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EXAMINING THE BUREAU OF INDIAN EDUCATION'S SCHOOL REOPENING GUIDANCE DURING THE COVID-19 PANDEMIC

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

Thursday, September 10, 2020

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OVERSIGHT HEARING ON EXAMINING THE BUREAU OF INDIAN EDUCATION'S SCHOOL REOPENING GUIDANCE DURING THE COVID-19 PANDEMIC

Thursday, September 10, 2020
U.S. House of Representatives
Subcommittee for Indigenous Peoples of the United States
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 3:06 p.m., via Webex, Hon. Ruben Gallego [Chairman of the Subcommittee] presiding.

Present: Representatives Gallego, Soto, Haaland, Case, Cartwright, Grijalva; and Stauber.

Mr. GALLEGO. The Subcommittee for Indigenous Peoples of the United States will now come to order.

The Subcommittee is meeting today to hear testimony on the Bureau of Indian Education's COVID-19 School Re-opening Guidelines.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chair and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members keep to their schedules.

Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Clerk by 5 p.m. today or the close of the hearing, whichever comes first.

Hearing no objections, so ordered.

Without objection, the Chair may also declare a recess subject to call of the Chair.

Hearing no objection, so ordered.

As described in the hearing notice, statements, documents or motions must be submitted to the electronic repository at HNRCDocs@mail.house.gov. Additionally, please note that, as with in-person meetings, Members are responsible for their own microphones and Members can be muted by staff only to avoid inadvertent background noise. Finally, Members or witnesses experiencing technical problems should inform Committee staff immediately.

Thank you.

STATEMENT OF THE HON. RUBEN GALLEGO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GALLEGO. Good afternoon and welcome to everyone watching our livestream. I want to thank our witnesses for making the time to testify before us remotely.

Today, we will be examining the Bureau of Indian Education's School Re-opening Plan and the steps, or missteps, BIE has taken in ensuring the safety of Native American students, teachers, and employees.

Though I am grateful for the witnesses we have here today, I would like to voice my disappointment in the Bureau of Indian Education for choosing not to testify today. BIE has refused to testify because we are holding this hearing in a virtual setting.

While this Committee has often struggled with this Administration's frequent refusal to provide timely and informed testimony, the BIE's refusal to be here today is a new low.

This fall, the health of Native children is on the line when they return to school. The health of teachers and staff is on the line. The health of their families and their communities is on the line.

If we do not get BIE schools re-opened correctly, Native Americans will die as a result. We know this because multiple BIE employees died this spring when some BIE schools took too long to close. We cannot let that happen again.

It is a dereliction of the Federal trust responsibility for the BIE to refuse to be here to discuss how to protect Native students just because the hearing is not happening in person.

This hearing is happening remotely because we understand the stakes of the public health crisis we are in. From their refusal, it is clear that BIE does not understand those stakes, which is why I am extremely concerned about their ability to oversee safe re-openings at BIE-run schools this fall.

Finally, I want it to be on the record that this Committee stands ready to hear BIE's testimony on school re-openings when the agency determines that Native lives are important enough to necessitate it.

Now, let's move on to the situation before us. BIE currently funds 183 elementary and secondary schools located on 64 reservations in 23 states, serving over 40,000 students. Fifty-five of those schools are operated by the BIE.

At the beginning of the pandemic, BIE schools shut down along with public schools across the country. Like other schools, BIE attempted to transition to a distance learning model; unlike other schools, BIE schools have had to contend with digital divide in Indian Country.

People on tribal lands are four times more likely to not have the internet, and are also more likely to lack access to laptops or, unfortunately, even electricity.

To make matters worse, BIE was not able to quickly mobilize to provide instruction, resources, or IT services to aid the transition to virtual learning in the spring. While these hiccups may have been understandable in March, it is disturbing that we are seeing those same problems arise in September, when BIE has had months to prepare.

In March, Congress provided funding for BIE schools through the CARES Act Education Stabilization Fund. However, it took BIE 97 days, over 3 months, to distribute this money, which undermined schools' ability to prepare teachers, students, and employees for the fall.

In addition to funding delays, BIE spent the summer sending mixed and concerning messages regarding school re-opening plans. In July, BIE held two tribal consultation sessions and assured the tribal leaders, tribal organizations, and school boards involved that their input would inform the re-opening plan.

However, in August, the BIE released a plan proclaiming that on September 16, BIE-operated schools would open in-person to the maximum extent possible. The BIE guidance does not provide for the consultation and explicit consent of local tribes, parents, and teachers before re-opening a school.

The BIE guidance, though it is only binding for BIE-operated schools, directs any tribally operated school that deviates from the guidance to "consult with its legal counsel to ensure it does not risk violating the terms of its grant"—a potential threat to tribal sovereignty.

Finally, the BIE guidance released on August 24 gave schools less than 1 month to implement this top-down approach, leaving school leaders with more questions than answers.

We all know that effectively and safely educating our children in a pandemic is a huge challenge. But we will never be able to overcome the challenges in Indian Country without committing to a thoughtful, nuanced approach that emphasizes consultation and partnership with local tribes and school leadership.

That is why I am disappointed that BIE is not here to engage in this discussion today, and that is why I look forward to hearing what our witnesses have to say.

[The prepared statement of Mr. Gallego follows:]

PREPARED STATEMENT OF THE HON. RUBEN GALLEGO, CHAIR, SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES

Good afternoon and welcome to everyone watching on our livestream. I want to thank our witnesses for making the time to testify before us remotely.

Today, we will be examining the Bureau of Indian Education's school re-opening plan and the steps—or missteps—BIE has taken in ensuring the safety of Native American students, teachers and employees.

Though I am grateful for the witnesses we have here today, I would like to voice my disappointment in the Bureau of Indian Education for choosing not to testify today. BIE has refused to testify because we are holding this hearing in a virtual setting.

While this Committee has often struggled with this Administration's frequent refusal to provide timely and informed testimony, the BIE's refusal to be here today is a new low.

This fall, the health of Native children is on the line when they return to school. The health of teachers and staff is on the line. The health of their families and their communities is on the line.

If we do not get BIE school re-openings right, Native Americans will die as a result. We know this because multiple BIE employees died this spring when some BIE schools took too long to close. We cannot let that happen again.

It is a dereliction of the Federal trust responsibility for BIE to refuse to be here to discuss how to protect Native students just because the hearing isn't happening in person.

This hearing is happening remotely because we understand the stakes of the public health crisis we are in. From their refusal, it's clear that the BIE does *not* understand those stakes, which is why I am extremely concerned about their ability to oversee safe re-openings at BIE-run schools this fall.

Finally, I want it to be on the record that this Committee stands ready to hear BIE's testimony on school re-openings when the agency determines that Native lives are important enough to necessitate it.

Now, let's move on to the situation before us. BIE currently funds 183 elementary and secondary schools, located on 64 reservations in 23 states, serving over 40,000 students; 55 of these schools are operated by the BIE.

At the beginning of the pandemic, BIE schools shut down along with public schools across the country. Like other schools, BIE attempted to transition to a distance learning model. Unlike other schools, BIE schools had to contend with the digital divide in Indian Country.

People on tribal land are four times more likely to not have internet, and are also more likely to lack access to a laptop or even electricity.

To make matters worse, BIE was not able to quickly mobilize to provide instruction, resources, or IT services to aid the transition to virtual learning in the spring.

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In addition to funding delays, BIE spent the summer sending mixed and concerning messages regarding school re-opening plans. In July, BIE held two tribal consultation sessions and assured the tribal leaders, tribal organizations, and school boards involved that their input would inform the re-opening plan.

However, in August, the BIE released a plan proclaiming that on September 16, BIE-operated schools would open in-person "to the maximum extent possible." The BIE guidance does not provide for the consultation and explicit consent of local tribes, parents and teachers before re-opening a school.

The BIE guidance, though it is only binding for BIE-operated schools, directs any tribally-operated school that deviates from the guidance to "consult with its legal counsel to ensure it does not risk violating the terms of its grant"—a potential threat to tribal sovereignty.

Finally, the BIE guidance, released on August 24, gave schools less than 1 month to implement this top-down approach, leaving school leaders with more questions than answers.

We all know that effectively and safely educating our children in a pandemic is a huge challenge. But we will *never* be able to overcome that challenge in Indian Country without committing to a thoughtful, nuanced approach that emphasizes consultation and partnership with local tribes and school leadership.

That is why I am so disappointed that the BIE is not here to engage in this discussion today. And that is why I look forward to hearing what our witnesses have to say.

Mr. GALLEGO. Before I end my remarks, I want to welcome Mr. Stauber as a new member of the House Natural Resources Committee and this Subcommittee. He is serving as Ranking Member today, and I would like to recognize him for any opening remarks he may have.

STATEMENT OF THE HON. PETE STAUBER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. STAUBER. Thank you very much, Mr. Chairman. Today marks my first appearance as a member of the House Natural Resources Committee.

My district is home to 3.5 million acres of Federal lands, the headwaters of the mighty Mississippi River, five sovereign Native American bands, and the Duluth Complex.

I have sought an appointment to this Committee since I started in Congress, and I have been fortunate enough to participate in an unofficial capacity several times.

Thank you very much to Chairman Grijalva and Ranking Member Bishop for welcoming me. I am excited to roll up my sleeves and get to work on Committee business.

Now, it is an honor and privilege to stand in for Ranking Member Cook and serve alongside Chairman Gallego today to discuss an issue pressing and pertinent to northern Minnesota and throughout the country.

First, I want to thank the Chairman for his interest in Indian education, but would encourage collaboration with the Committee that has jurisdiction over the Bureau of Indian Education, the Education and Labor Committee.

While this Committee has very limited jurisdiction over Indian education, there are legislative proposals this Committee has and can take action on.

I was proud to support the Great American Outdoors Act, which was signed by President Trump earlier this year. The Act included a 5 percent annual carve out for Bureau of Indian Education schools. When updating infrastructure with this funding, these schools can further develop infrastructure to provide better education and combat the virus.

Joining Chairman Bishop and the Committee's Minority, I wish to express disappointment in the Committee Majority for refusing to act on S. 886, the Indian Water Rights Settlement Extension Act. This bill would help tribes in one of the hardest-hit COVID-19 regions. As the CDC has advised, one of the best ways to combat COVID is hand washing.

Unfortunately, the Democrat Majority seems content in letting the settlement agreement collect dust, and many Navajo households struggle to get access to a reliable water supply.

It has been 90 days since the Senate sent over a legislation package containing this agreement and other bills aimed at the Native American communities and schoolteachers. This legislation is currently being held at the desk, and it appears that the Majority has no interest in passing this critical agreement.

I want to submit for the record a letter from President Nez asking Speaker Pelosi to schedule a vote on final passage of this bill.

That being said, and turning back to the issue of BIE schools in my district, we have three tribal schools operated by the Leech Lake Band, the Fond du Lac Band, and the Mille Lacs Band. These schools [inaudible].

Mr. GALLEGO. Let's give Mr. Stauber a few minutes so that way his internet catches up.

Mr. STAUBER. [Inaudible.]

Mr. GALLEGO. Mr. Stauber, you are coming in and out.

Mr. STAUBER. I am confident everyone participating today can agree that the priority is to simply get children back in school, especially the American Academy of Pediatrics, the leading organization on children's health.

Therefore, thank you to the Bureau of Indian Education for providing detailed guidance to help students return. It is well documented that [inaudible] of students [inaudible] in school. For example, evidence from the McKinsey Foundation shows that kids remaining at home will make existing achievement gaps worse.

Furthermore, [inaudible] student anxiety and depression have skyrocketed during closures.

With these effects in mind, we need to find ways to get students safely back into schools. I am encouraged by the Bureau's guidance,

relying on the CDC's leadership, by instituting social distancing, adding protective barriers, requiring face coverings, and added [inaudible].

Most importantly, we must remember these Native schools serve sovereign nations in largely rural areas. Therefore, they require flexibility and local decision making. The Bureau's guidelines do just that by offering expert opinions to match the needs of individual communities.

Mr. Chairman, I am a father of four and a youth advocate. I want [inaudible] education possible and our sovereign [inaudible].

Let's provide our Native children with the education they need and deserve by following the guidelines of the Bureau and getting them safely back into their schools.

I yield back.

[The prepared statement of Mr. Stauber follows:]

PREPARED STATEMENT OF THE HON. PETE STAUBER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Thank you, Mr. Chairman. Today marks my first appearance as a member of the House Natural Resources Committee. My district is home to 3.5 million acres of Federal public lands, the headwaters of the Mighty Mississippi River, five sovereign Native American bands, and the Duluth Complex. I have sought an appointment to this Committee since I started in Congress, and I have been fortunate enough to participate in an unofficial capacity several times.

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Unfortunately, the Democrat Majority seems content in letting this settlement agreement collect dust as many Navajo households struggle to access a reliable water supply. It has been 90 days since the Senate sent over a legislative package containing this agreement, and other bills aimed at the Native American communities and schoolteachers. This legislation is currently being held at the desk and it appears the Majority has no interest in passing this critical agreement. I want to submit for the record a letter from President Nez asking Speaker Pelosi to schedule a vote on final passage for this bill.

That being said and turning back to the issue of BIE schools, in my district, we have three tribal schools, operated by the Leech Lake Band, the Fond du Lac Band, and the Mille Lacs Band. These schools provide a world-class education while preserving the traditions of the respective Ojibwe bands.

I would like to take a moment and thank the Mille Lacs Band for providing my office with background on what the Nay Ah Shing School has been doing. They plan to open with a Hybrid Learning and Distance Learning Options, following the guidelines of the Bureau.

The BIE payments from the CARES Act to the Mille Lacs Band will be used to implement infrastructure updates such as barriers to ensure a touch-free environment and for transportation options to implement social distancing for bussing.

Another point to be made on behalf of the Mille Lacs Band is the need for mental health counseling in the school. It is impossible for the mental health staff to reach the students that need to be reached when schools are closed.

I am confident everyone participating today can agree that the priority is to safely get children back into the classroom, as that is the position of the American Academy of Pediatrics, the leading organization on children's health. Therefore, thank you to the Bureau of Indian Education for providing detailed guidance to help students return.

It is well documented that learning, health, safety, and nutrition of students are at their best when students are in school.

For example, evidence from the McKinsey Foundation shows that kids remaining at home will make existing achievement gaps worse. Furthermore, EdSource highlighted in a recent article that student anxiety and depression have skyrocketed during closures.

With these effects in mind, we need to find ways to get students safely back into schools. I am encouraged by the Bureau's guidance drawing on the CDC's leadership by instituting social distancing, adding protective barriers, requiring face coverings, and added emphasis on hand washing and sanitizing.

Most importantly, we must remember these Native schools serve sovereign nations in largely rural areas. Therefore, they require flexibility and local decision making. The Bureau's guidelines do just that, by offering expert opinion to match the needs of individual communities.

Mr. Chairman, I am a father of four and an education advocate. I want my children to get the best education possible, and our sovereign, Native brothers and sisters deserve the same.

Let's provide our Native children the education they need and deserve by following the guidance from the Bureau and getting them safely back into their schools.

Mr. GALLEGO. Thank you, Representative Stauber.

You did break up for a portion there, say, two-thirds of the way in. If you get a better connection and you want to read that into the statement at some point, or just in the process of questioning, obviously we will give you extra time.

I believe at some point you wanted to submit something for the record. I did not fully get that. I thought you had a letter from a tribal leader or something like that. If you could just repeat that, then I could put it into the record.

And, obviously, when we go through the question period if you want to add anything that was missed during your opening statement, we will give that opportunity.

Now, I would like to transition to our panel of witnesses for today.

Under our Committee Rules, oral statements are limited to 5 minutes, but you may submit a longer statement for the record if you choose.

When you begin, the on-screen timer will begin counting down and will turn orange when you have 1 minute remaining.

I recommend that Members use the grid view function so they may pin this timer on their screen. When you go over the allotted time, I will ask you to please wrap up your statement.

After your testimony is complete, please remember to mute yourself to avoid any inadvertent background noise.

I will allow the entire panel to testify before we question the witnesses.

The Chair will now recognize the Honorable Joe Garcia, who is the co-chair for the National Congress of American Indians and Interior's Tribal Budget Formulation Education Subcommittee.

STATEMENT OF THE HON. JOE GARCIA, CO-CHAIR, TRIBAL INTERIOR BUDGET COUNCIL, EDUCATION SUBCOMMITTEE, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. GARCIA. Good afternoon. Mr. Chairman, can you hear me?

Mr. GALLEGO. I can, sir. Please continue.

Mr. GARCIA. Chairman Gallego, Ranking Member Cook, and members of the Subcommittee, and I also see Chairman Grijalva present. It is good to see all of you.

