioux Tribe reservation boundaries. The lowest per capita income was \$ 5,213. *(Statistics derived from U.S. Census Bureau data; U.S. Department of Commerce, Bureau of Economic Analysis, Survey of Current Business; and DataQuick Information Systems, a public records database company located in La Jolla, San Diego, CA.)*

### **NCLB – PROBLEMS**

We know many in Congress who support NCLB. We support its concept – for Indian Tribal people, no person should be left behind. We support mastery of education topics for all our students, and we do not seek special consideration unless it is justified. However, reality must drive the program as it relates to BIA funded schools or failure is a foregone conclusion. These are the realities for us in NCLB:

1) We still face inadequate resources. I KNOW TALKING FUNDING IS UNPOLITIC WITH SOME AND MAY LEAD TO DEAF EARS BEING TURNED IN OUR DIRECTION. However, I also know you understand our plight. The BIA budget request is not computed based on any measure of real need to run the program. In fact, BIA regulation state clearly:

“25 CFR 39.101 Does ISEF assess the actual cost of school operations?

No. ISEF does not attempt to assess the actual cost of school operations either at the local level or in the aggregate at the national level. ISEF provides a method of distribution of funds appropriated by Congress for all schools. “

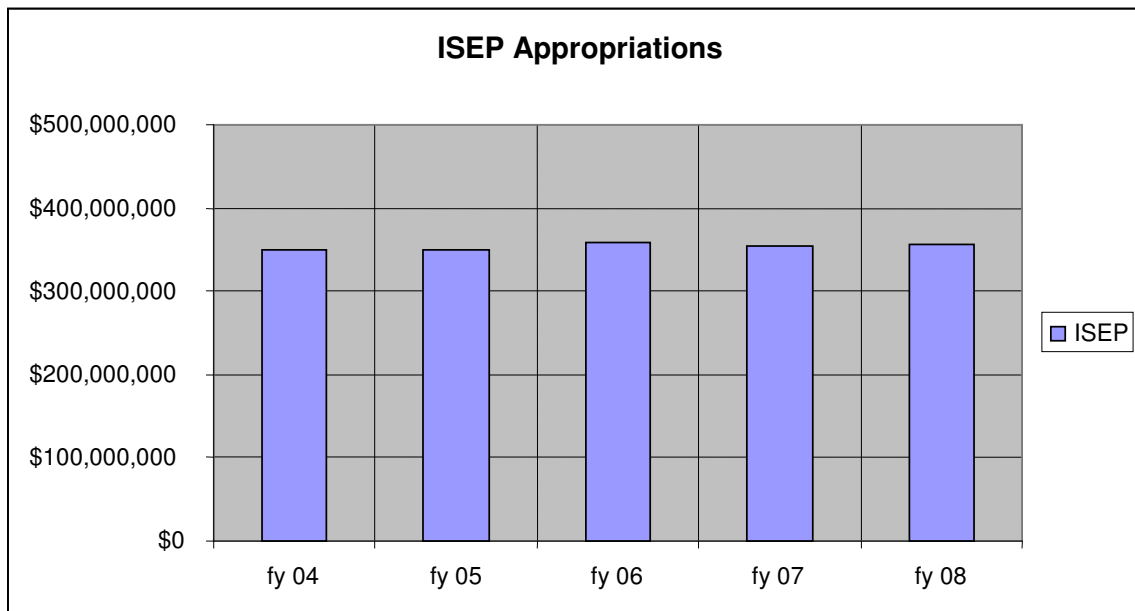
If this isn't clear enough, it is restated in essentially the same language at 25 Fed. Reg 39.201. This is on spite of a BIA's own policy statement (25 Fed. Reg. 32.4(aa)) that it will “[A]gressively seek adequate appropriations...”. I SUBMIT TO YOU THAT

IF ANY STATE ENTITY OR LOCAL SCHOOL BOARD SAID ITS BUDGET TO “FUND” ITS SCHOOLS WAS NOT BASED ON WHAT NEEDED FOR THE PROGRAM, THE PUBLIC WOULD NOT STAND FOR IT.

2) However, this does not mean the BIA does not have a method for computing such a need based sum. That is also found in regulations, which involve a computation for academic costs and home-living/residential costs. If these computations were made and then the budget was submitted based upon the total, much more progress in Indian Education would be possible.

HOWEVER, DESPITE THE PRESENCE OF THESE REGULATIONS, THE BIA SIMPLY DOES NOT MAKE THE COMPUTATIONS AND DOES NOT SUBMIT THIS INFORMATION TO CONGRESS. WHY DOES CONGRESS NOT REQUIRE SUCH A SUBMISSION?

3) As the following chart illustrates, the amount for the Indian Student Equalization Fund, which funds all of our academic and residential facilities, is actually going down when inflation is included to the total amount.



4) Unlike any other school district in the Country, our schools **are wholly reliant on federal funding.** Federal funds do not make up 8 – 10% of our funding. They are the whole package. Title I of NCLB does not fund a small part of our program – it funds over 18%, with IDEA funds essentially covering the majority costs for children with disabilities. We have nowhere else to go for money – not the State, not the local jurisdictions, nowhere.

5) As was noted above, this inadequacy of funding is exacerbated by the serious conditions of poverty and lack of resources in our communities in general. These problems, from housing, to unemployment, to inadequate health care, to meth are also partially caused by no funding in those problems. All of these factors bring their combined misery to the school door.

6) We do not ask for special treatment, and we do not say progress for the schools and the children is not possible. **IT IS AND WE STAND BEHIND OUR PROUD RECORD OF ACHIEVEMENT IN THE LAST TWO DECADES.** We want to be a part of the greatest school system on Earth, the schools of the United States of America, and whatever happens, we will remain committed to our children, our communities, our Tribes, and our Nation.

