

**Testimony of Julie Kitka
President, Alaska Federation of Natives
February 24, 2022**

**Before the Committee on Indian Affairs
United States Senate**

**Oversight Field Hearing “Transformative and Innovative Strategies for
Better Educational Outcomes for Alaska Native Students”**

I. Introduction

Vice Chair Murkowski and Members of the Committee:

Good afternoon. My name is Julie Kitka, and I serve as the President of the Alaska Federation of Natives (AFN). AFN is the largest statewide Alaska Native membership organization in Alaska. Our membership includes over 130,000 Alaska Natives and their institutions set up to serve our people. AFN’s membership includes federally recognized tribes, regional tribal consortiums, regional non-profit organizations, and Alaska Native Claims Settlement Act (ANCSA) villages and regional corporations representing every corner of the state.

Thank you for convening this hearing today. Senator Murkowski, we commend you for your long-standing and continued interest in legislation and legislative oversight of programs that are designed to meet the distinct social, cultural, and economic needs of Alaska Native communities and individuals. You have supported new initiatives in this area and sought ideas for improvements in existing programs, and we thank you for your support and leadership.

AFN requested this hearing today to urge the Committee to take action to help us to strengthen the federal trust responsibility in education for Alaska Natives, acknowledge the sometimes contradictory actions of the federal government over the years, and direct the Departments of Interior and Education to support the growing partnership with the State of Alaska in evaluating and demonstrating the potential of tribal compact schools as well as scale up other innovative efforts which are going on right now all over our state.

I want to report that we have been working closely with the Alaska Commissioner of Education, Dr. Michael Johnson, on a new type of public school in Alaska—a tribally compacted school. AFN has been working on the legal foundation of such a project, evaluating the relevant laws, regulations, and policies at both the federal and state levels. AFN desires to pilot a range of compact schools with the full weight of the federal trust responsibility for education, as well as the full weight of the State of Alaska constitutional mandate to provide education.

The worldwide pandemic of the past two years has created an unprecedented disruption in the delivery of education to Alaska’s students and has demonstrated a far greater demand for innovation in education methods, service delivery, and awareness of community needs. From the COVID-19 pandemic, we learned that we need to make sure the institutions around us have flexibility to adapt and meet the true needs of the people. Within the Alaska Native community there is a growing awareness that teaching about our culture or language is not enough. Our parents are our children’s first teachers. They need support. Critical resources need to go into relevant teacher preparation, professional

development, curriculum development as well as leadership training. We need to scale up the resources available and broaden the opportunities. We need critical resources to evaluate financial infrastructure, systems patterns and governance patterns that work for us. In our efforts we are putting our children first. Our parents are the frontline. Our children and their future, demands that the Alaska Native people take greater ownership of the system of education and ensure not only language and culture are at the heart of the educational experience, but that our social and economic well-being and aspirations for our future. We are ready to take on more responsibility and accountability. We want to have a greater role in decision-making and ensure our children can be all they want to be. In short, we want to expand the imagination of our people and create a path where we can put all our best efforts to create a better educational system.

This is not wishful thinking. It is critical if we are going to survive the rapid change which destabilizes our traditional communities and devalues our people. This change has been accelerating. Some have put the rate of rapid change to be 1000X the change that occurred in our parents' generation. And it continues to accelerate all around us and with leaps in technology.

The State Board of Education and the Alaska Department of Education and Early Development have identified compacting as the mechanism that will allow for the transformation of Alaska Native education, and the Alaska State legislature is currently considering legislation that would authorize a demonstration project for compacting of education services for Alaska Native students. Through tribal compacting of education, we will improve outcomes for students, schools, and communities. Compacting has long been one of the federal government's most effective tools for the promotion of innovative and cost-effective tribal programs, such as those under the Indian Health Service and Bureau of Indian Affairs. We have great and long-lasting experience in compacting in these areas.

We believe there is room in Alaska's educational system to create a transformational educational system. We have the commitment and drive to do our best to accomplish something better for our children.

Please include with my written testimony three attachments:

- Attachment A: ***Transformational Education Post Pandemic: A Path Forward***, dated December 2, 2021.
- Attachment B: ***AFN White Paper: The Origins, Meaning and Future of Indian Self-Determination***, dated December 2021.
- Attachment C: A link to three special webinars which were held to support this effort by First Alaskans Institute on transformative education and a discussion on what is possible in Alaska as we move to tribal compacting over education. Professor Graham Smith and Professor Linda Tuiwai Smith (Maori) discussed lessons learned in their 40 years of experience in New Zealand. (Webinar dates: February 11, 15, and 18th 2022. A video link and written transcript are available.)