My name is Joe Garcia, and I am Head Councilman and former three-term governor of Ohkay Owingeh, a federally recognized tribal nation in New Mexico.

I am also a former two-term president of the National Congress of American Indians, or NCAI. NCAI, founded in 1944, is the oldest and largest representative organization of tribal nations and communities.

This hearing could not come at a more critical time. September is the time that schools re-open for the new academic year. This year that task is complicated by the COVID-19 pandemic, which continues to plague Indian Country, and the nation and the world as a whole.

But even if that were not the case, there is a long-standing crisis in Indian education that merits this Subcommittee's attention and scrutiny. I have addressed this in my prepared testimony and will be glad to take your questions.

My oral testimony focuses on the re-opening of the Bureau of Indian Education schools, the BIE schools.

The BIE funds 183 schools located on 63 reservations in 23 states. Of these 183 schools, 132 are tribally controlled schools operated pursuant to a grant under the Tribally Controlled Schools Act of 1988 or pursuant to a contract under the Indian Self-Determination and Education Assistance Act. The remaining 55 schools are Bureau operated, which gives the BIE central office more authority over how these schools operate.

Today, the most critical issue before this Subcommittee is the question of whether these 55 Bureau-operated schools should re-open for in-person instruction. NCAI's position is that schools should re-open for in-person instruction only where BIE, the tribal government that the school serves, the parents, and the teachers all concur that it is safe to do so.

These decisions must be made at the local level, free of over-reach from the BIE central office and free in every respect from political interference. By this, I mean to say that the White House has no business influencing the BIE on whether it is safe to re-open a school.

On August 6, the U.S. Department of the Interior's Office of Indian Affairs announced that it would re-open brick and mortar schools under its jurisdiction to the maximum extent possible. It was widely believed that the Interior Department took this action out of a desire to please the President, if not in response to direct pressure from the White House.

This announcement was not well received in Indian Country. The "Dear Tribal Leader" letter included another sentence that reads, "Local decisions will be made in coordination with tribes, states, and local public health officials." This is closer to what NCAI wants things to be.

But, unfortunately, we are not seeing this coordination happen to the extent that we believe is needed.

On August 22, the BIE issued its final re-opening plan titled, "Return to Learn." While this guidance provides more information than that of previous documents issued by the Bureau, it does not ensure that the decision of tribal governments will be respected when it comes to the re-opening of K-12 and the safety of the students.

Once again, the Interior Department said that schools will operate in-person on a regular full-time schedule to the maximum extent possible, in effect doubling down on the very position that drew strong criticism from Indian Country in early August.

We are now a week away from school opening, and the question before us is whether BIE will respect the local judgments of tribal nations, sovereign nations, and parents on whether the school opens in person or virtually.

The BIE should be here today to answer the questions for all of us, but unfortunately, the Bureau declined the Subcommittee's invitation to testify.

Additionally, there is no evidence that the Interior Department or BIE officials have deferred to the position that tribal leaders have expressed to them. For example, on August 24——

Mr. GALLEGO. Mr. Garcia, start wrapping up please.

Mr. GARCIA. Yes. We urge the Subcommittee to demand that the Department of the Interior commit to abide by the wishes of the tribal government when it comes to re-opening schools.

The most important piece of it is that the safety and well-being of our children, of the faculty, and the staff be adhered to. That is the No. 1 reason why education systems exist in this country.

I thank the Committee for holding this hearing, and I look forward to your questions and working with you to address these issues.

Thank you.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF HEAD COUNCILMAN JOE GARCIA, NATIONAL CONGRESS OF AMERICAN INDIANS

Chairman Gallego, Ranking Member Cook, and members of the Subcommittee, My name is Joe Garcia, and I am Head Councilman and former three-term Governor of Ohkay Owingeh, a federally recognized tribal nation in New Mexico. I am also Co-Chair to the Department of the Interior's Tribal Budget Formulation Education Subcommittee, and a former two-term President of the National Congress of American Indians (NCAI). NCAI, founded in 1944, is the oldest and largest representative organization of tribal nations and communities.

This hearing could not come at a more critical time. September is the time that schools reopen for the new academic year. This year that task is complicated by the COVID-19 pandemic, which continues to plague Indian Country and the Nation as a whole. But even if that were not the case, the month of September is the best time to discuss the state of Indian education. The Bureau of Indian Education (BIE) has historically faced difficulties in providing quality, robust education to our American Indian and Alaska Native (AI/AN) students due to the underfunding of our programs, inadequate facilities, limited access to broadband, difficulty recruiting

and retaining teachers, and a lack of culturally appropriate educational opportunities—all of which have been exacerbated by the COVID-19 pandemic.

THE REOPENING OF BUREAU OF INDIAN EDUCATION SCHOOLS

The BIE funds 183 schools located on 63 reservations in 23 states. Of these 183 schools, 132 are tribally controlled schools operated pursuant to a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. § 2501, et seq.) or pursuant to a contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301, et seq.). The remaining 55 schools are Bureau-operated, which gives the BIE Central Office more authority over how these schools operate. Today, the most critical issue before this Subcommittee is the question of whether these 55 Bureau-operated schools should reopen for in-person instruction. NCAI's position is that schools should reopen for in-person instruction only where BIE, the tribal government(s) that the schools service, the parents, and the teachers all concur that it is safe to do so. These decisions must be made at the local level, free of over-reach from the BIE central office, and free in every respect from political interference. By this, I mean to say that the White House has no business influencing the BIE on whether it is safe to open a school.

On August 10, NBC News reported that the U.S. Department of the Interior's Office of Indian Affairs announced that it would reopen "brick and mortar schools" under its jurisdiction to the "maximum extent possible" on September 16.[1] It was widely believed that the Interior Department took this action out of a desire to please the President, if not in response to direct pressure from the White House. This announcement was not well received in Indian Country. Furthermore, we are aware that the news report led parents to seriously consider pulling their children out of BIE schools this academic year.

The document on which the NBC News story was based is a Dear Tribal Leader Letter signed by Assistant Secretary Tara Sweeney on August 6. The Dear Tribal Leader Letter included another sentence that was not mentioned by NBC News. That sentence reads, "Local decisions will be made in coordination with tribes, states, and local public health officials." This is closer to where NCAI wants things to be.

A month has passed since the NBC News story, and we are a week away from school opening. The question before us now is whether BIE will respect the local judgments of tribal nations and parents on whether school opens in person or virtually. The BIE should be here today to answer the question for all of us. But unfortunately, the Bureau declined the Subcommittee's invitation to testify.

On August 21, the BIE issued its final reopening plan titled "Return to Learn." While this guidance provides more information that previous documents issued by the Bureau, it does not ensure that the decisions of tribal governments will be respected when it comes to the reopening of K-–12 schools. Once again, the Interior Department states that schools will operate in-person on a regular full-time schedule to the maximum extent possible. In effect, they are doubling down on the very position that drew strong criticism from Indian Country in early August.

Adding to the confusion, there is no evidence that the Interior Department or BIE officials have deferred to positions that tribal leaders have expressed to them. There are more BIE-controlled schools on the Navajo Nation than any other tribal nation in the country. On August 24, 2020, Navajo Nation President Jonathan Nez sent a letter stating that every BIE-operated school located within the Navajo Nation must remain closed for face-to-face and in-classroom instruction for the entirety of the Fall 2020 semester, after which point the issue will be reviewed again. As of September 8, 2020, the Department of the Interior still has not acceded to this request. We are uncertain how the Department has handled similar communications that other tribes have submitted.

We urge the Subcommittee to demand that the Department of the Interior commit to abide by the wishes of tribal governments when it comes to reopening schools. The BIE must also provide a straightforward process for tribal leaders to request that the Bureau provide online or distance learning until a tribal community deems it safe to reopen. Finally, there may be situations where a tribal government is willing to reopen schools on its reservation for in-person instruction if it is convinced it is safe to do so. The Interior Department needs to provide straightforward assurances that BIE schools will be able to fulfill this promise. Furthermore, if an

[1] NBC News, "Federal agency to reopen 53 Native American schools despite coronavirus fears," Miranda Green, August 10, 2020, https://www.nbcnews.com/news/us-news/federal-agency-reopen-53-native-american-schools-despite-coronavirus-fears-n1236253.

outbreak should arise, they should be prepared to close the school and swiftly move to a remote learning environment.

Other areas of concern regarding the BIE's "Return to Learn" plan include how the Agency will guarantee students that are required to receive special education services do so. This is troublesome to tribal leaders considering the Government Accountability Office published a report this year finding that BIE schools did not provide or did not account for 38 percent of special education and related service time for students with disabilities during a regular school year.

Tribal leaders have also voiced their concerns during the Department of Interior's Tribal Interior Budget Council meeting, held on August 10–14, 2020, that because of the BIE's inadequate communications to tribal families, many families are withdrawing their students from the BIE system for this academic year. Therefore, tribal leaders have requested that the Bureau freeze Average Daily Membership (ADM) levels for the 2020–2021 school year to 2019–2020 levels. These ADMs have a critical role in the appropriations each school receives every year, and tribal leaders are concerned that the withdrawal of students for this academic year will negatively impact their Federal funding for years to come.

THE STATE OF INDIAN EDUCATION

Even if the pandemic had not occurred, we would be here today to describe the state of Indian education as troubling. The COVID-19 pandemic has only exacerbated long-standing educational disparities that directly result from the Federal Government's chronic underfunding of its trust and treaty responsibilities. There are approximately 620,000 AI/AN students enrolled in public schools, both in urban and rural areas, while 48,000 attend BIE schools. There are 183 BIE-funded schools located on 63 reservations in 23 states. The most recent data shows the high school graduation rate for BIE students is at 67 percent compared to the national average of 85 percent for the rest of the country.[2,3]

Prior to the pandemic, the Federal Government recognized that AI/AN students were being educated in inadequate facilities. For example, the Department of the Interior identified $629 million in deferred maintenance for BIE-funded education facilities and $86 million in deferred maintenance for BIE educational quarters, including severely overcrowded classrooms.[4] In addition to the crumbling physical infrastructure, tribal communities disproportionately lack the infrastructure to engage in culturally rich remote education.

In addition to these infrastructure disparities that result in less than ideal learning conditions, the BIE has historically had difficulties with recruiting and retaining highly effective teachers. Inadequate housing, the inability for tribally controlled schools to provide their staff Federal Employee Health Benefits, and low salary make it difficult for quality teachers to consider careers in the BIE system.

FUNDING DURING THE PANDEMIC

Initially, tribal and educational leaders were hopeful after the CARES Act was enacted because $153.75 million was allocated under the Department of Education's Education Stabilization Fund to programs operated or funded by the BIE. In addition to these funds, $69 million was appropriated directly to the BIE to "prevent, prepare for, and respond to coronavirus." On March 31, 2020, NCAI and the National Indian Education Association sent an intertribal organizational letter to both the Departments of Education and Interior requesting that funds allocated under the CARES Act be disbursed quickly and with maximum flexibility to BIE-funded schools. Despite this request, it was not until April 28 and 30 that the Department of Education held formal tribal listening sessions regarding the disbursement of the $153.75 million in funding. Finally, on June 9, the BIE began distributing their directly appropriated $69 million to BIE schools, and on July 2, the Agency began distributing the $153.75 million from the Department of

[2] U.S. Department of the Interior, Budget Justification and Performance Information, FY 2021 Bureau of Indian Education, https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-budget-justification-bie.pdf.

[3] U.S. Department of Education, National Center for Education Statistics. (2020). The Condition of Education 2020 (NCES 2020–144), https://nces.ed.gov/fastfacts/display.asp?id=805.

[4] Statement of Jason Freihage, Deputy Assistant Secretary For Management Office of the Assistant Secretary for Indian Affairs Department of the Interior before the Subcommittee on Interior, Environment, and Related Agencies, House Committee on Appropriations on Education Facilities and Construction (July 24, 2019), https://www.congress.gov/116/meeting/house/109835/witnesses/HHRG-116-AP06-Wstate-FreihageJ-20190724.pdf.

Education.[5] This 97-day delay in releasing funds impaired access to distance learning, prevented schools from preparing for summer programming, and delayed assessment of technology needs as described in NCAI's testimony before the U.S. Commission on Civil Rights Hearing on COVID-19 in Indian Country.[6]

EMERGENCY FUNDING AND CURRENT NEEDS FOR OUR AI/AN STUDENTS

As BIE-funded schools continue to plan for the 2020–2021 academic year, it is clear that our K-12 schools do not have the resources and educational infrastructure to ensure a safe return for our students. To address this, 21 national and regional tribal organizations have requested the following: (1) investment in emergency broadband access and deployment for BIE schools and tribal communities; (2) at least $1 billion in emergency funding to address the backlog of unfunded repairs and renovations at Bureau-funded schools which are especially needed to address overcrowded classrooms; and (3) at least $1.5 billion to BIE funded schools to meet the health, safety, and educational needs of students due to the impacts of COVID-19.[7]

CONCLUSION

Thank you again to the Committee for holding this hearing, and I look forward to your questions and working with you to address these disparities.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE JOE GARCIA, HEAD COUNCILMAN, NATIONAL CONGRESS OF AMERICAN INDIANS

Questions Submitted by Rep. Gallego

Question 1. In an ideal world, what would BIE's decision-making process about the upcoming school year have looked like?

Answer. The Bureau of Indian Education's (BIE's) decision-making process regarding the 2020–2021 school year should have centered around the safety and well-being of students, staff, and the community. Rather than taking risks in reopening schools, the BIE and Department of the Interior (Interior) should have deferred to all tribal nations, their elected leaders, and their local educational advisors on how to reopen schools safely.

In an ideal world these discussions with BIE, Interior, and tribal leaders would have occurred in May 2020 rather than in July, which would have provided more time for tribal communities to prepare for various situations. Doing so would have allowed for better collaboration and planning between tribal authorities, local and state health authorities, and the BIE, in order to develop health and safety plans alongside community members.

Question 2. The Broken Promises report by the U.S. Commission on Civil Rights found that remote areas in Indian Country lack telecommunications infrastructure and broadband access.

2a. How has the lack of infrastructure and broadband access affected Native students during this pandemic?

2b. How will this affect achievement gaps?

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[5] U.S. Department of Interior, BIE Listening Session, (July 2, 2020), https://www.bia.gov/sites/bia.gov/files/assets/asia/opa/BIE_CARES_Act_Slides%20-%20July%202nd%20Update.pdf.

[6] National Congress of American Indians, Testimony before U.S. Commission on Civil Rights Hearing on COVID-19 in Indian Country: The Impact of Federal Broken Promises on Native Americans, (July 17, 2020), http://www.ncai.org/resources/testimony/written-testimony-of-president-fawn-sharp-at-the-hearing-on-covid-19-in-indian-country-the-impact-of-federal-broken-promises-on-native-americans.

[7] Inter-tribal Letter to Congress on Tribal Priorities for COVID-19 Relief Package, (July 20, 2020), http://www.ncai.org/Covid-19/indian-country-priorities-for-covid19-stimulus/Tribal_Inter-Org_COVID_Relief_Letter-7.20.2020-FINAL.pdf.

Answer. According to a Government Accountability Office report, only 65 percent of individuals living on tribal lands had access to fixed broadband in contrast to the access rate of 92 percent for all Americans. Further, 34 percent of Native students nationwide do not have internet access in their homes, compared to 24 percent of students nationwide.[1]

Not being able to connect to the internet hinders a student's ability to get assistance or engage in active lesson plans. Further, not being able to communicate with an instructor or ask questions when unsure of a program or topic discourages students and furthers the achievement gap. Finally, if a teacher is not able to engage with their students and provide formative assessments, their learning progression can be hindered, which can result in students not achieving the educational outcomes and goals for the day. Four months of this or more will widen the achievement gap and have a negative effect on our students and their futures.

Question 3. The CARES Act provided $153 million for BIE schools. Is this funding enough to meet the needs of Native students?

Answer. Simply put, no. A significant investment in emergency funding is needed for the BIE system. On July 24, 2020, 21 national and regional tribal organizations requested at least $1.5 billion in direct funding to BIE funded schools to meet the health, safety, and educational needs of students due to the impacts of COVID-19. This funding would go toward purchasing education technology hardware, software, and connectivity; prevention and response efforts related to COVID; providing mental health services and services specific to the unique needs of AI/AN students; hiring additional IT staff; increased transportation to allow students to social distance on buses; and cleaning and sanitizing school facilities. This does not include the cost of maintenance and repair to BIE school facilities that would allow students and staff to abide by CDC guidance

Questions Submitted by Rep. Grijalva

Question 1. We have reviewed reporting by the GAO and the Department of the Interior's Office of Inspector General indicating that BIE facilities are currently in subpar conditions and do not meet health and safety standards.