We are, however, concerned that those who govern our future through the consideration of NCLB and any amendments to it, may make decisions not based on correct information. We do not want to have the good we have done undone when we have not been allowed an adequate chance for success. That is what we see in the actions of some States and in the “recent consultation” of the BIA and the Department of Education.

States are eligible for many programs in NCLB and other Federal laws to which the Tribes have no access. In order to get access, they tell us our schools must alter our programs, standards and process to conform with State restrictions. In some instances, we believe the States are making these demands to accommodate Federal agency pressure

to have all programs receiving a benefit fit one pattern. In some States, it is simply a matter of Administrative actions. In any event, such pressure means less local control. After over 100 years of schools being controlled by non-local, non-Indian entities, we ask that some provision be made in the reauthorization to accommodate Tribally operated schools within these programs.

Of primary concern, however, is potential action by the BIA, the Department of Education, and the Administration to use failure to meet AYP as an excuse to force Tribal schools to either 1) radically change their programs and make-up, thus re-establishing a Federal, BIA run/operated system, close or 2) have these children attend public schools, public schools which are ill prepared and over crowded in most of our communities.

Our Concern is real. Mr. Kildee, you, more than any other Member, must remember the past fights to establish and maintain local control and self-determination. You were the author and sponsor of the Tribally Controlled Schools Act, the direct response to the BIA closures and threats of unilateral action of the 1980s. You stood on the floor to fight the closure of the Phoenix Indian School and the InterMountain Tribal School, because you knew that was wrong. You sponsored the language prohibiting unilateral action by the Secretary of Interior for any closure:

“SEC. 127. Section 1121(d) of the Education Amendments of 1978 (25 U.S.C. 2001(d)) is amended by striking paragraph (7) and inserting the following:  
` (7) APPROVAL OF INDIAN TRIBES- The Secretary shall not terminate, close, consolidate, contract, transfer to another authority, or take any other action relating to an elementary school or secondary school (or any program of such a school) of an Indian tribe without the approval of the governing body of any Indian tribe that would be affected by such an action.”

How crucial this language is was shown when it was deleted by accident in the original NCLB. The Administration, through the BIA, actually began to plan forcible modification to Tribal programs, with the reason that the provision barring such unilateral action was gone. It had to be hurriedly replaced in 2004.

We are concerned the failure to reach AYP in some BIA funded programs will lead to the argument that the schools are not meeting the needs of their students, they are

“bad” schools, and that resumption of the school by the Federal government or another authority should somehow be undertaken. At the least, we are concerned that BIA or Department of Education will be allowed to force unilateral changes in programs without regard for the true factors causing problems and without allowing Tribal control.

Now we ask that you hear our voice and continue your proactive support of Indian Education as well as insure that any reauthorization does not diminish the local control of Indian Education.

## **NCLB and SOLUTIONS**

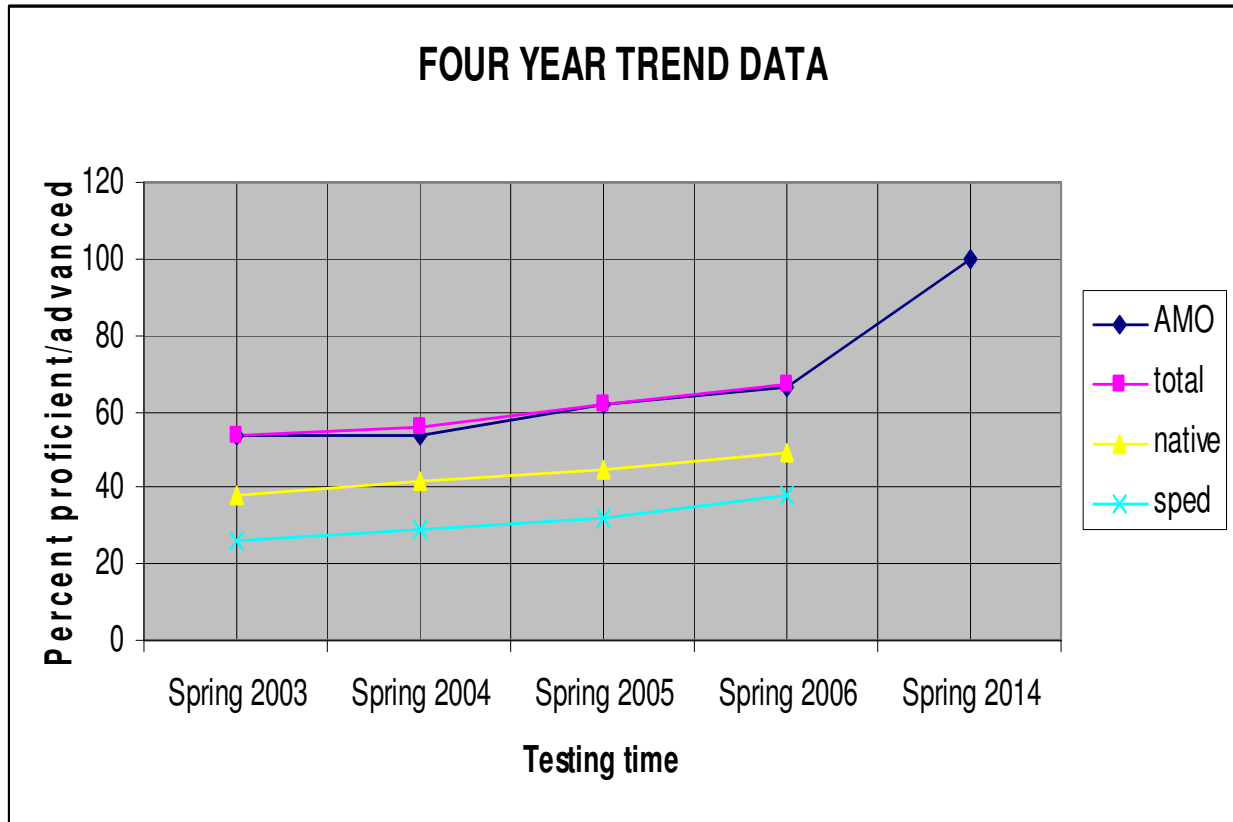
- 1. The current Deficit Model of Academic Success in Title I of NCLB is flawed and can be fixed by recognizing school success even when a school does not reach the annual measured objective (AMO) and specifically target poor areas with a 150% allocation*