II. The Need for a New Approach

The indigenous population in Alaska is large and diverse. There are 229 federally recognized Indian tribes and at least twenty distinct indigenous languages, some of which are now spoken by only a few people.¹ Over the years, you have heard a lot about the disastrous history of education of Native

¹ Diane Hirshberg, PhD, *Educational Challenges in Alaska*, University of Alaska Anchorage

children in this State—including government policy to eliminate our traditional cultures, traditions, and language and assimilate our children to be something they are not. This has had tragic impacts on generations of Alaska Native people. I am not going to dwell on that history, except to note its role in creating the current educational crisis for Native students in our state, where only about 68% of Native students in Alaska graduate from high school—compared to 80% percent of all students—and more than 5% drop out—compared to 3% of non-Native students.² It is also of note that, despite the fact that 22% of students in our state are Alaska Native, only 5% of our teachers are Alaska Native or American Indian— a number that has not changed for decades.³

Alaska’s vast size (land mass 1/5th the size of the entire United States) and the isolated nature of most of its Native villages also present special challenges to traditional approaches to education.⁴ More than 300 communities in Alaska, the vast majority of which are predominantly indigenous, are accessible only by plane or boat.⁵ The pandemic only exacerbated the challenges to providing quality education to Alaska’s Native students, who struggled to adapt to remote learning due to the lack of reliable internet access in Alaska’s rural areas. The true impacts of the pandemic on Native education are yet to be determined, as we are still in the pandemic.

These historical, geographic, and practical complexities—and just common sense—call for creative and flexible solutions that expand access to and leverage modern technology and innovations. We have those solutions at hand now if we exercise the right authorities and access the tremendous value in teaching through culture.

The Alaska State Board of Education and the Alaska Department of Education and Early Development recognized this need for innovation *even before the pandemic*, and, in 2016, changed the Department’s mission and vision statements to include five strategic priorities designed to ensure an excellent public education for all of Alaska’s students. One of those priorities was to “inspire tribal and community ownership of educational excellence.” The recommendation based on that priority, which the State Board later adopted, was to “create the option for self-governance compacting for the delivery of education between the State of Alaska and Tribes or tribally-empowered Alaska Native organizations.” As part of this effort, AFN has partnered with the Alaska Department of Education and Early Development to advance a *demonstration project* that would establish the first tribal compact schools in the state.

There has been important progress made in the education of Native students in Alaskan schools that have adopted the teaching recommendations of Alaska Native leaders, tribes, and tribal organizations, educators, and academic experts. For example, Native language education is now part of the curriculum, and many schools have found ways to present other aspects of Native culture to students. But it is clear that just teaching Native students about their culture in a classroom is not enough to change educational outcomes. To influence those outcomes and improve our children’s future, we need our schools to implement pedagogies based on and provided through Alaska Native cultural perspectives.

Institute of Social and Economic Research, February 2022, at 5.

² *Id.* at 14.

³ *Id.* at 11.

⁴ *Id.* at 22.

⁵ *Id.* at 4.

Schools help shape the way students think about the world and prepare them to live in that world. Academic research has established the benefits of Alaska Native children remaining linguistically and culturally connected to their tribes and communities. It is time to go beyond theory and implement change that will transform the education of Alaska Native students and improve their futures.

AFN has been working to support the State Board of Education's priority of identifying a legal and practical pathway for a state-tribal compact in which Alaska Natives could administer K-12 public education with support from the local school board and community. Legislation currently pending before the State legislature would authorize the Commissioner of Education to test innovative ideas through real-world experience, and then use that experience to evolve programs to make them more effective. Aligning vision, goals, and resources through demonstration projects to prove the value is an important first step.

III. Benefits of Tribal Compacting of Education

Tribal compacting of education offers significant benefits to all parties. A compact is a negotiated agreement between tribes and a state and/or the federal government that sets forth the terms and conditions of the relationship. Unlike contracts, compacts may set political policies for the state and tribes "and therefore have inherent value even beyond their stated goals,"⁶ and practices under the compact may be changed without requiring new approvals for the change. Compacting for the delivery of education means that Alaska tribes, or tribally empowered Alaska Native organizations, will be able to partner with the State to assume the responsibility (and receive the associated funding) to carry out educational programs, functions, services, and activities the State otherwise would be obligated to provide.