1a. Can you share your concerns about BIE school facilities, in subpar conditions, meeting the CDC's guidelines to safely reopen schools?

Answer. Prior to the pandemic, the Department of the Interior recently identified $629 million in deferred maintenance for BIE funded education facilities and $86 million in deferred maintenance for BIE educational quarters. These maintenance needs include utility systems such as portable water wells, water treatment plans, and water storage tanks. It is impossible for AI/AN students to abide by CDC's sanitation and hygiene standards in response to COVID-19 without the necessary water and sanitation infrastructure at our BIE schools. Due to the large amount of deferred maintenance, Indian Country has concerns on BIE schools meeting CDC's guidelines to reopen schools safely.

Additionally, before the pandemic, it was common for BIE classrooms to have to close for up to 2 weeks due to the presence of dangerous mold, unsafe roofs, and HVAC system failures, which all resulted in pre-pandemic lost instruction during the academic year. Kindergarten students alone have been displaced from their regular classrooms for 3 years at some schools.

Mr. GALLEGO. Thank you, Honorable Joe Garcia. Thank you for your testimony.

The Chair now recognizes Mr. Lance Witte.

Did I pronounce that correctly, Mr. Witte?

Mr. WITTE. Yes, that is correct.

Mr. GALLEGO. OK. Mr. Lance Witte, the Superintendent and high school principal for the Lower Brule Schools in South Dakota.

[1] Alliance for Excellent Education, Future Ready Schools, Students of Color Caught in the Homework Gap, https://futureready.org/homework-gap/.

STATEMENT OF LANCE WITTE, SUPERINTENDENT AND PRINCIPAL, LOWER BRULE SCHOOLS, LOWER BRULE, SOUTH DAKOTA

Mr. WITTE. Chairman Gallego, Ranking Member Stauber, honorable members of this Subcommittee, thank you for the opportunity to testify on behalf of Lower Brule Schools and the Lower Brule Sioux Tribe, both located in central South Dakota.

I serve as Superintendent of Lower Brule Schools, and my testimony today focuses on the challenges we face because of COVID-19. Specifically, my testimony is about the Bureau of Indian Education's school re-opening guidance and how COVID-19 intensifies our existing funding shortfalls.

In 1868, the Fort Laramie Treaty was signed between representatives of the Lakota Nation and the United States. This treaty established the Federal Government's role and commitment to best promote the education of Lakota youth by providing teachers, schools, and educational funding.

Our school serves students in one of the most rural and impoverished communities in the United States. The reservation covers more than 400 square miles, and 99 percent of our students are economically disadvantaged.

The primary source of funding for our schools is the Indian School Equalization Program, or ISEP. These funds, according to the Bureau's own documentation, are designed for education related programs, such as staff salaries and benefits, classroom supplies, textbooks, gifted and talented programming, and extracurricular activities. Unfortunately, ISEP is not sufficient.

ISEP dollars must be used to close gaps in other federally-funded programs like transportation, food service, special education, and facilities construction and maintenance.

Like many schools, businesses, and governments throughout America, COVID-19 has severely impacted our budget. Unfortunately, this pandemic-related impact merely compounds the annual funding crisis we face because of Federal under-funding.

The Lower Brule Sioux Tribe received Federal coronavirus relief funds from the CARES Act and distributed a portion of these funds to Lower Brule Schools. We are grateful to have received these funds that can help us provide technology to students, purchase personal protective equipment, and build out a wireless internet network so that our students can access their course work from home.

This year, to ensure the health and safety of our students and staff, we decided to start school online. One reason we decided not to re-open our campus was that South Dakota has the most rapidly increasing rate of COVID-19 spread in the nation, rising 55 percent in the last 2 weeks alone.

In part, we also decided to start the year with online learning because of the lack of clear communication from the BIE about CARES Act funding. When the CARES Act became law in March, we were grateful that it included tribal set-asides and increased funding for the BIE. But as the school's leadership team began crafting plans to resume school, we struggled with the lack of Federal guidance about this funding.

While our school was provided a tentative funding projection, no timeline was provided on when these funds would be available for us to use. It was only on June 29, 2020, that these BIE funds were deposited into our school's account, just a few weeks before the start of the school year.

This delayed funding meant that we had to postpone the start of our school year by 3 weeks.

As we reshuffle our Federal funding to meet immediate needs, the educational equity gap between our students and their non-Native peers in non-tribal schools only grows. In South Dakota, the Native American student proficiency rate on standardized math, English, and science assessments are less than half of the statewide average.

In testimony before the Senate Committee on Indian Affairs on July 29, BIE Director Tony Dearman said that it is the BIE's firm belief that students succeed when at school. Students learn and grow while attending school during in-person academic instruction.

Lower Brule Schools entirely agrees with Mr. Dearman's view on school re-opening and agrees with Federal policy makers that a return to in-person learning is good for students.

But as the BIE develops and implements its re-opening plans, we ask that they keep in mind that Federal funding directly impacts our ability to welcome students back to campus.

Funds provided to tribal grant schools need not only to be adequate but provided in a timely manner. Delayed funding is unfortunately not new to us, but we hope that this will change. For example, our school submitted all of its necessary documents for Title I funding in the fall of 2019 only to receive these Title I funds on March 20, 2020, after school had closed for COVID-19.

One hundred and fifty years after the Fort Laramie Treaty was signed, our tribe and school continue to pursue an education that best promotes the education of our students. Underfunding of the Indian School Equalization Program and other BIE programs does not help.

Congress' trust responsibility to our school is not altered because of COVID-19, and we ask for sufficient and timely fiscal relief from our Federal partners so that we can pursue a safe re-opening of our campus.

Thank you for your time and the opportunity to testify about these important issues.

[The prepared statement of Mr. Witte follows:]

PREPARED STATEMENT OF LANCE WITTE, ED. S. LOWER BRULE SCHOOLS SUPERINTENDENT ON BEHALF OF LOWER BRULE SCHOOLS AND THE LOWER BRULE SIOUX TRIBE

Chairman Gallego, Ranking Member Cook, and honorable members of this Subcommittee: thank you for the opportunity to testify on behalf of Lower Brule Schools and the Lower Brule Sioux Tribe, both located in central South Dakota. I serve as the superintendent of Lower Brule Schools, and my testimony today focuses on the challenges we face because of COVID-19. Specifically, my testimony is about the Bureau of Indian Education's (BIE) school reopening guidance and how COVID-19 exacerbates our existing funding shortfalls.

In 1868, the Fort Laramie Treaty was signed between representatives of the Lakota Nation and the United States. This treaty established the Federal Government's role and commitment to "best promote the education" of Lakota youth by providing teachers, schools, and educational funding.

Our school serves students in one of the most rural and impoverished communities in the United States; the reservation covers more than 400 square miles and 99 percent of our students are economically disadvantaged. The primary source of funding for our school, the Indian School Equalization Program, or ISEP, provides a per-pupil allocation to Bureau of Indian Education-funded grant schools for general operating expenditures. These funds, according to the Bureau's own documentation, are designed for education-related programming, such as staff salaries and benefits, classroom supplies, textbooks, gifted and talented programming, and extracurricular activities. Unfortunately, ISEP funding is not sufficient to operate our school well.

One reason for this is that ISEP dollars often must be used to close gaps in other federally-funded programs, like transportation, food service, special education, and facilities construction and maintenance. Draining ISEP funds for needed expenses in other areas leaves us with less money to pay teachers and invest in student programming.

Like many schools, businesses, and governments throughout America, COVID-19 has severely impacted our budget. Unfortunately, this pandemic-related impact merely compounds the annual funding crisis we face because of Federal underfunding. The Lower Brule Sioux Tribe received Federal Coronavirus Relief Funds (CRF) from the CARES Act (P.L. 116–136) and distributed a portion of these funds to Lower Brule Schools. We are grateful to have received these funds that can help us provide technology to students, purchase personal protective equipment, and build out a wireless internet network so that our students can access their coursework at home. But to put this in perspective, these CRF funds do not even cover the existing Federal funding shortfall our school has faced since 2018.

As I speak with tribal school leaders across South Dakota and nationwide, it is clear that many of us are in a similar position: Our schools are forced to use Federal funds intended for educational programming for other essential needs, often simply to keep our aging school facilities open. As we reshuffle our Federal funding to meet immediate needs, the educational equity gap between our students and their non-Native peers in non-tribal schools only grows. In South Dakota, the Native American student proficiency rate on standardized math, English, and science assessments is less than half of the statewide average.

This year, to ensure the health and safety of our students and staff, we decided to start school online. One reason we decided to not reopen our campus was because South Dakota has the most rapidly increasing rate of COVID-19 spread in the nation, rising 55 percent in the last 2 weeks alone.[1] In part, we also decided to start the year with online learning because of a lack of clear communication from the BIE about CARES Act funding. When the CARES Act became law in March, we were grateful that it included tribal set-asides and increased funding for the BIE. But as our school's leadership team began crafting plans to resume school, we struggled with a lack of Federal guidance about this funding. While our school was provided a tentative funding projection, no timeline was provided about when these funds would be made available for us to use. Without knowing the confirmed funding amounts, we could not adequately prepare for the start of school—we did not have the information we needed to properly budget funds for personal protective equipment, cleaning supplies, laptop computers for in-home learning, or mobile hotspots, for example.

It was only on June 29, 2020, that BIE funds were deposited into our school's account, just a couple weeks before the start of school. This delayed funding meant that we had to postpone the start of our school year by 3 weeks.

In testimony before the Senate Committee on Indian Affairs on July 29, BIE Director Tony Dearman said that "it is BIE's firm belief that students succeed when at school. Students learn and grow while attending school during in-person academic instruction." Lower Brule Schools entirely agrees with Mr. Dearman's view on school reopening and agrees with Federal policymakers that a return to in-person learning is good for students.

But as the BIE develops and implements its reopening plans, we ask that it keep in mind that Federal funding directly impacts our ability to welcome students back to campus. Funds provided to tribal grant schools need not only be adequate, but provided in a timely manner. (Delayed funding is unfortunately not new to us, but we hope that this will change; for example, our school submitted its all necessary documents for Title I funding in the fall of 2019, only to receive these Title I funds on March 20, 2020, after the school had closed due to COVID-19.

[1] National Public Radio (NPR), September 8, 2020. "Coronavirus Maps: How Severe Is Your State's Outbreak?"

150 years after the Fort Laramie Treaty was signed, our tribe and school continue to pursue an education that "best promotes the education" of our students. Underfunding of the Indian School Equalization Program and other BIE programs does not help. Congress's trust responsibility to our school is not altered because of COVID-19, and we ask for sufficient and timely fiscal relief from our Federal partners so we can pursue the safe re-opening of our campus.

Thank you for your time and the opportunity to testify about these important issues.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. LANCE WITTE, LOWER BRULE SCHOOLS SUPERINTENDENT

Questions Submitted by Rep. Gallego

Question 1. What written guidance or other communication, if any, did you receive from BIE last spring and/or over the summer regarding the reopening plans for the upcoming school year?

Answer. The BIE sent out sample surveys for parents in July. We utilized those surveys with our parents to collect data. After that, no guidance for the school opening was sent out until late August. We used information from parent surveys, CDC, South Dakota Department of Health, South Department of Education, and other school districts around the state to develop our Return to Learn Plan. Our Return to Learn Plan was approved on August 5 by the Lower Brule Tribal Council. We were asked to send the Return to Learn Plan to the BIE, and we met their request. We then told on September 4 that the BIE was evaluating our Return to Learn Plan with a rubric that we were never provided. On September 15, we received the feedback on Return to Learn Plan and were asked to make adjustments based on the feedback. We modified our Plan in a couple of days as directed. Finally, we received an email from Dr. Tsosie, BIE Minneapolis, before we were able to send the modifications that they approved the Plan without modifications.

Mr. GALLEGO. Thank you, Mr. Witte.

The Chair now recognizes Ms. Sue Parton, the President of the Federation of Indian Service Employees.

STATEMENT OF SUE PARTON, PRESIDENT, FEDERATION OF INDIAN SERVICE EMPLOYEES

Ms. PARTON. Good afternoon, Chairman Grijalva, Subcommittee Chairman Gallego, Ranking Member Stauber, and distinguished members of the Subcommittee.

My name is Lahoma Sue Parton. I am a member of the Kiowa Tribe of Oklahoma. I am president of the Federation of Indian Service Employees, affiliated with the American Federation of Teachers. FISE represents 6,700 employees at 350 work sites in 22 states run by the Bureau of Indian Affairs, the Bureau of Indian Education, the Office of Special Trustee for American Indians, and the Office of the Assistant Secretary for Indian Affairs under the Department of the Interior.

The coronavirus has hit Native American communities especially hard, and misinformation or no information has complicated the lives and careers of our members.

On March 16 and 17, all Bureau-operated schools were shut down and boarding schools were directed to send students home, but employees were directed to continue to report for duty.

Employees were eventually directed to shelter in place and initially placed on weather safety leave. They were ultimately directed to telework, yet they were not provided with training nor

equipment to telework. Many lived in rural areas with little or no broadband or internet access.

At the end of April, FISE received a draft of the BIE School Re-opening Plan. We requested and were granted the opportunity to participate in the re-opening plan.

The first meeting of the BIE Re-opening Task Force met by conference call on May 22. However, all subsequent meetings were canceled.

On June 12, I received an e-mail from BIE stating that the task force would not be reconvened.

On June 24, the BIA sent out an e-mail to the employees stating, "Your BIE e-mail is scheduled to migrate this evening."

The new software required users to have a DOI-issued personal identity verification card and card reader, which the majority of BIE employees did not have and could not acquire due to the closings of the credentialing centers.

The BIE employees were immediately put in the position where they could not receive information from the union or communication from their supervisors since they could not access the government e-mail. This situation continues to affect about 1,000 BIE contract educators today.

In late June, the BIE School Re-opening Plan was published for comment in the Federal Register with the announcement of public and tribal comment sessions to be presented virtually. I sent the union's comments to the BIE per instructions for publication, but it was sent back to the BIE Employee Labor Relations Office to address the concerns and questions.

The union then submitted our proposal on the re-opening plan, which was also ignored.

Throughout July, FISE made numerous attempts to communicate with BIE. We were forwarded guidance from BIE's Human Resources Office, from the DOI, Indian Affairs, BIE, state government and tribal government, which may or may not have been applicable to all four agencies that we represent. It was confusing and difficult to decipher.

At the end of July, we were informed by BIE that there was a glitch causing unemployment applications to be denied to contract educators. BIE devised a work-around where employees would have to submit several documents on an individual basis to apply for retroactive benefits.

Many employees lacked internet access to these submissions except at their work sites, which they cannot reach due to the pandemic.

Throughout the summer, we requested information on the teaching method and distance learning plans the BIE would be offering so we could notify employees and help to ensure a safe and productive working environment. It is now 4 work days before the re-opening date, and we have not received any decision. The most recent version of the BIE re-opening plan, "Return to Learn," simply states that BIE prefers to offer in-person teaching to the extent possible.

About 80 percent of our members are affiliated with a Native American tribe and traditionally live in multigenerational homes, amplifying concerns about spreading the virus to their family

members. The majority of Native Americans depend on Indian Health Service for health care, which is underfunded by BIE. Our tribal nations have already been decimated.

FISE believes schools must re-open but must do so safely. We must follow available science and public health guidance and the expertise of educators and health practitioners.

As we see across the country, premature return to normal activity without proper precautions risks infection surges and new shutdowns, harming our communities and our economy.

As to the "Return to Learn" plan, safety measures are only recommendations, not directives. There are several times where the guidance equivocates, such as "when feasible," "if possible," "within reason," or "to the extent practicable" when referring to safe measures like social distancing, face coverings, or other PPE.

I want to be clear that what we want is an opportunity to truly collaborate with BIE. Our members have the right to a workplace with adequate infection control practices and PPE, and our labor laws obligate employers to discuss these matters.

We want a solution-driven dialogue with employers that will ensure staff and students are safe.

Thank you for this opportunity.

[The prepared statement of Ms. Parton follows:]

PREPARED STATEMENT OF SUE PARTON, PRESIDENT, FEDERATION OF INDIAN SERVICE EMPLOYEES

Good afternoon, Chairman Gallego, Ranking Member Cook and distinguished members of the Subcommittee.

My name is Lahoma Sue Parton, and I am a member of the Kiowa Tribe of Oklahoma. I currently serve as the president of the Federation of Indian Service Employees, affiliated with the American Federation of Teachers. FISE is headquartered in Albuquerque, NM, where I have worked and resided for the past 44 years. FISE represents about 6,700 employees in the Bureau of Indian Affairs, the Bureau of Indian Education, the Office of the Special Trustee for American Indians and the Office of the Assistant Secretary-Indian Affairs, under the Department of Interior, who work at about 350 work sites located in 22 states.