The current Title I model of school improvement provides penalties for schools that do not reach annual measured objective established by states. The state’s AMO is directly related to state content standards and are based on the total population of the state. **There was little or no participation from tribal governments and tribal schools in the development of the state content standards and state assessments.** We are treated as second class citizens and are now being blamed for schools not making adequately yearly progress. This is even worse for the students with disabilities not to mention tribal students who have disabilities.

The law requires all states to disaggregate data based on types of students. The disaggregated groups include low income, minorities, and students with disabilities. Many of the disaggregated groups started far below the state average targets but were expected to make more progress than the rest of the population. If any of the disaggregated groups did not make annual measured objectives (AMO), then the school did not make adequate yearly progress (AYP). Even if a school and the disaggregated group makes annual academic progress but never reach’s the AMO they are classified as a bad school. The following chart illustrates the deficit model.

Illustration 1.





The above illustration shows that even when the school and the disaggregated groups made academic progress, they do not make AYP. Schools and disaggregated groups that do not make AYP are considered non-performing, almost “bad” schools and end up in corrective action or restructuring. These “bad schools” will also lose financial resources and students because NCLB allows students and parents to use Supplemental Educational Services.

The following chart show academic progress at Tiospa Zina Tribal School over a number of years but the school has been in and out school improvement primarily because of disaggregated groups (SPED). The school made adequately yearly progress this past year because of the use of safe harbor. Over 50% of the students at TZTS have been at the school for less than 4 years. The majority of the students came from public schools. Illustration 2.

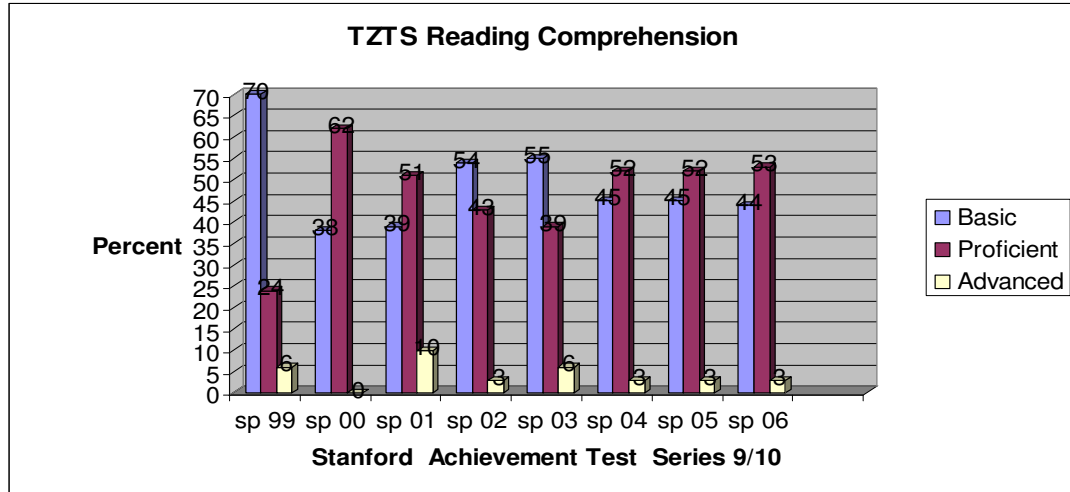


Illustration 3.

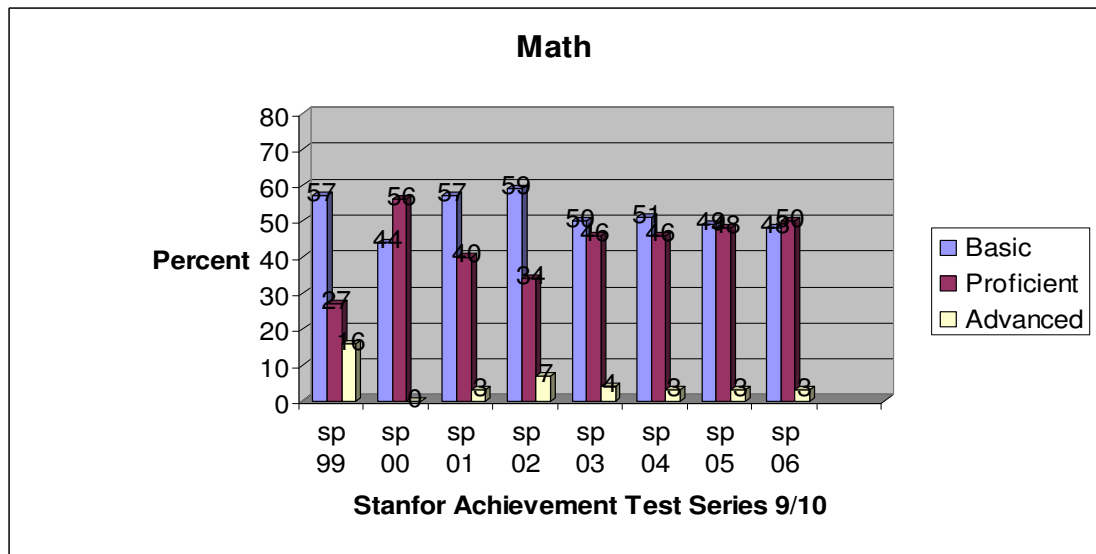


Illustration 4 shows the effects of SPED disaggregated populations. The TZTS Spring 2005 achievement results are shown with and without SPED student data.