FISE represents 2,817 BIE bargaining unit employees who work at 55 bureau-operated schools and offices located in 10 different states. Currently, 2,281 of our members work in schools located in Arizona and New Mexico. The coronavirus has hit Native American communities especially hard, particularly in how it has affected BIE-operated schools and how misinformation, or no information, from BIE/DOI management has complicated the lives and careers of our members.

Although I became aware in January, through news reports, of COVID-19's devastating impact on a Washington state nursing home, I was not yet aware of its potential to become a pandemic that would affect us all. It was not I received an email at the end of January from the AFT, with guidance and resources regarding preparing for and taking precautions against a possible airborne viral pandemic, that I realized the implications of the coronavirus. About the same time, I received inquiries from some OST members who had questions as to why they were being advised to take home their laptop computers, just in case.

In early March, I was notified that my Federal supervisor had attended a conference in Washington state and was told to quarantine for 14 days upon her return to Albuquerque. In mid-March, when the governors of New Mexico and Oregon shut down their public schools, many BIE schools were on spring breaks, so we were inundated with inquiries from employees as to what BIE was going to do. On March 16 and 17, all bureau-operated schools were shut down and boarding schools were directed to send students home, but employees were directed to continue to report for duty. This raised many questions, but BIE did not provide consistent answers. Employees were eventually directed to "shelter in place," being initially placed on weather/safety leave provided through guidance from DOI/BIE. They were ultimately directed to telework, allowing them to fulfill their school year contracts. While this is the status of the majority of our BIE employees, employees were not

provided with training or equipment to telework, and they lived in rural areas that had little or no broadband or internet access.

On March 18, after numerous unsuccessful attempts to get decisive, consistent guidance from BIE/DOI and an increase in inquiries from worried employees, I sent out an email to our entire bargaining unit to inform them that their union was pursuing every avenue to advocate for them and get answers to their concerns. This correspondence was sent through the government email system, per the collective bargaining agreement. I was censured by the Bureau of Indian Affairs for doing so.

In early April, management offered paid leave under the Family First Coronavirus Response Act, as a way for employees to remain on telework or to care for themselves and family members, but the administration of these leave policies were often misinterpreted and applied inconsistently throughout BIE. Once the decision was made for bureau-operated schools to remain closed through the end of the school year, the Employee Performance Appraisal Plan closeout issue was negotiated to fairly rate employees, which would affect their next year's contract.

At the end of April, FISE received a draft of the BIE School Reopening Plan. As the exclusive representative of the employees, we requested and were granted the opportunity to participate in the reopening plan. The first meeting of the BIE Reopening Task Force met by conference call on May 22, however all subsequent meetings were canceled. On July 12, I received an email from BIE stating that the task force would not be reconvened. The reason given was to allow the BIE to align the reopening plan with the administration's "Opening Up America Again" guidelines.

To exacerbate the situation, on June 24, the BIA Office of Information Management Technology, which controls the BIE email system, sent out an email to employees stating, "Your BIE email is scheduled to migrate THIS evening." The BIE was migrating to Office 365, which required users to have a DOI-issued personal identity verification (PIV) card and card reader, which the majority of BIE employees, who were mostly on their summer furlough, did not have and could not acquire, due to the closures of credentialing centers. The BIE employees were immediately put in a position where they could not receive information from the union or directives and communication from their supervisors, since they could not access their government email. The situation continues to affect about 1,000 BIE contract educators today. The union was not notified of this change in employees' working conditions, which would have allowed the employees to bargain over the impact and implementation of the change, so a grievance was filed. We have been informed that our grievance has been upheld, but we have not yet received the relief we are seeking.

In late June, the BIE School Reopening Plan was published for comment in the Federal Register, with announcement of public and tribal consultation/comments sessions to be presented virtually. I sent the union's comments to the BIE per instructions for publication, but it was sent back to the BIE ER/LR office to address the concerns and questions. The union then submitted our proposal on the reopening plan, which was obviously ignored.

Throughout July, FISE made numerous attempts to communicate with BIE regarding the reopening plans and types of instruction, email issues, concrete information on types of leave for employees, and specific concerns for the bureau-operated schools that have residential operations, including the four off-reservation boarding schools located in Oregon, California, South Dakota and Oklahoma. We received only guidance provided to us by BIE's Human Resources office, from DOI, Indian Affairs, BIE, state governments and tribal governments, which may or may not be applicable to all four agencies we represent. It was confusing and proved difficult to decipher.

At the end of July, we were informed by BIE HR that there was a problem with contract educators who normally receive unemployment during their furlough, because of a glitch causing unemployment applications to be denied. We learned that BIE sends personnel information to the Interior Business Center (payroll office), who sends the information to its processing contractor, Equifax, who sends it to various states' Labor departments for unemployment eligibility information for benefits. There was a problem with the transfer of information from IBC to Equifax, so employees did not receive unemployment benefits. BIE HR devised a "workaround" where individual employees would have to submit several documents on an individual basis to apply for retroactive benefits. I'm not sure if this has been resolved, but I doubt that it has, with the lack of internet access for most employees, except at their work sites, which they could not reach due to the pandemic.

Throughout the summer, we have requested a list of all of the BOS schools and what type of teaching they will be offering their students, so we can notify employees and "impact and implementation" bargain over any part of the plan to ensure

a safe and productive working environment. It is now 4 work days before the reopening date, and we have not received any decision, other than the most recent version of the BIE reopening plan, "Return to Learn," which still states that BIE prefers to offer in-person teaching "to the extent possible." This leaves the decision on how to reopen schools on September 16 up to each individual school working with the BIE associate deputy director for their schools, adhering to any tribal government directives and the guidelines provided by their state governors and their local health officials.

About 80 percent of our members are affiliated with a Native American tribe and traditionally live in multigenerational homes, which accelerates their concerns about contracting the virus and spreading it to members of their families, particularly the elderly with many underlying health conditions. The majority of Native Americans depend on Indian Health Service to provide their healthcare, which is as vastly underfunded as BIE. Having a personal computing device and a vehicle is often a luxury for many Native families.

FISE believes schools must reopen, but must do so safely. We must follow available science and public health guidance and the expertise of educators and health practitioners. As we are seeing across the country, premature return to "normal" activity without proper precautions risks infection surges and new shutdowns, which harms our communities and our economy.

Based on what is currently known about the disease and its spread, there are two essential components each community and our Nation as a whole must commit to. These are imperative and should be considered non-negotiable, and they are preconditions for opening school buildings.

1. Physical distancing until the number of new cases declines for at least 14 consecutive days in a given region.
2. A robust public health infrastructure with the capacity for effective disease surveillance, tracing, isolation of those infected and quarantine.

The best way to keep students and staff in school is to ensure that community transmission is under control. However, getting students to and from school, and what happens in schools, are just as important.

As to the "Return to Learn" plan, non-negotiable safety measures are recommendations, not directives. There are several spaces where the guidelines are worded in equivocating language, such as "when feasible," "if possible," "within reason" or "to the extent practicable," when referring to safety measures such as social distancing, face coverings and other PPE. Our tribal nations have already been decimated. I want to be clear that we are not calling for an overhaul of the BIE. To the contrary, we acknowledge that the BIE has the right intentions, and we support its mission 100 percent. What we want is an opportunity to truly collaborate with the agency and to be heard.

We share the BIE's goal of educational excellence and equity for Native students—to ensure that they are able to meet the same challenging college- and career-ready standards required of all students. It was encouraging to see that the plan aspires to meet the academic, health and social needs of our Native children.

In conclusion, I would like to say that our members have the right to a workplace with adequate infection-control practices and PPE to keep them safe from exposure to hazards like COVID-19, and our labor laws obligate employers to discuss these matters. As a union, we can engage in a solution-driven dialogue with employers that will ensure staff and students are protected from COVID-19 exposure in the workplace.

Thank you for this opportunity.

QUESTIONS SUBMITTED FOR THE RECORD TO MS. SUE PARTON, PRESIDENT, FEDERATION OF INDIAN SERVICE EMPLOYEES

Questions Submitted by Rep. Gallego

Question 1. In its letter to Tribal leaders, the BIE said that "educators will receive professional development which supports them being effective instructional leaders in a COVID-19 environment." To your knowledge, have teachers received that training?

Answer. In a request the union sent to BIE on August 10 and again on August 25, we asked for information as to what type of teaching each of the BIE schools would have. Normally, that would be done through an official notification outlining how the affected educators would be impacted, what the provision for the selected

type of teaching would entail and how management would meet the requirements for that type of instruction. Then, we would work with employees and management to ensure that all safety measures would be provided to accommodate those needs. However, since we have not yet received that information for all schools, I can only respond that a few schools I do know of have provided professional development to the educational staff. But, I cannot verify that is the case for ALL BIE operated schools.

Question 2. In June, you mentioned that BIA's Office of Information Management Technology reached out to BIE staff regarding the BIE e-mail system and that there were issues with BIE employees receiving information about their contracts.

2a. Since you were not notified of the change in working conditions for employees, does this mean that the bargaining period for BIE employees has ended?

Answer. The change was made without prior notice to the union, and the union has still not received official notice of the change, in violation of the CBA. Consequently, it is the union's position that it may still conduct I&I bargaining once (if) the official notice is ever provided. Not if management complies with the relief we are seeking in the grievance filed on June 26. The reason this change was so disruptive is because it required that employees have a card reader attached to their computers in order to access their e-mail accounts. With the vast majority of employees working from home, card readers were not issued for their home use, which meant none of these employees could access their e-mail accounts remotely, and that impacted their ability to obtain information about their contracts and other work-related information.

2b. What relief were you seeking for the grievance?

Answer. To rescind the decision to implement card readers and Office 365, and instead return to the former BIE e-mail system. We further requested that once the decision is made to move forward with the new system, to officially notify the union, afford for I&I bargaining, then go from there. This has caused a lot of undue confusion, stress and anxiety in a time when there's plenty already for our employees.

2c. Roughly how many BIE employees continue to be impacted by this technology delay?

Answer. About 1,000 at this time.

Mr. GALLEGO. Thank you, Ms. Parton. I apologize if I mispronounced your name earlier.

And thank you to all the witnesses for their testimony.

The Chair now recognizes Ms. Therese Yanan, the Executive Director for the Native American Disability Law Center.

Thank you, Ms. Yanan.

STATEMENT OF THERESE YANAN, EXECUTIVE DIRECTOR AND ATTORNEY, NATIVE AMERICAN DISABILITY LAW CENTER

Ms. YANAN. Thank you, Chairman Gallego.

Chairman Gallego, Ranking Member Stauber, members of the Committee, thank you for the opportunity to speak with you today.

The Native American Disability Law Center is a private nonprofit that addresses the unique legal issues facing Native Americans with disabilities and is a part of the Federal Protection and Advocacy System, a nationwide system dedicated to promoting the rights of people with disabilities.

For over 25 years, I have had the pleasure and privilege of working with the various tribal communities of the Four Corners region, primarily the Navajo Nation and Hopi Tribe.

Since its inception in 1994, a primary focus of the Law Center's services and a major concern of our community has been the education of Native American children with disabilities, especially those attending BIE schools.

The BIE's current obligation to meet the educational needs of its students, including those with disabilities is rooted in its trust responsibility to tribes and under Federal law. For approximately 6,000 Native American students with disabilities, the Bureau must comply with the requirements of the Individuals with Disabilities Education Act, known as the IDEA.

As an agency, the Bureau struggles to meet the needs of students with disabilities attending its schools. A series of GAO and IG reports and the Department of Education corrective action plans documents the Bureau's inability to meet even the basic educational needs of students with disabilities.

For 9 consecutive years, the Department of Education has found the Bureau needs intervention based on its repeated failure to comply with corrective action plans to properly implement the IDEA. The Bureau's long-standing inability to comply with the IDEA made education for Native American students with disabilities attending their schools challenging under the best of circumstances.

Then the pandemic hit. While state education agencies were issuing guidance to school districts concerning the provision of educational services, families of students in BIE schools were left in the dark. Schools shut their doors with no communication to students with disabilities about how their services would be provided.

Beginning in April and continuing through June, the Law Center checked in with clients in Bureau schools across the Four Corners region. One parent was contacted by a school counselor who had been counseling her son and told that the school terminated his contract.

A speech language therapist in another school was told to stop providing services even though she could do so remotely.

Some parents were provided packets of work for their children, but they were often either far above or below the child's grade level.

Across the board, these families were clear that their children were not receiving any meaningful education or services.

In July, when the Bureau held listening sessions on the topic of a school re-opening plan, stakeholders expressed concern about re-opening too early in areas with high COVID rates, not having reliable technology to support distance learning, and the lack of training for staff on how to educate students in remote learning environments.

Despite this input, the Bureau issued a letter on August 6 suggesting that all schools return to in-person learning as soon as possible. The letter referenced the "Return to Learn" plan which provides little substantive guidance on the actual re-opening of schools for the current school year.

While the clear goal of the Bureau is for students to return to in-person learning as soon as possible, the plan includes two other alternatives. One is internet-based learning.

The other is an alternative education program for students without technology or connectivity. The plan instructs schools that they must provide students with disabilities all services identified in their IEPs, regardless of which option they choose.

The Law Center has significant concerns with these options. First, with such a heavy focus on return to in-person learning, the

Bureau failed to construct effective internet-based educational services. Many students in Bureau schools lack the technology or reliable internet necessary to fully participate in an online learning platform.

Further, by giving schools the choice of providing an alternative program to families who do not have access to technology, the Bureau is contributing to the already existing inequities facing tribal communities.

Additionally, the plan fails to provide guidance on how special education services will fit into the alternative program or how students would be connected with service providers.

Recent outreach revealed that schools have not been in contact with families, leaving them unsure of what the current school year looks like. Many families are afraid to return their children to school for in-person learning. Students should not be forced to return to school because the Bureau failed to provide a viable distance learning option.

The Bureau must take immediate steps to address the needs of students with disabilities by developing a more robust and comprehensive distance learning plan that provides clear guidance on meeting the educational needs of students with disabilities.

We appreciate the Subcommittee's interest in the issues facing Native American students with disabilities.

Thank you for your time today.

[The prepare statement of Ms. Yanan follows:]

PREPARED STATEMENT OF THERESE E. YANAN, NATIVE AMERICAN DISABILITY LAW CENTER

Chairman Gallego, Ranking Member Cook, members of the Subcommittee: thank you for the opportunity to testify today regarding reopening schools funded and operated by the Bureau of Indian Education. My name is Therese Yanan and I am an attorney and the Executive Director of the Native American Disability Law Center.

INTRODUCTION AND BACKGROUND

The Native American Disability Law Center (Law Center) is a private non-profit legal organization that serves Native Americans with disabilities in the Four Corners region of Arizona, Colorado, New Mexico and Utah. The Law Center's mission is to advocate so that the rights of our clients are enforced, strengthened, and brought in harmony with their communities. With offices in Farmington, New Mexico and Flagstaff, Arizona, our advocates work to ensure that Native Americans with disabilities have access to justice and are empowered and equal members of their communities and nations. The issues we address include civil rights, special education, health care, and access to public and private services. Our staff investigate abuse and neglect in care facilities, and provide rights-based training for people with disabilities, their families, educators and service providers.

The Law Center is a part of the Federal Protection and Advocacy (P&A) System, which is a nationwide system of legal organizations dedicated to promoting and protecting the rights of people with disabilities living in every state and U.S. territory. The Law Center is the only P&A that is dedicated to meeting the unique needs of Native Americans with disabilities. While we focus our direct services in the Four Corners, as national leaders in the field, the Law Center routinely consults with other legal organizations, including in the national P&A network, to address the legal issues facing Native Americans with disabilities. The Law Center is often invited to speak at regional and national disability rights conferences. In 2019, the Law Center was recognized as the organizational recipient of the annual National Disability Rights Network Advocacy Award for its efforts to address the educational needs of Native American students with disabilities attending a BIE school.

For over 25 years, I have had the pleasure and privilege of working with the various tribal communities of the Four Corners, primarily the Navajo Nation and Hopi

Tribe. Since its inception in 1994, a primary focus of the Law Center's services and a major concern of our community has been the education of Native American children with disabilities.

The Law Center addresses the special education needs of Native American students with disabilities in the Arizona, New Mexico, Colorado and Utah public school systems and the Federal Bureau of Indian Education (BIE) system. The Law Center provides services that can include informal advocacy, technical assistance, and legal representation to its clients. The Law Center has been working to address the unique legal issues facing Native American students with disabilities attending BIE schools for 25 years including in the seminal education civil rights cases *Bitsilly v. Bureau of Indian Affairs*, 253 F. Supp.2d 1257 (D.N.M. 2003) and *Stephen C. v. BIE*, No. 3:17-cv-08004-SPL (D. Ariz. 2017). The legal issues Native American students with disabilities face in BIE schools are often more complicated because of jurisdiction and tribal sovereignty issues, inconsistent practices across BIE schools, persistent failure to adequately staff schools, and a lack of formalized special education policies and procedures.

HISTORY OF INDIAN EDUCATION IN THE UNITED STATES

The history of Indian education in the United States has a painful past that has left a long-lasting impact on many Native American communities. With the passage of the Civilization Fund Act on March 3, 1819, the U.S. Government ushered into practice forced assimilationist policies that led to an era often referred to as the "Indian boarding school era." This era created boarding schools that were run by the Federal Government and religious officials and designed to assimilate Native Americans into the dominant culture. During this shameful era, Native American students were coerced into attending the boarding schools where they were stripped of their cultural practices, language, and appearances. The Federal Government has recognized that it was Federal policy to "acculturate and assimilate" Native American communities by eradicating their tribal cultures through the boarding school system. In 1928 the Meriam Report documented the conditions of the boarding school system as overcrowded, without adequate food or medical care, with a uniform and ineffective curriculum and low teacher standards, and with child labor being used to keep the schools running. Many may not know that for some the disruption of the boarding school era has not ended since many Native American students who do have a high school in their community attend BIE boarding schools since it is their only option if they want to obtain a high school diploma.

The Indian boarding schools were originally operated by the U.S. Department of Interior's Bureau of Indian Affairs. This system of schools was later taken over by the Office of Indian Education Programs, which was renamed and reestablished as the BIE in 2006. The BIE is headed by a director, who is responsible for the direction and management of all education functions, including the formation of policies and procedures, the supervision of all program activities and the approval of fund expenditures appropriated for education functions.

The BIE's current obligation to meet the educational needs of its students, including students with disabilities, is rooted both in its unique trust responsibility to tribes and Federal law. The Federal Government's trust responsibility to provide for the education of Native American students is established primarily through treaties between the Federal Government and tribes, but also through Federal statutes, court decisions and executive actions. The BIE's obligations to meet the educational needs of Native American students are detailed in the Indian Education Act, the Indian Self-Determination and Education Assistance Act and other numerous Federal statutes and regulations, such as the Every Student Succeeds Act. In its own regulations, the BIE has declared its mission is to provide "quality education opportunities from early childhood through life in accordance with a tribe's needs for cultural and economic well-being, in keeping with the wide diversity of Indian tribes and Alaska Native villages as distinct cultural and governmental entities." In addition to funding and operating its own schools, the BIE is the State Education Agency (SEA) for tribally-controlled schools funded by the BIE, but operated by other tribal entities like tribal school boards or departments of education. Currently, there are 183 BIE-funded elementary and secondary schools, located on 64 reservations in 23 states serving roughly 43,000 students, including 6,000 students with disabilities. In addition, the BIE funds or operates off-reservation boarding schools and dormitories near reservations to support students who attend public schools far from their homes.

For Native American students with disabilities, the BIE must comply with the requirements of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) in addition to other applicable Federal

education laws. The BIE has never promulgated its own regulations implementing the IDEA. Its IDEA policies and procedures have been in draft form since 2012. Importantly, on July 17, 2020, the BIE for the first time issued a national policy providing interim guidance to its operated elementary and secondary schools and dormitories on the "nondiscrimination prohibitions based on disability found in Section 504[.]" Prior to issuing this policy, the BIE had no written policy regarding its obligations to comply with Section 504, a provision passed in 1973.

BIE'S FAILURE TO MEET NEEDS OF STUDENTS WITH DISABILITIES AND GENERAL CONCERNS

As an agency, the BIE struggles to meet the needs of students with disabilities attending its schools. Well documented in a series of U.S. Government Accountability Office (GAO) Reports, Inspector General reports, the U.S. Department of Education State IDEA Determinations and related communications, internal reports and corrective action plans, the BIE is plagued with high staff turnover, lack of staff training, lack of special education and related service providers, and an inability to properly monitor its special education program. These inadequacies impact the BIE's ability to meet even the basic educational needs of students with disabilities often resulting in students' being owed compensatory or "make up" education services.

According to a June 2020 GAO Report, the U.S. Department of Education, which provides approximately $78 million annually to the BIE to meet the educational needs of Native American students with disabilities, raised significant concerns about BIE's implementation of IDEA including concerns about BIE's long-standing noncompliance with the IDEA's requirements and repeated failure to take the Department of Education's required corrective actions. The Report ultimately determined BIE was not complying with the IDEA. Troublingly, the GAO found that the BIE did not provide or did not account for 38 percent of special education and related time for students with disabilities. One school did not provide *any* service to three of its students. Furthermore, the BIE has not established whether and when missed service should be made up, which has led to inconsistent practices among schools.

For 9 consecutive years, the Department of Education has found that the BIE "needs intervention" based on its repeated failure to comply with corrective action plans to properly implement the IDEA. Students attending BIE schools have the lowest outcomes of any students in the country.

In practice, this means that Native American students with disabilities are not provided with the critical special education and related services they are entitled to receive in their Individual Education Plans (IEPs), the document that defines a student with a disability's education program under the IDEA. Families who avail themselves of the IDEA's procedural safeguards like filing informal and formal complaints against the BIE often wait many months or in extreme circumstances, years, for resolution. Many of the Law Center's clients do not contact the Law Center with esoteric legal issues: families simply want to schedule an IEP Meeting with their school and can't get a response, are concerned their student's IEP is not being properly implemented with fidelity, or want to access their student's educational records, which they have been denied. These issues are fundamental to the student's ability to learn and access his or her educational program and their parents' ability to fully participate in their child's education contrary to the clear mandates of the IDEA.

The BIE's long-standing inability to comply with the IDEA and Section 504 made education advocacy for Native American students with disabilities attending BIE schools challenging under the best of circumstances. Then the pandemic hit.

COVID-19 SCHOOL CLOSURE AND BIE RESPONSE

In March 2020, Americans began to come to grips with the fact that we were facing a global pandemic. By late March, many states had announced that schools would be closed for the remainder of the year. New Mexico made this decision on March 27, while Arizona followed suit 3 days later. State Education Agencies (SEAs) began issuing guidance to school districts concerning the provision of educational services and, in particular, special education services to students with disabilities. The message was clear: schools must continue to provide students with disabilities the supports and services identified in their individualized education plans (IEPs). Should a school be unable to provide those supports and services, it must be prepared to review a student's progress toward goals and provide compensatory services to enable that student to be in a position s/he would have been if services had been provided. While it has not been a smooth road for students with

disabilities in state-funded schools, there was at least a map to follow and a general understanding of expectations.

Meanwhile, families of students in schools overseen by the BIE were left in the dark. Schools shut their doors with no communication to students with disabilities about how their services would be provided. In early April, one school sent parents a letter informing them that the school was closed, no education services would be provided, IEP meetings would be held virtually or canceled, and students with IEPs may be eligible for compensatory education services. Beginning in April and continuing through June, the Law Center checked in with clients in BIE schools across the Four Corners area. One parent was contacted by a school counselor who had been providing ongoing counseling services to her son. The counselor stated that his contract was terminated by the school. A speech language therapist in another school was told to stop providing services, even though she could do so remotely. Some families were provided with packets for their children to work on, but they were often either far above or below the child's grade level. Occasionally, a special education teacher would call to check on a student, but this check in was typically a cursory call to see how the student was doing. Across the board, the message from these families was clear: we are not receiving any meaningful education or services. Not only were students being denied educational opportunities, but Native American students with disabilities were left without access to critical services. During the pandemic, alternative services in the community were often inaccessible as resources were being directed toward managing an influx of COVID-19 cases at under-resourced health systems.

On April 21, 2020, the Law Center, along with civil rights and disability rights advocates across the country, submitted a request to the BIE to issue guidance to its schools. This request went unacknowledged and unanswered.

On April 30, 2020, the BIE held a public listening session on the disbursement of $153 million of CARES Act funding. Despite active participation and input from tribal leaders and school representatives, the BIE failed to publicly release any plan concerning the funding.

The school year ended without fanfare, without grades, without progress reports, and without any clear direction moving forward. On June 11, 2020, Margo DeLaune, Acting Associate Deputy Director for the BIE Division of Performance and Accountability (which oversees special education in BIE schools) signed a "Dear School Leader" letter addressing the continued responsibility of schools under the Individuals with Disabilities in Education Act (IDEA). The letter reminded schools of their obligations to students with disabilities and highlighted the need for schools to assess their obligation to provide compensatory services during the time that school facilities have been closed due to COVID-19, to conduct annual evaluations, and to figure out how to provide extended school year (ESY) services to students if schools remained closed through the summer. This guidance instructed schools to contact families and schedule IEP meetings or provide notice that an IEP meeting would be scheduled in the future to discuss these issues. Many of our clients have not been contacted by schools concerning compensatory services or IEP meetings. It is unclear whether the BIE has provided oversight of its schools on this important requirement.

BIE RE-OPENING PLAN

In July, the BIE held three listening sessions on the topic of a school re-opening plan. The stated purpose of these listening sessions was to allow stakeholders input on the needs of their individual schools and communities. Concerns were expressed about reopening too early in areas with high rates of COVID-19 transmission, not having reliable technology to support distance learning, lack of safe and reliable bus transportation, mental health needs of students, and lack of training for staff on how to educate students in a remote learning environment. While the BIE agreed to take all these comments and concerns under consideration, they quickly issued a letter on August 6, 2020 suggesting that all schools return to in-person learning as soon as possible. The letter referenced a Return to Learn plan, which was located on a new BIE website: returntolearn.bie.edu. This 76-page document provides very little substantive guidance on the actual reopening of schools for the 2020–2021 school year.

While the clear goal of the BIE is for students to return to in-person learning as soon as possible, the plan outlines three possible learning environments for students:

1. In person for the full school day;
2. Distance learning through a Learning Management System (LMS); or

3. Alternative education programs as determined by each school leader for students without capability to connect to distance learning instruction.

The plan instructs schools that they must provide students with disabilities all services identified in their IEPs, regardless of whether they choose the distance learning or alternative education option. There is no mention of the June 11 letter instructing schools on their obligations to provide compensatory education services, annual evaluations, or ESY. The Law Center is not aware of any BIE funded school that was able to provide ESY to any student. We also have serious concerns about whether schools have communicated with parents about ESY or their child's right to these services.

The Law Center has significant concerns with the options available to families. First, with such a heavy focus on a return to in-person learning, the BIE has failed to construct an effective method of delivering educational services though distance learning. Many students in BIE schools lack the technology necessary to fully participate in an online learning platform. Even if they have a computer, internet service is often unavailable, unreliable or slow. The BIE has not released any plan to ensure students have adequate technology to access distance learning platforms or, in the case of students with disabilities, special education and related services. Further, by giving schools the choice of providing an "alternative education program" to families who do not have access to technology, the BIE is contributing to the already existing inequities in tribal communities. There is no guidance on how special education services would fit into the "alternative education program" or how students would be connected to service providers. The BIE assumes that in person education and services will be possible; however, as we see school reopening play out across the country, this goal seems unrealistic.

Another concern is the BIE's statement that "schools should assist families in understanding their responsibility in supporting their child's education in this environment." While families play an important role in a child's life both in and outside of school, they cannot be held responsible for their education. This is especially true for families of students with disabilities. Special education teachers receive specialized training in working with students with disabilities; it cannot fall on parents to provide these services in the home. Further, as previously mentioned, many of these students rely on the school for assistance with basic needs that require specialized knowledge and training. A parent cannot be expected to be a speech therapist, occupational therapist, and teacher—particularly when they are likely facing the additional stresses that have come with the pandemic and their own work responsibilities.

Recent outreach to families revealed that schools have not been in contact with students with disabilities to schedule IEP meetings and that families are unsure of what the 2020–2021 school year will look like. Many families remain concerned about returning their students to school for in-person learning. Some, particularly on the Navajo Nation, have experienced loss of close family members to the virus. They should not be forced to send their children back to school simply because the BIE cannot provide a viable distance learning option.

ACTION ITEMS

We respectfully request you consider taking the following steps to immediately address the BIE's failure to account for and address the specific and unique needs of students with disabilities during the COVID-19 related school closures and in its Reopening Plan.

First, the BIE should be required to create a COVID-19 Response Team properly staffed with the requisite educational and public health and safety expertise that is responsible solely for addressing the BIE's Reopening Plan. Specifically, this Response Team should be responsible for developing a clear communication plan and strategy that addresses the needs of both school administration and leadership and parents and families. For every school, there should be coordination between the Response Team, the School Leadership, Tribal representatives and parents. Given the history of Indian Education, the BIE should recognize the importance of building partnerships with tribal governments and families. These partnerships are essential to solving the complex problems facing these schools.

The Response Team should have a clear communication plan with concrete implementation strategies for school administration and leadership to follow including how best to communicate with families, document any concerns or issues facing families and how families can contact the school to address them. For families, the Response Team must have a cogent, consistent communication plan that does not rely solely on the BIE's "Return to Learn" website in order to meet the needs of families who may not have access to internet, read English or know about the

website. Further, the Response Team should create a system or complaint process where a specific Response Team member is tracking individual family issues in order to connect that family directly with the school to work through the issues for prompt resolution.

Importantly, the Team should have an appropriate level of staffing to successfully "roll out" the Reopening Plan to all of its operated schools and still be available to provide technical and direct assistance to those schools so that Reopening Plan expectations are clearly communicated and issues are addressed quickly and effectively.

Second, the BIE should develop a more robust Distance Learning Plan. As discussed above, the BIE's current iteration of its remote and distance learning plan is not comprehensive, nor does it provide clear guidance on how a student with a disability's educational needs will be served. The plan must first clearly state that distance learning must be made available to all students with disabilities. Further, the plan must clearly require that the schools provide laptops (or other devices) and adequate access to the internet so all students can access the remote learning plan. Without a more robust remote learning plan with clear direction that the BIE is responsible for ensuring access, students with disabilities will be left behind even more than they already have been.

Last, the BIE should be required to demonstrate transparency and release publicly available information about how the BIE's CARES Act funds and other subsequent funding streams have been spent to date and how feedback from the April 20 and 28, 2020 tribal consultations and listening sessions was considered in that process.

We appreciate the Subcommittee's interest in this issue. Thank you for allowing me to speak with you today.

QUESTIONS SUBMITTED FOR THE RECORD TO THERESE YANAN, NATIVE AMERICAN DISABILITY LAW CENTER

Questions Submitted by Rep. Grijalva

Question 1. Are BIE schools required under IDEA to provide eligible students with special education services during the COVID-19 related closures?

Answer. Yes, it is clear from the guidance provided by the U.S. Department of Education and the BIE's own guidance it provided to its schools that schools must comply with the IDEA and provide students with services during school closures.

1a. To what extent did schools provide these services to eligible students after BIE schools closed in the spring of 2020?

Answer. Based on our contact with families, schools consistently failed to provide any special education or related services to students when they closed in the spring. Some parents reported that they received a call from a teacher to generally check in on how things were going but schools were not providing coordinated or substantive services or supports.

Question 2. You mentioned that the BIE is unable to meet the basic educational needs of students with disabilities.

2a. Can you expand on the issues you have identified?

Answer. The BIE consistently fails to provide schools with appropriate staff, supports & services, including assistive technology and related services, such as speech, physical or occupational therapy in order to meet the needs of students with disabilities. Many schools under the BIE's supervision report an inability to provide related services due to a lack of staff. The schools frequently fail to timely identify and evaluate students who have suspected disabilities and fail to timely develop and implement Individual Education Plans (IEPs), the document that guides a student's educational program. The schools also consistently fail to constructively address students' behavior that is related to their disabilities, instead resorting to exclusionary discipline practices that improperly remove students from school.

Additionally, the BIE lacks the infrastructure and consistent practice across its schools to properly document what special education and related services students are entitled to receive in their IEPs and what the students actually receive. In some instances, this inconsistent recordkeeping makes it virtually impossible to determine what service, if any, a student is provided or entitled to in compensatory education services. This critical issue was amplified in the May 2020 GAO Report where it

determined the BIE was unable to fully account for the services students with disabilities were provided.