Illustration 4.

**Reading Comprehension**

	All Students	Without SPED students
Basic	103 (45%)	59 (36%)
Proficient	117 (52%)	101 (60%)
Advanced	7 (3%)	7 (4%)

**Math Problem Solving**

All Students	Without SPED students
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Basic	113	(50%)	69	(41%)
Proficient	108	(48%)	92	(55%)
Advanced	6	(2%)	6	(4%)

**Language Arts**

	All Students		Without SPED students	
Basic	111	(49%)	73	(44%)
Proficient	107	(47%)	87	(52%)
Advanced	8	(4%)	6	(4%)

**Science**

	All Students		Without SPED students	
Basic	88	(39%)	56	(34%)
Proficient	129	(57%)	104	(63%)
Advanced	9	(4%)	6	(3%)

**Social Science**

	All Students		Without SPED students	
Basic	65	(29%)	42	(26%)
Proficient	146	(63%)	110	(68%)
Advanced	11	(4%)	10	(6%)

The solution is to use growth models that recognize schools and disaggregated groups who make academic progress but do not make Annual Measured Objectives.

One possibility is to allow those schools to stay in school improvement and not force them into corrective action and restructuring. Those schools that are in high poverty areas and need additional financial resources. One possibility is to fund the high poverty schools at 150% of the state allocation.

*2. Lack of respect from state and federal government.*

Allow tribal schools access to all NCLB programs and assure that states do not attempt to impose state statutes on tribal governments or tribal schools.

3. *Amendments in Attachment A are a collaborative effort with members of the Association of Community Tribal Schools Inc. and the National Indian School Board Association. These organizations sponsored 4 meetings on the reauthorization of No Child Left Behind Act. The meetings were conducted over the last 2 ½ years. The changes focus on BIE funded schools.*

4) *We are also attaching amendments which would delete from title 25 of the United States Code provisions which are clearly out of date. The continuing presence of provisions to allow agency superintendents to withhold rations for failure to attend schools or select specific Indian girls to act as unpaid matrons, illustrate this point.*

Mr. Chairman, I submit this testimony on behalf of the Tribal schools in the states of **Maine, Florida, North Carolina, Mississippi, Louisiana, South Dakota, Minnesota, North Dakota, Michigan, Iowa, Wisconsin, Kansas, Wyoming, Oklahoma, Montana, California, Washington, Idaho, Nevada, Arizona, and New Mexico.**

Mr. Chairman and Members of the Subcommittee, thank you for your support in the past and thank you for your continuing support in the future. If there is any way on which we may help you in your endeavors, please let our schools know.

Footnote

There are at least 20 programs that are authorized by the No Child Left Behind Act that tribal schools are not eligible for but public schools can access these programs. Many states do not recognize tribal schools as equals to their own public schools. The state of South Dakota has required tribal schools to be state accredited if they want to apply for any federal flow through funds including 21<sup>st</sup> Century After School Grants.

Attachment A.

Tribally Controlled Schools Act of 1988

1) Section 2502(a)(3) (Use of Funds) is amended by adding a new subparagraph:

“(C) Amendments to grants

(1) At any time during the academic year for which funds are provided under this Act, the school board of the tribally controlled school which receives a grant under this Act may request an amendment or amendments of the grant by submitting such amendments or amendments in writing to the Secretary or appropriately designated representative.

(2) If the Secretary fails to make a final decision on any amendment or amendments submitted under this provision, within 180 days after the filing of the request, the Secretary shall-----

(i) be deemed to have approved such request; and

(ii) immediately upon the expiration of such 180-day period amend the grant accordingly.

(B) Rights

A tribally controlled school board tribe or organization described in subparagraph (A) may enforce its rights under subsection (a)(2) of this section and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 2507(e) of this title.”

2) To move up the date of the last payment. NOTE – A SIMILAR CHANGE IS REQUIRED FOR BIA OPERATED SCHOOLS, IN SECTION 2010 OF THE BIA RELATED AMENDMENTS, SEE NOTE 11.

Section 2506(a)(1)B) is amended by striking the term “December” and substituting the term “October”.

3) SECTION 2507(A) – THIS IS WHERE DELETIONS FROM EXISTING CHAPTER 25 LANGUAGE SHOULD BE MADE –

Legislation administered by the Department of the Interior relating to Indian education which needs to be considered for amendment or repeal.

1) P.L. 93-638 - Title II, Part A, section 203 - requests a study of the interrelationship of all programs providing supplemental services to Indian students and a report if there is a need for redistribution of funds or further services. Now obsolete. Part B - authorizes the Secretary of the Interior to help public schools with substantial Indian student populations to fund construction. I don't think this has ever been used, but just having it on the books is a problem. If there is any money for construction, it should be used for tribal or B.I.A. schools, and no conversation. This should be repealed.

2) 25 USC 48 - says that where the Secretary determines that tribes are competent to direct the activities of “their blacksmiths, mechanics, teachers, farmers or other persons engaged for them”, the Secretary may give authority over those persons to the tribal officials. At least with respect to teachers and education personnel, no longer needed. May want to amend or repeal. Enacted in 1834.

3) 25 USC 104 - authorizes the Secretary of the Interior to purchase (when advantageous) for use in the Indian service products produced by Indian manual and training schools. No longer applicable. Enacted in 1880.

4) 25 USC 231 - authorizes the Secretary of the Interior to allow State officials to enter any reservation for the purpose of inspecting schools or enforcing compulsory attendance State laws (doesn't apply to IRA tribes unless they allow it). However, is on the books and a dangerous precedent (I shudder to think what A.S. Swimmer could have done with this). Should be repealed. Enacted in 1929.

5) 25 USC 278a - prohibits funds from being used for education of Indian students in sectarian programs, except where the student chooses such a program for postsecondary education. Enacted in 1968.

6) 25 USC 307 and 308 - transfers the Bushnell General Hospital to the BIA, to become the Intermountain vocational school. Since Intermountain is closed and the property transferred (part is now a golf course) , this is obsolete, and should be repealed.

7) 25 USC 471 - authorizes no more than \$250,000, annually, for loans to Indians for vocational and trade schools, providing not more than \$50,000 may be used for high school or college and the funds must be repaid. There are other programs which cover this, and I am not aware it is even being used. Should be repealed. Enacted 1934

8) 25 USC 66 - allows the Commissioner of Indian Affairs to assign the duties of an Indian agency superintendent to an education officer or superintendent of an Indian school whenever he determines such officer can conduct the duties, provided the pay of such officer may then be increased by no more than \$300.00 per annum. This was overridden by section 1126 of P.L. 95-561 and should be repealed. Enacted in 1972.

9) 25 USC 101 - payment for transshipment of goods by wagon from a central point to a school shall be paid for from funds appropriated for that school. Probably doesn't fit anymore and should be repealed. Enacted in 1913.

10) 25 USC 102 - costs for inspection, storage, transportation and so forth for coal for schools shall be paid for from a support fund of the school or agency for which the coal was purchased. I am not aware that this is still a problem or that if coal is used, it is not being paid for from some other fund. Anyway, I suggest it is not needed, and should be repealed. Enacted 1920.

11) 25 USC 155 - All miscellaneous revenues produced "from Indian reservations, agencies and schools" (except for 'Five Civilized tribes') shall go to the Treasury, into an account called "Indian monies, proceeds of labor" and may be available for the Secretary to use for the benefit of Indians. This runs counter to the idea that money produced by the actions of the school stays with the school, and could complicate the student products part, the investment part, the tuition staying at the school section and others. I suggest its repeal. Enacted in 1883, updated in 1928. This would seem to be a relic of the old Indian industrial and agricultural school era.



12) 25 USC 271 - The President, in each case where he deems it shall improve 'the habits and conditions' of the Indians, and where the tribe agrees, may employ 'persons of good moral character' to instruct the Indians in agriculture and their children in reading, writing and arithmetic, under such rules and regulations as he shall provide. Of great historic interest, but of no purpose today. I suggest its repeal. Enacted in 1819.

13) 25 USC 272 - the President shall appoint, by and with the advice and consent of the Senate, a person with knowledge and experience in the "management, training and practical education of children" to be "Superintendent of Indian Schools" and to visit any school operated by the government or funded with Federal funds and report to the Commissioner of Indian Affairs on deficiencies and remedies, with reports also made to Congress. This does not sound like a staff position to the Commissioner. It sounds more like a school inspector, who would be separate from the Indian Service. As such, while this provision may be out of date and is no longer used, it is an idea which may merit some consideration. However, with respect to the provision itself, it is obsolete and I recommend repeal. Enacted in 1889.

14) 25 USC 273 - the Secretary of the Army may detail officers, not above the rank of captain, to special duty in Indian education. I really don't think we need this anymore, and I suggest repeal. Enacted in 1879.

15) 25 USC 274 - the Commissioner of Indian Affairs may hire Indian girls as assistant matrons and Indian boys as farmers and industrial arts teachers in all Indian schools, where practicable. Repeal. Enacted in 1897.

16) 25 USC 275 Teachers in schools may be allowed, in addition to annual leave, educational leave in every alternate year, provided they receive no additional pay, for attendance at educational gatherings, conventions, institutions and training schools, where it would be in the interest of the government. I believe this provision has been overtaken by other regulations and laws and that it is no longer necessary. Repeal. Enacted in 1912, updated as late as 1957.

17) 25 USC 276 - the Secretary of the Army is authorized to set-aside vacant posts and barracks for normal and industrial schools 'for the youth from the nomadic tribes' and to detail Army officers to aid in the education. With the next round of base

closures under consideration, lets not be hasty. Anyway, I think this can be repealed. Enacted in 1882.

18) 25 USC 277 - the former Fort Apache military post is to be turned into the Theodore Roosevelt Indian school, providing the land remains with the Army and is under the control of the Secretary of the Interior only so long as used as a school. I foresee problems with this. Maybe we should change, so the land was transferred and becomes tribal if no longer needed as a school. In any case, should be reworded. Enacted in 1923.

19) 25 USC 279 - Mission schools on reservation serving Indian students are to receive the same rations of food and clothing which such children would receive if living at home. This is a stumper. Do these still exist? If so, is this a backdoor way of getting them some help? Do we want to do so? Enacted in 1906

20) 25 USC 280 - grants patents of up to 160 acres to mission schools functioning as of Sept. 21, 1922, with reversion of land to Indians if the school ceases to function. Are there any of these around? Enacted in 1922.

21) 25 USC 280a - essentially grants patents for lands for missionary or private schools serving Indians in Alaska (uses term "Indian"). Do any of these still exist? Enacted in 1900.

22) 25 USC 281 - says that any children of any Indian who has taken land in "severalty" (that is, in fee) is still eligible for Federal educational services. Hasn't this been overrun by time and practice. Maybe, should be left, just to be sure. Otherwise, I would suggest making it plain in our rewrite of P.L. 95-561. Enacted in 1894.

23) 25 USC 282 - authorizes the Secretary to promulgate and enforce mandatory school attendance reg.s Enacted in 1920.

24) 25 USC 283 - authorizes the Commissioner of Indian Affairs to withhold food, clothing, annuities, and other rations from parents of children who do not attend school, provided that adequate schools are available and that notice of this is given to parents. The schools covered are obviously boarding schools. Should be repealed . Enacted in 1893.