Structurally, one of the major difficulties facing students with disabilities is the BIE's failure to finalize either regulations or policies to consistently implement the IDEA. The IDEA was last reauthorized in 2004. The BIE's procedures have been in "draft" form since 2012. To date, there are no publicly available procedures on which parents, or their advocates, can rely to ensure that students with disabilities receive appropriate services as required by the IDEA. One issue that the Law Center has addressed multiple times is the complaint system provided by the IDEA. This complaint system is intended to be a quick and easy way for parents to address concerns about a school's failure to provide services consistent with an IEP. The IDEA regulations require that a complaint be investigated and addressed within 60 days. The Law Center has waited up to 6 to 9 months for the BIE to address a complaint. At one point this issue was "fixed," because the BIE had addressed internal contracting issues that led to the delays but it has again became a problem with one client waiting over 3 months for the BIE to begin investigating a complaint. Since the BIE did not have clear procedures regarding investigations, the offending school used Department of Interior regulations to object to the investigation after the 60-day timeline had passed, further delaying the BIE's ability to address the complaint.

2b. Have GAO and/or IG reports mentioned or raised similar concerns?

Answer. In May 2020, the Government Accountability Office issued a report specifically on the BIE's provision of special education services. In addition to interviews with relevant parties, the GAO reviewed specific student files. The report documents that:

- BIE Schools did not provide or did not account for 38 percent of special education and related service time.
- BIE's limited monitoring and technical assistance hindered its oversight and support for special education.
- BIE cannot ensure that the schools it funds are meeting their responsibilities under the IDEA.

In February 2018, the Department of Interior Office of Inspector General issued a report on the BIE's use of background checks in its schools. The OIG found that:

- The BIE does not require completion of local law enforcement checks.
- Reinvestigations are not up to date and the backlog was increasing.
- Oversight responsibility for background checks at tribally controlled schools was unclear.
- The background check guidance and information system are outdated & inadequate.

In May 2010, the Department of Education Office of Special Education Programs (OSEP) sent a letter to the BIE documenting the results of its Continuous Improvement and Focused Monitoring System to verify compliance with the IDEA. The results of this process found that:

- BIE did not have a system to effectively monitor educational results, functional outcomes for students with disabilities or to ensure compliance with the IDEA.
- BIE did not have a system to ensure correction of identified areas of noncompliance in a timely manner. It was:
  - —Unable to review data to ensure issues have been corrected;
  - —Unable to determine the cause of noncompliance;
  - —Unable to require a change in policies or procedures that contributed to noncompliance.

In March 2007, the United States Department of Education Office of Inspector General issued a final audit report on the results of its audit of implementation of the IDEA. The OIG found that:

- BIA was unable to demonstrate that it provided planned special education services to 68 percent of students.
- BIA was unable to adequately account for $111 million of IDEA funds.

In addition to this history of the BIE's failure to properly serve students with disabilities, provide required legal protections, properly account for Federal funds,

and take reasonable measures to protect all students, the United States Department of Education Office of Special Education Programs (OSEP) has had the BIE school system designated as "needs intervention" for over 9 years. It is the only school system in the country that has had this designation for such a long period of time and indicates the BIE's ongoing failure to address long identified issues that ensure that students with disabilities receive services consistent with the IDEA.

Thank you again for the Subcommittee's interest in these important issues. Please contact us at your convenience if we can provide any further information.

Mr. GALLEGO. Thank you for your time.

And thank you for all the panel witnesses. I greatly appreciate your testimony.

Reminding Members that Committee Rule 3(d) imposes a 5-minute limit on questions, the Chairman will now recognize Members for any questions they may wish to ask the witnesses.

I will start by recognizing myself for 5 minutes.

Chairman Garcia, my first question is: what was your reaction to learning that BIE was not planning to testify at today's hearing?

Mr. GARCIA. Mr. Chairman, No. 1, I was really upset that they failed, and I figured they had reasons why they did not accept, and some of them I have already elicited, but some of the panelists also have written or talked about the reasons why they probably did not accept.

But it remains to be seen what happens after this.

Mr. GALLEGO. Right. In NCAI's view, does BIE's "Return to Learn" Re-opening Plan adequately include local stakeholders like tribal governments, school administrators, and parents in the decision to fully re-open BIE-operated schools?

Was there proper consultation?

Mr. GARCIA. I don't believe so, sir. I live in a community that has in the local area about five different BIE schools.

The important part for me is that under BIE controlled and operated schools, it is harder for the community to work with the BIE staff and the BIE personnel.

For instance, the principals are hired by BIE. So, I think they were under direct orders to not speak to the locals unless instructed to do so.

Now, tribally controlled schools are a little bit different. We have a lot better local control, and so our planning with the local tribally controlled schools, ones that we have and the one that I belong to, Santa Fe Indian School, we have made all of those important things that we need to do to ensure the safety of the students, including telecommunications and all of that. But the BIE schools, nothing like that that I have seen.

So, the communications efforts have been really, really poor. I have spoken to a number of tribal leaders and educators locally in the Pueblos and tribes, and that never really happened with the BIE.

Mr. GALLEGO. Your testimony mentions the difficulty that Navajo Nations face in its attempts to keep BIE-operated schools out of trouble and it is closed for in-person learning. What does BIE's unresponsiveness to the Nation's request signal to you?

Mr. GARCIA. Well, it signals that it is a bigger problem than we feel because Navajo Nation, No. 1, is the biggest Indian Nation in

the country. So, if the BIE doesn't even respond to the Navajo, how in the world do I expect them to and people expect that they are going to talk to the tribal leaders in the small communities like Taos Pueblo, like San Felipe, and other schools in the Pueblo area if they are not even working with the Navajo Nation?

So, I presume that the numbers that I have spoken to in tribal leaders, that is the real case, that they are not responding.

Mr. GALLEGO. OK. Let's switch to Ms. Parton. I apologize, and my screen just went blank, of course. Give me 1 second. Again, I apologize. You never rely on things going well when you need them to.

Mr. GARCIA. Sue Parton maybe?

Mr. GALLEGO. Yes. I apologize. I had to get my question up right here.

Ms. Parton, the question I have for you is scrolling all the way down to my questions, of course, and there it is.

To what extent do BIE schools have the supplies and staff capacity to follow through on Federal recommendations for taking protective measures against COVID, including sanitizing school buildings, providing PPE, and enforcing social distancing?

This is more of a followup to my opening testimony where in part of the CARES Act we provided money for our BIE schools to actually have this money, but it took 97 days to even distribute it.

Ms. PARTON. To my knowledge, the BIE has been offering safety and sanitation courses online to all of the BIE-operated schools. However, the union does not have any way to ensure that they have available resources and policies in place for opening up the schools.

Mr. GALLEGO. Thank you, Ms. Parton.

I yield my time back, and I recognize our Ranking Member, Pete Stauber, for his 5 minutes.

Mr. STAUBER. Thank you very much, Mr. Chairman.

Mr. Chair, I have a couple of things that are requests from you. I had an issue with my internet.

Mr. Chair, I want to ask unanimous consent that I allow my opening statement in writing to be sent to the Committee. I do not want to have to go over it. Time is of the essence here.

Mr. GALLEGO. Without objection.

Mr. STAUBER. And, Mr. Chair, I would like to enter into the record a letter from the Navajo Nation asking for enactment of S. 886 be included in the record please.

Mr. GALLEGO. Without objection.

[The information follows:]

THE NAVAJO NATION
WINDOW ROCK, ARIZONA

July 28, 2020

The Honorable Nancy Pelosi
Speaker of the House of Representatives
1326 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
H-204, the Capitol
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy:

We respectfully request that you schedule a vote on final passage of S. 886, the Navajo Utah Water Rights Settlement Act (NUWRSA), before the House leaves for the August recess. As discussed and explained in our June 22, 2020 letter to the House, nearly 40 percent of the Navajo Nation lacks running water or adequate sanitation in their homes. To make matters worse, the Navajo Nation's COVID-19 infection rate on a per capita basis is one of the highest in the country and the Navajo Nation has more COVID-19 deaths than many states. The House has an opportunity to take immediate action to mitigate future COVID-19 outbreaks and address the drinking water crisis on the Navajo Reservation by passing S. 886. Although the Senate unanimously passed S. 886, the House of Representatives has so not acted on it, further delaying the relief that it will ultimately bring to the Navajo people.

The Navajo Nation has over 300,000 enrolled members and is the largest Indian reservation spanning portions of Arizona, New Mexico, and Utah. The conditions on Navajo are dire and the pandemic only compounds our needs. With so few watering points across the Navajo Nation, families must travel hours to reach these points and must ration their water accordingly. Without access to clean drinking water, the Navajo Nation will continue to struggle, and its members will be more susceptible to deadly illnesses such as COVID-19.

S. 886 would provide the means to begin to address these critical needs. Through NUWRSA, the Navajo Nation would receive approximately $220 million in federal and state funding for desperately needed drinking water infrastructure on the Reservation in exchange for the Nation waiving its water-related claims against the United States and State of Utah. In 2016, Congress first introduced the settlement legislation and on June 4, 2020, the Senate unanimously passed S. 886, demonstrating the broad bi-partisan support for the legislation.

The Navajo Nation recognizes that there is more to be done for Indian Country and we stand ready to assist you on this work, but S. 886 is ready for final passage. The House's inaction on S. 886 or sending it back to the Senate for further consideration will only delay addressing the basic human needs of the Navajo people. Therefore, we respectfully request that you schedule a vote on final passage of S. 886 before the House recesses in August.

Sincerely,

Jonathan Nez, President

Myron Lizer, Vice President

Mr. STAUBER. Thank you, Mr. Chair.

Mr. Garcia, thank you for offering your expertise today on Native issues. From your testimony, it is clear you are a valued voice by Indian Country nationwide and by the Trump administration in your capacity as Co-Chair of the Interior's Tribal Budget Formulation Committee.

I, therefore, look forward to learning on your experience on this Subcommittee.

However, experts on the subject matter of educating children, the American Academy of Pediatrics, states, and I quote, "The AAP strongly advocates that all policy considerations for the coming school year should start with a goal of having students physically present in school."

Would you agree with the experts, in this case the American Academy of Pediatrics, saying that children need to be in school to optimize social and emotional learning and work to close achievement gaps?

Mr. GARCIA. Yes, sir. That is a dual-pointed issue, I think. I come from a rich culture in the Pueblo country in Ohkay Owingeh, and so I think it is important that I didn't learn all of the things that I knew about social life and culture and language and all of that in an education setting. I learned at home. I learned in the community.

But the other part of it is that if we are going to be part of the United States of America, then we also should learn the educational system of the dominant society, if you will.

And how true that statement is, yes, that's where you learn face to face, but, sir, I must say the online statement to that would be in a safe environment.

If the climate is not safe by virtue of the COVID in existence, they have to assure—the people that are running the schools, have to give assurance that the places are safe and well-kept and that the resources are available and that right policies and perspectives are put in place so that our children will not suffer, will not be infected, not only the children, but their families and students and personnel.

Mr. STAUBER. Thank you, Mr. Garcia.

And do you foresee your support for in-person learning before a vaccine or before we as a nation get through the virus?

Do you foresee support for in-person learning?

Mr. GARCIA. Oh, yes, there is a lot of support for in-person learning. In fact, one of our panelists talked about those students that are especially in need of mental and behavior health needs. That is how you are going to provide it by being face-to-face.

And to tell you, you know how much of a hampering that has happened to some of the schools now, the BIE schools in particular, they do not have the resources to go online, and then No. 2 is that the communities are not well equipped technically to be able to accept that kind of service.

The tribally controlled schools are a little bit different because we are able to ensure that those students are provided with what they are needed to be provided.

Thank you.

Mr. STAUBER. Mr. Garcia, I just want to follow up.

Mr. Chair, how much time do I have?

Mr. GALLEGO. You have 45 seconds, but don't worry if you need more time.

Mr. STAUBER. I just want to ask Mr. Garcia one more.

Mr. Garcia, when discussing the NBC's coverage of the "Dear Tribal" letter from Assistant Secretary Sweeney, you stated that the NBC article omitted a sentence reading, "Local decisions will

be made in coordination with tribes, states, and local public health officials."

And furthermore, your testimony says that these local decisions are "closer to where NCAI wants them to be."

In your opinion, Mr. Garcia, why do you think NBC News took that line from Assistant Secretary Sweeney out of context and omitted the part where she clearly stated that they will make local decisions in coordination with local officials?

Mr. GARCIA. I can only assume, but the fact remains that what was the action in the BIE actions after the fact, and the truth is that they did not contact local tribal leaders.

I have taken the liberty to contact tribal leaders locally here in New Mexico, and in fact, a couple of schools in Arizona, and as I said, there was no response from BIE at any level, and so for whatever reason. But I can only assume why they did not do it.

Thank you.

Mr. STAUBER. Thank you, Mr. Garcia, for your expert testimony. I appreciate you and all the witnesses here today.

I yield back, Mr. Chair.

Mr. GALLEGO. Thank you, Representative Stauber, and you, Mr. Garcia.

Let me now move to—and I probably should make sure I have the right list. Now let me recognize Representative Haaland for 5 minutes.

Ms. HAALAND. Thank you so much, Chairman.

And thank you to all the witnesses for being here. I am very, very grateful for that and for this hearing.

Ms. Parton, I will start with you. In your testimony, you mentioned that the Bureau of Indian Affairs censured you for sending out an e-mail to your bargaining unit since the Bureau of Indian Education would not issue your employees guidance, even after other state governors shut down their schools in their states.

How did the BIA censure you or prevent you from finding this information?

And do you feel that it was a safety concern?

Ms. PARTON. Well, what we were hearing was very, very disheartening to me. Our employees were scared, and they were not getting messaging or they were getting mixed messaging. They were getting guidelines from the Federal Government, and as Federal employees, they felt compelled to follow the guidelines of the Federal Government.

But then they would get a different set of guidelines from the state governor wherever their school was located, and quite often they would get other guidance from the tribal leaders if they were located on or near a reservation.

So, they started calling the union saying, "What do we do? Who do we follow? State schools are doing this right down the road from where we are, but we are still in classes or we are still having to work."

I was hearing all of this, and I just felt compelled to reach out to the members and tell them, "Look. We don't know. We are getting the same mixed messages, but I want to assure you that your union is advocating for you and fighting on your behalf to try and

come up with some answers. So, this is what you can do to help us at this point."

And then about a week later, I received a letter of censure from the Office of Human Capital.

Ms. HAALAND. Thank you for that answer.

And then one quick question. Since only 65 percent of tribal lands have broadband networks available, how did the lack of internet services impact the BIE employees that you work with during the shutdown?

Ms. PARTON. It impacted them very much because a lot of times they were told to telework. This was after they did their 14 days of safety and wellness leave. They were told to telework, but a lot of them did not have equipment. If they got equipment, they did not have internet access. They did not have broadband availability.

A lot of the Pueblos, as I know you are aware, are located in really remote places and sometimes in places where there are mountains, so there is no signal. They were afraid that they were going to be disciplined because they could not meet the tasks that were being given to them to do remotely as a part of their telework.

Ms. HAALAND. Thank you

My next question is for Mr. Garcia, and it is very nice to see you, Mr. Garcia.

The Federal Communications Commission found that only 65 percent of tribal lands have broadband networks and are the most digitally disconnected lands in the United States. However, the Interior school re-opening letter stated it will provide, and this I quote, "wireless access in each school like hot spots."

If tribes do not have access to wireless networks over a majority of their lands, how does the Interior's technology platform contradict itself?

And is it an issue that the BIE should have solved years ago so that Native students can have the same educations as their state school peers?

Mr. GARCIA. Yes, Ms. Haaland. As you know, I have been one of the pushers of telecommunications and broadband for many, many, many years. I serve on the SEC Tribal Leader Task Force, and that 65 percent is even a high number compared to reality.

And if you think about hot spots, hot spots work especially if they are using Verizon. That assumes that you have communications for cell phone service, and many of the remote areas in Indian Country don't even have that.

So, it is an assumption about what they can provide, but the important part of it is that those that are near metropolitan areas can actually go out and provide the services, if the BIE was prepared to go to virtual learning or could provide services or communications or any of that stuff.

But I have been harping on the BIE for over 10 years that they need to invest in it, and so just recently it is happening at the Tribal Interior budget sessions, but we are really far behind already.

I can give kudos to the tribally controlled schools like the Santa Fe Indian School. We were on top of the game.

When they shut down and we shut down the school, we were already prepared to provide communications, and we did what was

necessary at the local level for the tribal level as well as for the school to provide long-distance learning communications and what not, but the BIE has not done so. I am sorry.

Ms. HAALAND. Thank you, Mr. Garcia.

Chairman, I yield back.

Mr. GALLEGO. Thank you, Chairman Haaland.

Ranking Member Stauber, do you have any Members of the Minority that are interested in questions?

Mr. STAUBER. At this time, Mr. Chair, I don't believe I do.

Mr. GALLEGO. OK. Just make us aware and get my attention if someone should pop in. We want to make sure we obviously get them in the queue.

Next I would like to recognize Representative Ed Case from the great state of Hawaii.

Representative Case is not available, so we will move on to Representative Cartwright from the great state of Pennsylvania.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Can you hear me?

Mr. GALLEGO. Representative Cartwright, I can.

Mr. CARTWRIGHT. All right. Good.

My first question is for the Honorable Joe Garcia.

Mr. Garcia, tribal consultation is a critical aspect of the Federal trust responsibility, but in your written testimony, you stated there is no evidence that the Interior Department or BIE officials have deferred to positions that tribal leaders have expressed to them in crafting their school re-opening plan.

Is that what you said? And could you please expand on that statement?

Mr. GARCIA. OK. Thank you for the question.

There are two aspects of that. The first one that you referred to is the Navajo Nation. The Bureau has not really talked with the Navajo Nation president in terms of what their plans are.

And in fact, the president has said the Navajo Nation facilities, BIE facilities will not open if the places are not safe, if the students cannot be safe, and so the BIE cannot be trusted to provide a safe environment for our children in the learning environment.

That is one outlier, you might say. The other one is the example in Taos Pueblo. In Taos Pueblo up north from where I live, they bent over backwards in order to get information from the Bureau at the Assistant Secretary level as well as at the Secretary level of DOI to get clarification of what it is that they are going to do.

And what they were told is that the BIE is planning to open that school because it is not a tribally controlled school. It is a BIE controlled school, so the principal and all personnel are BIE employees.

So, they are under direction to re-open that school, and I will quote permission granted by the War Chief of Taos Pueblo. He said they told him that you can re-open the school if you do not listen to what we have to say because we have passed laws at Taos Pueblo that there are no outside people coming in, that you need to condone to our laws, and that means that the schools will not be open either.

So, you can open the school if you like, but you will have no students. And the reason they said that is there is also a public

school in Taos, and the War Chief said all of our students will be disenrolled from BIE schools and they will be transferred to the public schools, and they are under virtual learning at the Taos public schools.

So, those are two extremes, sir. I hope that answers your question.

Mr. CARTWRIGHT. It does. Thank you.

And, Mr. Garcia, you also mention in your written testimony that prior to the pandemic, the Department of the Interior identified $629 million in deferred maintenance for BIE-funded education facilities and $86 million in deferred maintenance for BIE educational quarters.

It is no secret that infrastructure problems like poor ventilation and overcrowding can contribute to the spread of COVID-19, but despite the prevalence of these problems throughout BIE schools, the BIE is proceeding with an aggressive Re-opening Plan.

In your opinion, did the BIE sufficiently take into account the potentially harmful effects of a school's aging physical infrastructure when it issued its final Re-opening Plan?

Mr. GARCIA. I would say, no, they did not. It was more of, I guess, a directive that they open the school rather than the safety and the well-being of the students that were to attend.

But that is not COVID-related per se. It is related to the backlog of the conditions of the facilities from years and years and years of neglect.

Mr. CARTWRIGHT. Correct. And let me ask you this. Were the tribes consulted on this matter?

Mr. GARCIA. No, sir.

Mr. CARTWRIGHT. I yield back, Mr. Chairman.

Mr. GARCIA. Thank you.

Mr. GALLEGO. Thank you, Representative Cartwright.

I now recognize the great Chairman from Arizona, Congressman Grijalva.

Mr. GRIJALVA. Thank you.

Thank you, Mr. Chairman, and thank you for the hearing and the really good panel that the Committee has put together. And I think the questions from my colleagues are to the point and have dealt with a lot of substance.

Two things that are noticeable. This deadline of September 16 is still active for BIE schools, that and Defense Department schools. It is kind of interesting that the only schools that the Federal Government truly controls are those BIE schools and Defense schools that happen to be on military bases, and those are being urged to do, and pushed in the direction to do, person-to-person, while the rest of the country roils in this debate upon what is safe, when is the time, what are the resources we are going to have in order to open our public schools.

And yet, to some extent, this is a second class status given to the 42,000 Native students that utilize BIE and tribally controlled schools on the rez and to treat them in a different matter, forsaking the trust responsibilities, circumventing it or doing something perfunctory, and the pandemic and the consequences.

We all know, and you stated it before, Mr. Chairman, that the hardest hit, the most impactful in terms of infection and mortality

per capita has been in Indian Country and yet we are being asked to rush this.

I have just a couple of questions. Let me start with the Honorable Joe Garcia.

Mr. Chairman, in your written testimony, you wrote that you believe the Department of the Interior took the action to re-open schools out of a desire to please the President, if not in response to direct pressure from the White House.

What makes you come to that opinion, if you wouldn't mind elaborating, sir?

Mr. GARCIA. Mr. Chairman, was that for me, Joe Garcia?

Mr. GRIJALVA. Yes.

Mr. GARCIA. I come to those conclusions because that is what is being pushed in the nation, opening of schools whether the safety is there or not.

And I want to ensure that at least in New Mexico we will listen to the governor of the state of New Mexico in the closures of schools and the opening of facilities, including educational facilities and what not.

We were consulted. We worked together, but that does not happen with the BIE. This is being pushed at the higher levels, higher than just the BIE, which means then the DOI part of it. That is the message that I get, and a lot of other tribal leaders have told me the same thing, that BIE is only acting on instructions and directives given from higher up.

Mr. GRIJALVA. Thank you so much.

Mr. Superintendent, if I may, Mr. Witte, the release of the BIE guidelines, the timing of that, how did that affect your school's planning and procedures? And, thus far, the coronavirus pandemic, how has that affected your students, in particular, and the staff that works for those students, if you wouldn't mind touching on those two questions?

Mr. WITTE. Thank you, Mr. Chairman.

We had plans in place long before we received the BIE guidelines based on conversations with tribal officials from the state of South Dakota and the other plans for public schools in the surrounding area because some of our schools are off the reservation of those schools.

So, when we received those guidelines, we received them late. The Tribal Council had already determined what our re-entry plan would be, which we are currently in as Phase 1.

We are about 97 percent online. We do see the kids 1 hour a week, touch base with them. We took a very aggressive move to put in a 2.5 gigahertz, a Spectrum broadband initiative to get our families wi-fi.

So, the issue that I alluded to was the delay in the funding being brought to us, which delayed us getting that broadband piece put together. We are still installing routers as I speak, and the 3 weeks of extra time would have done us a lot of good.

Mr. GRIJALVA. Thank you.

And, Mr. Chairman and Ms. Parton, I think the saddest commentary, saddest in the sense that I think BIA and Interior, in general, keep making the case, especially BIA, for their ineffectiveness, to say the least, and to allowing some of its functions to be

so politicized that it cannot truly represent the trust responsibility and the obligations that we have to Indian Country in this nation.

And that hurts this Committee's work, and it certainly is affecting tribes as we heard today and the 6,000 kids with special education needs that are by the wayside even more so.

That is a very sad commentary on the work being done at this point, and I want to thank you for highlighting that and I look forward to any followup that you might suggest, Mr. Chairman.

Thank you again. I yield back.

Mr. GALLEGO. Thank you, Chairman Grijalva.

I just want to check in with Ranking Member Stauber.

Are we OK? Did anyone else jump on?

Mr. STAUBER. Mr. Chair, I don't think any other Member has jumped on, so I send it back to you.

Thank you.

Mr. GALLEGO. Not a problem.

OK. Now we move on to Representative Soto for 5 minutes.

Mr. SOTO. Thank you, Mr. Chairman.

I wanted to make sure, as I had to go in and out with other committee assignments, that I gave each of the witnesses a little extra time to answer questions that they may not have gotten to. We will start with Mr. Garcia.

If there were one or two things you could say to the Bureau of Indian Affairs today about what you would like them to do going forward, what would they be with regard to school openings?

Mr. GARCIA. No. 1 is—please give us assurance that the facilities are safe, that the plans are in place. Show me what the plan is. Show us what the plans are. Show us that you have communicated with the local governing bodies, the tribal leaders, the school boards and others that are related and acquainted with the school system locally.

And, as well, show us how you work with the state that those facilities are in, so it is a three-prong approach, not just a BIE controlling.

But I have yet to see a document, sir, that dictates or that shows me that I would have confidence in having one of my students attend a BIE facility, and just like Taos Pueblo, if they were not ready, if they are not safe, my student is not attending any one of those schools and neither are our community's students.

So, that is the bottom line. They have to show us. They have to really show us that they are ready to re-open, and they have not shown that, nothing.

Mr. SOTO. Thank you, Mr. Garcia.

Ms. Parton, what advice would you give to BIA about re-opening and how we can improve, if you would be able to give them one or two points if they were here today?

Ms. PARTON. I think I would tell them that, just like Mr. Garcia said, we need assurances that our workplaces are safe. As educators, we really care about the education of our students. We know how it is important to advance the Native American society.

My father was a BIA teacher back in the 1950s in a boarding school in South Dakota and then later in a boarding school near Gallup, New Mexico, so I have lived around Native education my whole life.

And I would tell them that we really need assurances that our people are going to be safe, our employees, our students, their families and our Native communities. It is just not happening. It is like this is being pushed on everybody.

The employees know that as Federal employees they have to do what they are directed to do, but they are very worried. They are very concerned and do not want to spread it to their families or people in the communities where they live.

Mr. SOTO. Thank you, Ms. Parton.

Mr. Witte, what would you say to BIA if they were here today about one or two points you would like to see them improve upon?

Mr. WITTE. I think there are two things that could be improved upon drastically. One is the communication in a timely manner. It seems like things are always coming out past the time where we have to make decisions.

And another important issue would be the distribution of funds. We were excited to hear that we got the money for maybe doing some things to better prepare ourselves—because in the spring of the year when we had to close our school, we were not in a very good position to deliver education.

And as we tried to make those decisions through the summer to implement change and receiving the funding at the end of June did not allow us very much time to prepare for the start of the school year.

Mr. SOTO. Mr. Chairman, may I inquire how much time I have left? I can't see the clock.

Mr. GALLEGO. Representative Soto, you have and I actually lost track of the time also. Go ahead with your question, and we are going to do a second round, too, if you have lost time.

Mr. SOTO. OK. My second and final question is on rural broadband. I know this is a concern both in my district in central Florida, which is both urban, suburban, and very rural, and I know our tribes run the gamut from being more urban like in south Florida in our state to very rural.

So, it would be great to get a brief state of how you all are faring with rural broadband or with broadband generally to be able to do some distance learning should you have to.

We will start with Mr. Garcia.

Mr. GARCIA. The question, I will give you two examples.

One is that the Northern Pueblos of New Mexico, when the ARRA stimulus packages came out back in 2010, put an effort out as five tribes that became partners in a coalition to improve the broadband systems here, internet systems if you will, here in northern New Mexico.

We were successful. We got the funding, and we put a system in place. So, broadband is not a big issue for at least the northern part of New Mexico.

We are OK. We are faring well. Some of the schools that have hard times are in southern New Mexico.

But the biggest example that I give you that is a negative side are the rural parts of Arizona and the rural parts of New Mexico or the remote parts of those two states. That is where the Navajo Nation is.

That is where a lot of the BIE schools are. So, if the infrastructure is non-existent, you can do all you want in this facility, which is not going to do any good if you can't get the information to the community, to the students who live outside the facility.

So, that is still a dilemma, and it is not going to be a quick fix. It is going to take a lot of timing, a lot of effort to ensure that it is done properly so that the——

Mr. GALLEGO. Thank you, Mr. Garcia.

Mr. GARCIA. Thank you.

Mr. GALLEGO. Representative Soto, we are going to do a second round. So, if you want to hold your questions on that second round so that we can respect the time of everybody on here, I would greatly appreciate it.

Mr. STAUBER. I will do that, Mr. Chair. Fine.

Mr. GALLEGO. Oh, no, I am sorry, Representative Stauber. I was talking to Representative Soto.

Mr. STAUBER. Oh, OK.

Mr. GALLEGO. Yes.

Mr. STAUBER. Mr. Chair, it is up to you, but I would yield to Representative Soto time if he needs it.

Mr. GALLEGO. OK. Let's do that then. That is fine. Let's finish up the rounds of questions.

Go ahead, Representative Soto. Continue.

Mr. SOTO. Thank you, Mr. Stauber. I thank the gentleman from Minnesota.

And I am just going to continue on with the question that I think both Republicans and Democrats care about here, which is the rural broadband access.

Ms. Parton, if you would go next. It would be great to hear the state of broadband in your area as well.

Ms. PARTON. OK. When you say in my area, we represent the employees at 55 Bureau-operated schools in 10 different states, so it varies from state to state.

We have four off-reservation boarding schools that are kind of located near urban areas that really I think do not have the broadband access.

But then we have the rural schools, like Mr. Garcia said, in New Mexico and Arizona, the real remote locations that are really struggling.

The same way with the schools that we represent that are located in South Dakota and North Dakota. We find that they are really struggling with distance learning even though they are feeling that that is the way that they would like to go because it is safer at this time, but it has been difficult to ensure that they have operational abilities to do distance learning just because of the remoteness.

I also am a part of the Rural Task Force Committee with the American Federation of Teachers, and this is something that we discuss quite often to represent broadband access in rural America.

Mr. SOTO. Thanks.

Mr. Witte, your response on the state of broadband.

Mr. WITTE. It is a real challenge in rural South Dakota. In Lower Brule, we struggled with this as well.

We did secure the 2.5 gigahertz Spectrum broadband through the FCC, and we are currently installing routers in our homes, as I speak. So, we have probably about a third of our community connected at this point, and we have about two-thirds remaining.

Eventually, I believe the tribe will be able to connect, but it is a challenge, and it is something that I think we will have remedied hopefully in the future.

For us, we did not have a one-to-one program going into the spring. So, this is kind of new for our students to have those laptops and devices at home, too.

Mr. SOTO. Thank you. I yield back to Mr. Stauber.

Mr. STAUBER. Mr. Chair?

Mr. GALLEGO. Yes.

Mr. STAUBER. May I ask a question? OK. Thank you very much, Mr. Chair.

I have a couple in my second round of questions. This is for Ms. Parton.

Thank you for participating today. As a pro-labor Republican in the public sector and a union member myself, I always seek dialogue with the brothers and sisters in labor.

As you may know, Minnesota has some of the highest Native populations of any state in the Union. Minnesota sadly has some of the nation's worst educational achievement gaps, according to the Federal Reserve Bank of Minneapolis.

According to a McKinsey study, COVID-related shutdowns of schools will only further exasperate these existing achievement gaps between white and minority students.

Articles and studies agree with this. The closure of schools disproportionately affects low-income and minority students.

Therefore, Ms. Parton, do you agree that to close these achievement gaps, we need students in schools so our Native children are not left behind?

Ms. PARTON. Yes, sir, I do agree with that, but not at the expense of the health and well-being of the students and the employees.

I also am a very big believer in basic skills. That is the whole foundation of a lot of the reasons why Native students fall behind, and I think that is what the focus should be on during this difficult time in our society today.

Mr. STAUBER. Thank you, Ms. Parton.

Ms. Yanan, if you are unaware, my wife Jodie and I are blessed to have a son with Down's Syndrome, and I am fortunate to have firsthand knowledge of the issues as well. We have sat in on many IEP meetings with our child at Duluth Dansol High School.

Therefore, thank you for your advocacy on a topic so near and dear to my heart.

However, I could not imagine the difficulties of managing my son's IEP during COVID. We do not have the training of the crucial staff helping with the IEP.

These cannot be done over Zoom or over the phone. We need these students in the classrooms to get the individualized attention they need.

We also know this is happening in Indian Country. In my district, the Nay Ah Shing School controlled by the Mille Lacs Band

told me firsthand that individualized delivery of special education services suffered further under COVID-19.

Therefore, Ms. Yanan, do you agree with the BIE at least that our Native students with IEPs should not be denied the attention they need, just like my son received the attention he received?

Ms. YANAN. Thank you, Congressman.

I do agree that students with disabilities need individualized attention. I think that the services are so individualized that it needs to be an individualized determination that includes the parents.

And I think that is where the Bureau is failing to properly communicate and consult with parents and families about the services for their children.

As you know from your own experience, the IEP team works best where there is true partnership between the school staff and parents. When schools are not communicating effectively with parents, the students lose out.

Mr. STAUBER. I agree with you. IEPs have to be mutually and collectively designed with the parents in mind because, as you know, the parents are the biggest advocates for the children. So, I appreciate that.

My last question is for Mr. Witte.

Mr. Witte, thank you for bringing a firsthand perspective to the Committee today that the Nay Ah Shing School, operated by the Mille Lacs, has increased transportation needs and is now driving out to deliver much needed school meals.