25) 25 USC 285 - specifically authorizes the withholding of rations from Osage parents if their children do not attend school. No reason given why they were singled out. Suggest repeal. Also obviously applies to boarding schools. Enacted 1913.

26) 25 USC 286 - no child may be sent out of State to a boarding school unless with the consent of the parents or next of kin, and the Indian agent may not withhold rations or take any other steps to coerce such consent. Sounds like a good idea to me, and maybe one we should incorporate into the rewrite of P.L. 95-561. However, this particular provision should probably be repealed (though seems to do no real harm) Enacted in 1894.

27) 25 USC 287 - Once a child is in school, the child may not be taken to a school in another State without parental consent. See comment above. Enacted in 1896.

28) 25 USC 290 - prohibits the transportation “at government expense” of any child under the age of 14 out of State to attend an Indian school. What does this mean for some Navajo and off-reservation boarding schools. I think it is being ignored, but needs to be considered. Enacted in 1909.

29) 25 USC 291 - Where there is any property at an Indian school not necessary to that school, the Secretary is authorized to move it to another Indian school, where it is needed. Enacted in 1907.

30) 25 USC 292 - the Commissioner of Indian Affairs may suspend or discontinue any education program at his discretion and dispose of the property and furnishings, with the money to be used for the benefit of other schools (remember Phoenix Indian School) as the Secretary of Interior directs. This is directly contrary to the current language in P.L. 95-561 and should be repealed, though the idea that if any closure takes place, all the proceeds should be used for Indian education is an idea to be considered for incorporation into P.L. 95-561 (remember Intermountain and Phoenix [where some land swapped for everglades swamp for alligators]- could be overridden by Appropriations but gives something to argue). Enacted in 1904.

31) 25 USC 293 - Another sale provision. Authorizes the Secretary of the Interior to sell any property brought by the U.S. for use as a school no longer needed for a school and put the money into the Treasury, unless the property originally brought with tribal funds, in which case it should be put into the tribal funds. See discussion on preceding

section. Should be repealed and substituted with language that proceeds must be used for education, with tribes having first option (I think they may have this under GSA language). Enacted in 1917

32) 25 USC 293a- the Secretary is authorized to transfer to State or local governmental entities any land and improvements used for an Indian school and no longer needed for such purpose, retaining a right of reverter if the land is not used for a school “or other public purposes” and retaining mineral and prospecting rights. If land held in trust, requires tribal permission. No longer necessary - should be repealed. Enacted 1953, updated as late as 1962.

33) 25 USC 294 The Secretary of the Interior is authorized to sell , at no less than appraised value (remember Phoenix) “any abandoned day or boarding school plant or abandoned agency building”, with the proceeds to be credited to the Indians”to whom said lands belong” (What does this mean?) Suggest covered now under GSA language and is no longer necessary. If want the idea, than move to rewrite of P.L. 95-561, with money to be used for education. Enacted 1920.

34) 25 USC 295 - All expenditure of funds for education shall “be at all times under the supervision and direction of the Commissioner”, and shall be spent “ in conformity with such conditions, rules, and regulations” as he shall prescribe. He is also to control the “conduct and methods of instruction”. Runs contrary to 93-638, 95-561 and 100-297 and should be repealed. Covered by other statutes. Enacted 1908.

35) 25 USC 302 - From schools being operated, the Secretary is to designate one as “an Indian Reform School” and make “all needful rules and regulations for its conduct”. Permission of parents or next of kin shall not be required for placement here. I think we have outgrown this, though it is a concept discussed as recently as 1976. Repeal. Enacted 1906.

36) 25 USC 304 - In South Dakota, the course of study taught at any Bureau school shall, upon a majority vote of the parents of the school, be the course of study taught in South Dakota schools. No longer necessary - Repeal. Enacted 1949.

37) 25 USC 304a - the Secretary is to carry out a study of education of Indian students in the continental U.S. and Alaska and report to Congress. To be done by 1958 (never heard of it - doubt it was done). Obsolete and should be repealed. Enacted 1956.

38) 25 USC 304b - there may be student funds and student activity associations established and funds maintained for these purposes, under Bureau regulations. Should be incorporated in a rewrite of 561. Enacted 1959.

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Below are amendments to Title XI of 95-561 (as amended)

4) CAVEAT ON NEW OR EXPANDED SCHOOLS BELOW (NEW SUBSECTION (e)(7)), BUT UNTIL WE GET THE APPROPRIATIONS LANGUAGE LIFTED, THIS IS MOOT –

Section 2001(e)(1)(A(i)) is amended by deleting “The Secretary” and substituting “Subject to the limitations of paragraph (7) of this subsection, the Secretary.”. Clause (i) is amended by deleting “.. Bureau funded school;” and substituting the term “Bureau funded school as of the date of enactment of \_\_\_\_\_(whatever this new bill is called; “

Section 2001(e) is amended by adding at the end thereof the following new paragraph:

“(7) Limitation

The Secretary shall not commence funding for any new school or extension or any program changes submitted by application subject to the provisions of this subsection which would otherwise commence funding under paragraph (5) of this subsection in any Fiscal Year in which appropriations for programs funded under section 1127 of this Title are not more than the funding for such programs (adjusted for \_\_\_\_\_ whatever they are using) in the Fiscal Year preceding the Fiscal Year in which the application change would otherwise become effective, provided that the new school or change for any approved applications will be commenced, in the order in which such applications were approved, beginning in any Fiscal Year in which appropriations referred to exceed the limitation amount, and shall continue in each succeeding Fiscal Year.”

For reference

Finally, Section 2001 (d)(7) : for reference, I know Leg. Counsel will have the latest for mark-up, but those working off the web will miss the change in (d)(7) which was included in an appropriations bill. Don't let anyone mess with this provision without a lot of thought.