These crucial and important measures unfortunately put further strain on the banned budget. Therefore, it is helpful that students can use their hybrid models to at least get into the physical classroom a few days a week, lowering the strain on transportation budgets.

Would your students being physically in schools, at least at the beginning, be helpful in easing these costs?

Mr. WITTE. We have been feeding our students from the beginning of the virus primarily with the USDA SAC lunch type program. We deliver those meals to the homes and suburbans. Roughly about 20 square miles is our transportation need.

There are some increased costs. It may be a little bit of an advantage as far as cost factor, but for the safety of our children, our local tribe has decided to go with our hybrid model, which can allude to your special education question.

We are bringing our special needs students in for the time that is in their IEPs, so it has been modified for one-to-one instructions. We are bringing every student in for 1 hour a week minimal to work with them.

So, we have a hybrid approach.

Mr. STAUBER. And the hybrid approach, as far as delivering of the meals, is easing that cost on the budget, correct?

Mr. WITTE. Yes. We can compensate some of those meals as they come in for those meeting times.

Mr. STAUBER. Yes. Thank you all very much. Your testimony was important for us to hear.

I yield back to you, Mr. Chair.

Mr. GALLEGO. Thank you, Representative Stauber, for your questions.

And since there are no other Members of the Minority, should you come up with a question in the process of this second round, please just give me a heads up so I can recognize you.

I have a question for Director Yanan.

You previously called on BIE to provide schools and parents with more comprehensive guidance on schools' responsibilities to write special education and related services during the pandemic. To date, has BIE done so, so far?

Ms. YANAN. Thank you, Mr. Chairman.

What we are hearing from parents is that in some cases some schools have started trying to have meetings and trying to start having the discussion regarding providing compensatory services for the springtime when services stopped, but we have only heard from one family that has actually started receiving those compensatory services.

The major issue we are hearing from families is the lack of communication. We have one family that reported receiving a text at 7:58 in the morning directing her son to get on a Zoom call with his class that morning, and she didn't have the technology and the platform ready on any sort of device.

So, the lack of preparation and the lack of communication with families is a serious issue.

Mr. GALLEGO. And has Director Tony Dearman or any other BIE or BIA officials reached out to your organization to respond to your concerns and parents' concerns?

Ms. YANAN. No, but frankly, Mr. Chairman, I have been trying to address these issues with the Bureau for over 25 years, and I have never gotten response from the Bureau about addressing problems or creating solutions. So, their lack of response didn't necessarily surprise me.

Mr. GALLEGO. Well, I would hope that they would have some urgency right now. Thank you, Ms. Yanan.

I would now like to move on to Representative Haaland if you have a second round of questions.

Ms. HAALAND. Thank you, Chairman. Thank you very much.

Yes, I will go to Mr. Witte please.

Mr. Witte, the BIA's "Return to Learn" guidance focuses on returning to the physical classroom. How feasible is it to re-open schools in your community on September 16?

Are you hearing concerns from school leaders, educators, tribes, parents, or community members regarding the re-opening?

Mr. WITTE. As a tribal grant school, we re-opened this week, Tuesday, September 8. So, our timeline is a little different.

So far, we have re-opened in the hybrid model, which I described earlier, where we are going to be bringing students in an hour a week. Other than that there will be distance learning.

It is going fairly well, but the biggest hurdle that we have is the broadband issue, so we are hoping to get that remedied here soon.

But as far as the spread in South Dakota, as I said in my testimony, it is increasing dramatically over the last couple of weeks. Our tribal officials don't feel like it is safe to bring kids in in large groups at this time.

Ms. HAALAND. So, would you say that the biggest concern you have at this point is the broadband internet service or is it the coronavirus itself?

Mr. WITTE. Well, I think both of those are large concerns because if it wasn't for the coronavirus, we would have the kids in person.

Because of that fact, we are relying on broadband internet service, so they are kind of hand in hand. I think one leads to the other.

Ms. HAALAND. Thank you so much.

My next question will be for Ms. Yanan.

In your testimony, you note that students are re-entering the classroom this fall after a long break from studies during which many have cared for and lost family and friends, contributing to mental health needs.

The BIA has indicated that the Bureau intends to reserve $8 million for direct mental and behavioral health support for BIE funded schools from CARES Act funds.

Has the BIE shared any details regarding their plans for this funding?

Ms. YANAN. Not to my knowledge. From what we are hearing from families and from what we have been able to find from publicly available documents, the "Return to Learn" plan has a section on mental and behavioral health, but there is very little detail.

And what we are hearing from families is there has been no contact with them regarding these issues.

Ms. HAALAND. Thank you.

And based off the Interior's decision to re-open in-person learning as soon as possible and oversight of basic COVID issues impacting Native students, do you think there is a general disconnect between the Interior and what is actually happening in tribal communities?

Ms. YANAN. Yes. I think that, again, the lack of communication, the lack of input from parents, we have heard from some parents that neither their schools nor the Bureau asked for any input or asked them how they felt about re-opening.

And then because any information is just on the website, the school website and Bureau website, a lot of parents just don't know what is happening. They don't know what to anticipate for the upcoming school year, and they don't know how their children are going to be educated.

Ms. HAALAND. Thank you so much for that answer.

Chairman, I will yield back my time.

Mr. GALLEGO. Thank you, Representative Haaland.

And I believe we do not have any other questions. I am just going to double check to make sure. I am going to scroll through right now. If anyone has a question, please give me a wave.

Representative Soto, are you OK? Excellent.

Ranking Member Stauber, are you OK?

Mr. STAUBER. Yes, I am. Thank you, Mr. Chairman, for holding this important hearing. I appreciate it.

Mr. GALLEGO. Thank you, Mr. Stauber, for also attending. I thank the other Committee members as well as the witnesses. I would like to thank you for your insightful testimony and the Members for their questions.

As stated before, the members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing.

Under Committee Rule 3(o), members of the Committee must submit witness questions within 3 business days following the hearing, and the hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned. Thank you all.

[Whereupon, at 4:33 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Statement for the Record

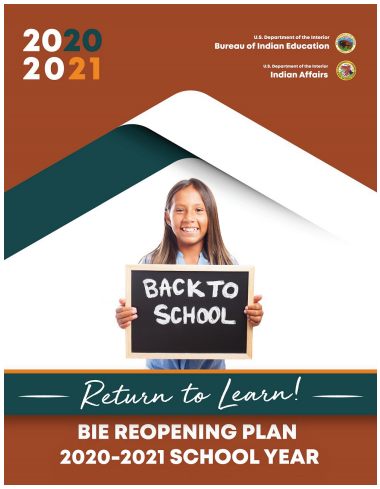
Bureau of Indian Education
U.S. Department of the Interior

Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) regarding the Bureau of Indian Education's (BIE) reopening guidance for the 2020–2021 school year. The BIE's *Return to Learn!* plan provides BIE leaders and school personnel with guidance on reopening criteria that follows current Centers for Disease Control and Prevention (CDC) recommendations, provides flexibility for local conditions, and makes recommendations on distance learning platforms. The *Return to Learn!* plan, as well as other reopening guidance and resources, can be found on the BIE website at bie.edu and on the reopening webpage at https://returntolearn.bie.edu/.

The Department appreciates the opportunity to provide this statement.

Return to Learn!

BIE REOPENING PLAN
2020–2021 SCHOOL YEAR



Full Report available at:
returntolearn.bie.edu/sites/default/files/2020-08/Return-To-Learn-Plan.pdf

Submission for the Record by Rep. Stauber

Statement for the Record

The Mille Lacs Band of Ojibwe Indians
by
Chief Executive Melanie Benjamin

Mr. Chairman and honorable members of the Subcommittee, I am pleased to provide this statement on behalf of the Mille Lacs Band of Ojibwe regarding the reopening of our tribal schools during the COVID-19 pandemic.

Our BIE-funded tribal schools include Abinoojiyaag (K-5) and Nay Ah Shing (6-12), which are located in District I of our reservation near Mille Lacs Lake, and the Pine Grove Leadership Academy in District III, which is east of Hinckley, Minnesota, and about 80 miles from District I. Collectively, these three schools are referred to as "Nay Ah Shing School System", or NASS. We are a small school system and service about a third of the reservation school-age population. Our schools have a focus on Ojibwe language and culture, which is what keeps our students wanting to attend NASS. Language programs are presently funded by the Band. We also have a two-year BIE grant to support native language development.

Planning for this 2020–2021 school year has been exceptionally challenging during the COVID-19 pandemic, and the safety of our students, staff and community has been paramount. On our reservation so far, 15 Band Members have tested positive for COVID-19 that the Band is aware of, and three Band Members have passed away due to COVID-19. However, our health staff have reason to believe there are significantly more cases of COVID-19 in our community that have gone untested.

In our Anishinaabe communities, our households are often multi-generational, with children and grandchildren living with elders. When a child is exposed to COVID-19, our elders who are in high-risk groups are in grave danger.

With these concerns in the forefront, our education staff have spent the majority of the summer planning for our 2020–2021 Academic year. Our first day of classes will be September 16th, and we will be offering two models—a Hybrid option that combines in-person learning at school with Distance/Remote learning from home and a 100% Remote/Distance Learning option. Currently, 51 families have opted for the Hybrid learning option and 23 families have opted for Remote/Distance learning. However, our student count is at 183 and, as of today, many families remain undecided about which option they prefer. These families are likely to make their decision at our Open House scheduled for Friday, September 11.

The Band received a BIE Cares Grant for our schools based on student enrollment. These funds are being used to make the building and classrooms safe. Our schools have been provided with and fitted for sensor thermometers, glass partitions, water fountain and bathroom updates and planning for social distancing on buses.

NASS staff have also devoted significant time over the summer developing a plan for 100% Distance Learning should the school need to close due to a COVID-19 outbreak.

BIE Guidance:

With the topic of examining guidance provided by the BIE to tribes in reopening during a pandemic, generally speaking, we have received outstanding support from BIE staff and officials in developing our reopening plan and have an excellent working relationship with the BIE. Regarding BIE guidance provided, we understand there to have been two primary communications, or guidance, provided to tribes. On August 6, Assistant Secretary Tara Sweeney signed a "Dear Tribal Leader Letter" on the topic of BIE school reopening which was sent to me as Chief Executive. Within this letter, Assistant Secretary Sweeney announced that all BIE-controlled schools would open for school on September 16 for in-person learning at brick-and-mortar school sites. However, she added that that tribally-controlled BIE Schools would not be required to follow this guidance, but were advised to use the guidance to the greatest extent possible.

A second communication arrived in early-mid August, when the BIE released a comprehensive reopening plan for tribal schools to use as a template for reopening safely. This plan was extremely well-done, and over-all our school administrators were very impressed with the guidance provided.

Realistically, however, the plan would require significant budget increases in order for our schools to have adopted it in its entirety. Our financial state of being under-funded did not coincide with cost of implementing the BIE plan. However, BIA officials also emphasized in teleconferences that the BIE plan was only a model, and that there is no one-size-fits all approach for BIE schools. We were advised that tribes should take our own locally determined needs into consideration first and develop our own reopening plan based on local guidance as determined through our unique needs.

Additionally, it would have been helpful to receive the BIE reopening plan earlier in the summer, but we also understand the constraints BIE is working under and the reality of bureaucratic delays that are always a factor when dealing with the approval processes at the Central Office in Washington D.C. However, as the first tribe in the United States to sign a Self-Governance compact in 1990 with the Bureau of Indian Affairs, the Mille Lacs Band of Ojibwe has a long history of doing things our own way and organizing services around our unique, locally determined needs and priorities. While we always appreciate advice, assistance, information and expertise provided by the federal agencies, we are accustomed to taking action to resolve our challenges versus waiting for instructions from federal agencies.

In fact, our Nay Ah Shing School first opened in the early 1975 after students experiencing overt racism walked out of the local public school, and asked the Band government to open a reservation school. Former Chief Executive Arthur Gahbow and our other elected officials responded immediately by opening a school in our community center and then constructing a building after-the-fact which eventually became part of the federal Indian Education programming at that time.

I also want to point out that Mille Lacs was well-prepared for distance learning during the pandemic as a result of having pioneered a hybrid distance learning program in 2016 at our Pine Grove Leadership Academy. Pine Grove was a charter school in District III of our reservation, which the Band eventually took over as a tribal school funded by tribally-generated dollars. With funding limitations, we wanted Pine Grove to become part of the BIE system but there was a moratorium on new school expansion within the BIE system. We worked closely with Chairwoman Betty McCollum, of the House Appropriations Subcommittee on Interior, Environment, and Related Agencies to get language through Congress that allowed for a waiver of the moratorium if a tribe could show that it already had a facility and infrastructure to deliver distance learning as a satellite school of the tribe's BIE school.

Mille Lacs was the first tribe in the Nation to achieve the waiver, and Pine Grove became part of the BIE system as a satellite school of Nay Ah Shing. We continued to offer on-site learning at Pine Grove, but were able to add distance learning for our students through technological connections with Nay Ah Shing instructors. So we may have been advantaged over other tribes with regard to implementing distance learning for several years already, on a small scale.

Unmet Funding Needs:

While we appreciate BIE CARES Act funding received to date, we have numerous needs that have gone unfunded that we expect may negatively impact student, staff and community safety.

(1) Distance Learning Teaching/Curriculum Specialists

Currently, our school day will end at 1:00 in order to provide teachers the time to deliver instruction to students who have chosen Distance Learning. Our teachers would have more time to deliver classes with a longer school day if the Band were able to hire additional teaching staff who could devote their time to develop and deliver distance learning curriculum. This would require additional funds. Currently, our teaching staff will have to simultaneously deliver distance learning while they are still learning distance learning techniques and the associated technological knowledge required for delivering distance learning, as well as having to create distance learning curriculum. While our teaching staff are extremely committed and outstanding teachers, we are very concerned about teacher burnout and potentially losing teaching staff.

(2) Transportation

Our transportation dollars took a big hit with the closing of schools in March. While students were not being transported, we devoted transportation resources to delivering two meals a day, in addition to student supplies, to students at their homes. With stops at every home, this significantly increased the miles driven on a daily basis. Further, when we do start transporting students, our plan for social distancing on buses will require at least two additional staff on each bus to scan the temperature of each child prior to getting on the bus and to enforce social

distance seating. Social distance seating also means we will require additional buses and drivers. Until we are able to provide additional busses, our staff have taken on the duty of picking up children with our smaller vans, again adding to their responsibilities without compensation that bus drivers would otherwise receive.

(3) Our Operation and Maintenance

Our Operation and Maintenance staff have been focused on making the building safe. As noted above, all areas of the schools have been redesigned, as funds will allow, to accommodate safety measures. However, to meet social distancing guidelines, we need more classroom space to keep the student/classroom ratio at no more than 10 students-per-classroom so as to keep our students safe and healthy. We are currently at capacity at Abinoojiyaag School (K-5) and Pine Grove (K-6). Classroom space is costly to construct, even temporarily. We need additional funding for this.

(4) Special Education

Students with IEP's and those with learning disabilities have been the most challenging to serve during the COVID-19 pandemic. The individualized delivery of the curriculum to our special education students has suffered. An ideal special education teacher student ratio would be less than 5 students per teacher. Also due to COVID-19, it has not been possible for paraprofessionals to work safely one-on-one with students while social-distancing. This is another critical area that is very underfunded and requires additional funding in order to provide the necessary level of education.

(5) Student Socialization and Mental Health

Mental health for students and teachers during COVID-19 is a major concern. We have only one social worker at our school, which has always been a concern due to opioid or other substance abuse related dysfunction among many of our families. Students residing in dysfunctional environments depend on the mental health support available on a daily basis at our schools. We are concerned that some students who need these services will go without that support while in a home-school living environment. In the past, we were able to have mental health personnel from our Reservation clinic right in the school. Additional mental health funds would allow us to bring on additional staff or emergency contractors to help our students who need this support and nurturing.

(6) Food Service

Food Service is funded partially by Minnesota State funds and the remainder from Mille Lacs Band tribally-generated revenue. Individual meal preparation for home delivery over the summer has been a hard hit on our food service budget and more federal funds are needed.

(7) Older Students and Completion of High School Program

This year, our after-school activities will include a program to assist students who dropped out and want to complete their high school education program. We were funded for the 2019–2020 school year, but need additional funding to continue through the 2020–2021 school year. Currently, we have five students who are returning after a year or two of absence.

Conclusions

Mr. Chairman, re-opening our schools confronts us with unprecedented challenges. Each of them is costly. None of us can afford to short-change the education of our children and youth. We will need the financial and technical support of the federal government to soften the damage to the next generation of Band members. We ask that you work with our Congressman, Pete Stauber, in a bipartisan effort to make re-opening work safely for our students.

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