Source: H.R.2361 which was included in the Consolidated Appropriations Act PL 108-447

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Enrolled as Agreed to or Passed by Both House and Senate)

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SEC. 127. Section 1121(d) of the Education Amendments of 1978 (25 U.S.C. 2001(d)) is amended by striking paragraph (7) and inserting the following:

`(7) APPROVAL OF INDIAN TRIBES- The Secretary shall not terminate, close, consolidate, contract, transfer to another authority, or take any other action relating to an elementary school or secondary school (or any program of such a school) of an Indian tribe without the approval of the governing body of any Indian tribe that would be affected by such an action.'

Also, for reference, here is the moratorium language:

Source : any final Interior approps bill since FY 1996

Under:

General Provisions, Department of the Interior

Appropriations made available in this or any other Act for schools funded by the Bureau shall be available only to the schools in the Bureau school system as of September 1, 1996. No funds available to the Bureau shall be used to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau school system as of October 1, 1995. Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school (as that term is defined in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026)), except that a charter school that is in existence on the date of the enactment of this Act and that has operated at a Bureau-funded school before September 1, 1999, may continue to operate during that period, but only if the charter school pays to the Bureau a pro rata share of funds to reimburse the Bureau for the use of the real and personal property (including buses and vans), the funds of the charter school are kept separate and apart from Bureau funds, and the Bureau does not assume any obligation for charter school programs of the State in which the school is located if the charter school loses such funding. Employees of Bureau-funded schools sharing a campus with a charter school and performing functions related to the charter school's operation and employees of a charter school shall not be treated as Federal employees for purposes of chapter 171 of title 28, United States Code.

Finally delete Subsection 1001(h), which was the GAO study on funds. They never really did anything, and this is obsolete.

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5) Section 2002(a)(1) is amended by inserting the term “facilities requirements” between the terms “space,” and “and”.. At the end of the paragraph, add the following new language:

“All the factors set forth in this paragraph shall be set subject to the procedures and requirements of section 2017 of this Title.”

6) This is the problem: the BIA is requiring tribal resolutions for each child for each year, which increases paperwork, who attends a non-reservation boarding or school site.. The hammer they are using is cutting off travel funds for the student. That was never the intent.

Section 2004(f) is amended by adding the following new paragraph:

“(3) Construction

The provisions of subsection (d)(2) of this section shall be construed to require only one tribal authorization for each student for the duration of attendance at an off-reservation home living school or dormitory, provided that each tribal council may determine to cover more than one student.”

7) They are for studies and plans, which were never done –

Section 2005 (a) and (b) are deleted and the Subsections re-designated accordingly.

Also, education control of facilities management for schools

(UN-NUMBERED AS OF YET) Direction and supervision of certain personnel and operations of the office of facilities management and Construction

(1) In general

Any other provision of law notwithstanding, not later than 180 days after date of enactment , the Director of the Office shall direct and supervise of all aspects of the operations of all personnel directly and substantially involved in the provision of services to schools operated by or funded under Section 1127 of this Act provided prior to such



date by the Office of Facilities Management and Construction, or other entities within the Bureau or Department, relating to operations and maintenance, major or minor improvement and repair, and any facilities information system relating to facilities which are primarily involved with the provision of education services.

(2) Transfers

The Secretary of the Interior and the Assistant Secretary for Indian Affairs shall, not later than \_\_\_\_\_, coordinate the transfer of functions relating to this provision to the Director.

8) Section 2007 – As for clarification of travel –

Section 2007(a)(1)(B)(ii) is amended by inserting after the term “transportation” the following “including but not limited to transportation related to necessary student academic or home living related activities”.

9) Section 2008 – To be sure the recipient and not the BIA defines what these funds will be used for, subparagraph 2008(a)(1)(B) is amended by deleting “may include” and substituting “may, at the determination of the recipient of a grant made pursuant to this section, include”..

if the Study provisions no longer needed (and I doubt they are) then:

Section 2008 is amended by deleting subsection (i) and redesignating all remaining subsections.

10) Section 2009 – Delete entire section – this is just embarrassing. This means renumbering the sections, which everybody has to get used to a new nomenclature for the rest of the bill, and everything written before now is obsolete. Anyone got a totally new, meaningless (or even meaningful) section to stick in here to help?

11) Section 2010 currently (see above -probably renumbered the sections).

The language from the TCSA is much better and rather than cut and bite, I suggest the following:

Section 1010(a) is amended by deleting subsection (a) and substituting the following:

“(a) Payments

(1) In general

Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this chapter in two payments, of which--

(A) the first payment shall be made not later than July 1 of each year in an amount equal to 80 percent of the amount which the grantee was entitled to receive during the preceding academic year; and

(B) the second payment, consisting of the remainder to which the grantee is entitled for the academic year, shall be made not later than October 1. “

Section 2010(a)(3)(A) is amended by deleting the term “\$50,000” and substituting the term “\$100,000”/ Clause (2010(a)(3))(A)(i) is amended by deleting the term “\$15,000” and substituting the term “\$25,000”.

Furthermore, I suggest we delete the sequestration language (or at least figure out if still applicable):

Section 1010(a), as amended above, is amended by deleting (4).

12) Section 2015 deals with an annual report and audit – to my knowledge, this isn’t done, but I am looking for leverage here – if we amend this to include a new provision regarding a computation of the amount to conform to the regulation dealing with ISEF

and a minimum amount (see below) then we can at least get that amount before Congress. It won't work unless people (mainly on the Hill) hold the BIA to actually doing it, but the first step is to get something in statute which can then be enforced. Also, putting it here and relying on something already in the regulations makes it harder to argue against the provision. Finally, I tied it to a date, because if the BIA is smart, they will delete the reg.

Section 2015 is amended by redesignating the current provision "(b) Budget request" as (b)(1) Budget request" and adding the following new paragraph immediately following that provision:

"(2) The annual budget request for the education programs of the Bureau, as submitted as part of the President's next annual budget request under section 1105 of title 31 shall include a computation of the factors included in 25 CFR Part 39.804 et seq., as in effect on \_\_\_\_\_, based on each preceding academic year's information relating to student counts and other information."

INFORMATION - you referenced the minimums in the regulations already - how does this mesh? They are not in 25 CFR Part 32 (which is Education policies) but they are in 25 CFR 39 (39.804 et seq.) The reason I point out they are not in policies is that within 39, which deals with funding, there are two clear provisions 39.201 and 39.101 which clearly state the ISEP has nothing to do with what the program actually cost (they are a stitch and should be referred to the Committees time and time again - I have never seen the like). If they were in the policies, we would be in a stronger position to use them.

13) Section 2018 - dealing with regulations and negotiated rule making - I think if you include/re-state the definition of regulation already in the Act in Section 2003(b, there can't be too much debate. If they say it is already in there, then say you want a reference, for clarity. This will get you further than trying to put in manuals, etc., per se.)

Section 2018 is amended by adding the following new subsection:

“(d) Definition of regulation

In this section, the term “regulation” means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by any officer or employee of the executive branch.”

Attachment B.

25 CFR 39.100 What is the Indian School Equalization Formula?

The Indian School Equalization Formula (ISEF) was established to allocate Indian School Equalization Program (ISEP) funds. OIEP applies ISEF to determine funding allocation for Bureau-funded schools as described in §§ 39.204 through 39.206.

25 CFR 39.101 Does ISEF assess the actual cost of school operations?

No. ISEF does not attempt to assess the actual cost of school operations either at the local level or in the aggregate at the national level. ISEF provides a method of distribution of funds appropriated by Congress for all schools.

25 CFR Subpart H—Determining the Amount Necessary To Sustain an Academic or Residential Program

39.801 What is the formula to determine the amount necessary to sustain a school's academic or residential program?

(a) The Secretary's formula to determine the minimum annual amount necessary to sustain a Bureau-funded school's academic or residential program is as follows:

Student Unit Value × Weighted Student Unit = Annual Minimum Amount per student.

(b) Sections 39.802 through 39.807 explain the derivation of the formula in paragraph (a) of this section.

(c) If the annual minimum amount calculated under this section and §§ 39.802 through 39.807 is not fully funded, OIEP will pro rate funds distributed to schools using the Indian School Equalization Formula.

39.802 What is the student unit value in the formula?

The student unit value is the dollar value applied to each student in an academic or residential program. There are two types of student unit values: the student unit instructional value (SUIV) and the student unit residential value (SURV).

(a) The student unit instructional value (SUIV) applies to a student enrolled in an instructional program. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical non-residential program.

(b) The student unit residential value (SURV) applies to a residential student. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical residential program.

39.803 What is a weighted student unit in the formula?

A weighted student unit is an adjusted ratio using factors in the Indian School Equalization Formula to establish educational priorities and to provide for the unique needs of specific students, such as:

- (a) Students in grades kindergarten through 3 or grades 7 through 12;
- (b) Special education students;
- (c) Gifted and talented students;
- (d) Distance education students;
- (e) Vocational and industrial education students;
- (f) Native Language Instruction students;
- (g) Small schools;
- (h) Personnel costs;
- (i) Alternative schooling; and
- (j) Early Childhood Education programs.

39.804 How is the SUIV calculated?

The SUIV is calculated by the following 5-step process:

- (a) Step 1. Use the adjusted national average current expenditures (ANACE) of public and private schools determined by data from the U.S. Department of Education-National Center of Education Statistics (NCES) for the last school year for which data is available.
- (b) Step 2. Subtract the average specific Federal share per student (title I part A and IDEA part B) of the total revenue for Bureau-funded elementary and secondary schools for the last school year for which data is available as reported by NCES (15%).
- (c) Step 3. Subtract the administrative cost grant/agency area technical services revenue per student as a percentage of the total revenue (current expenditures) of Bureau-funded schools from the last year data is available.
- (d) Step 4. Subtract the day transportation revenue per student as a percentage of the total revenue (current revenue) Bureau-funded schools for the last school year for which data is available.
- (e) Step 5. Add Johnson O'Malley funding. (See the table, in § 39.805)

39.805 What was the student unit for instruction value (SUIV) for the school year 1999–2000?

The process described in § 39.804 is illustrated in the table below, using figures for the 1999–2000 school year:

Step 1 .....	\$ 8,030 ANACE.
Step 2 .....	\$ 1,205 Average specific Federal share of total revenue for Bureau-funded schools.
Step 3 .....	\$ 993 Cost grant/technical services revenue as a percentage total revenue.
Step 4 .....	\$ 658 Transportation revenue as a percentage of the total revenue.
Step 5 .....	\$ 85 Johnson O'Malley funding.
Total .....	\$ 5,259 SUIV.

39.806 How is the SURV calculated?

(a) The SURV is the adjusted national average current expenditures for residential schools (ANACER) of public and private residential schools. This average is determined using data from the Association of Boarding Schools.

(b) Applying the procedure in paragraph (a) of this section, the SURV for school year 1999–2000 was \$11,000.

39.807 How will the Student Unit Value be adjusted annually?

(a) The student unit instructional value (SUIV) and the student unit residential value (SURV) will be adjusted annually to derive the current year Student Unit Value (SUV) by dividing the calculated SUIV and the SURV into two parts and adjusting each one as shown in this section. (1) The first part consists of 85 percent of the calculated SUIV and the SURV. OIEP will adjust this portion using the personnel cost of living increase of the Department of Defense schools for each year. (2) The second part consists of 15 percent the calculated SUIV and the SURV. OIEP will adjust this portion using the Consumer Price Index-Urban of the Department of Labor.

(b) If the student unit value amount is not fully funded, the schools will receive their pro rata share using the Indian School Equalization Formula.