Because only one other state—Washington—has implemented a program for the tribal compacting of education services, and because the circumstances in Alaska differ in several important ways from Washington, including the logistical challenges Alaska faces described above and a lack of pre-existing BIA schools, the Department of Education is committed to starting this endeavor into tribal compacting of education with a demonstration project. Those of us who have studied the needs here believe a test project will put Alaska in the best position to ensure that, when a permanent program is eventually implemented, it will best meet the needs of Alaska's Native students.

The present proposal before the Alaska legislature would authorize a demonstration project for tribal compacting that would formally recognize the tribal entity's authority to oversee certain functions of K-12 public schools. The current proposal is for a five-year demonstration period. Participation in the program would be voluntary and structured to honor tribal sovereignty through government-to-government negotiations and agreements.

The proposed demonstration project would improve education for Native students in Alaska by:

- Providing local control of schools in tribal communities
- Allowing for improved recruitment and training of Native educators
- Allowing for K-12 teaching through cultural methods

⁶ Intergovernmental Compacts in Native American Law: Models for Expanded Usage, 112 Harv. L. Rev. 922, 924 (1999).

- Encouraging Native parents and community leaders to become and stay involved with the education of Native children
- Providing for Native language, culture, and vocational education
- Providing a reporting mechanism for ongoing review and improvement of the compacting program

The demonstration project would offer tribes and Native communities an opportunity to have a direct role in providing their children an education grounded in and driven by their culture, language, traditions, and values on a demonstration basis with the potential to grow into broader use of state-tribal education compacting. Requiring regular reporting on the program’s implementation will also provide valuable information to guide Native education planning in Alaska and help ensure future success.

We have received great, thoughtful leadership from the Commissioner of Education, and we are hopeful the legislation will pass in this session.

IV. The Federal Role

We want Alaska’s demonstration project for tribal compact schools to be a new hybrid effort utilizing state and federal funding sources. The exercise of tribal control over Native education arises from a foundation of federal laws that have supported education for Native American students based on the federal government’s trust responsibility. Considerable legal authority already exists for the federal funding and operation of education programs for the benefit of Alaska Natives. As just one example, the Johnson-O’Malley Act authorizes the Secretary of the Interior, through the Bureau of Indian Education, to enter contracts with tribes, tribal organizations, states, schools, and private non-sectarian organizations to address the needs of Native students. In addition, the Indian Self-Determination, and Education Assistance Act⁷ authorizes self-governance compacts, which are used primarily for tribes to assume operation of the Indian Health Service and Bureau of Indian Affairs programs.⁸ ISDEAA also authorizes tribal compacting of programs from other bureaus of the Department of the Interior.⁹

AFN has asked the U.S. Department of the Interior for a legal opinion as to whether it may enter compacts on behalf of other federal departments, such as the United States Department of Education. If the Department of the Interior has that authority, it may act as a conduit for federal Department of Education funds supporting Alaska’s tribal compacting demonstration program on a temporary basis until direct Congressional authority is obtained. AFN’s initial legal analysis suggests such authority exists under the Johnson-O’Malley Act and its implementing regulations, the JOM Modernization Act of 2018, and the clear compacting authority of ISDEAA.

One legislative fix that AFN urges you to immediately pursue is the repeal of a provision included in the 1994 appropriations legislation for the Department of the Interior and Related Agencies that prohibited

⁷ P.L. 93-638, as amended.

⁸ *See supra* n.1.

⁹ The Department of the Interior publishes a list annually of all non-BIA programs, services, functions, and activities that are eligible for inclusion in self-governance agreements. There are required programmatic targets. Currently nearly the entire Indian Health Service and Bureau of Indian Affairs is compacted—with Alaska Native tribes, consortiums or statewide compacts running for example the statewide hospital, regional hospitals, subregional and village health clinics.

the use of funding other than through the Johnson-O'Malley Act to support the operation of elementary and secondary schools in Alaska. This provision was included at the request of Assistant Secretary of Indian Affairs Dr. Eddie Brown because a few Alaska villages had applied for the BIA to take over education services and the BIA did not have sufficient funds to grant those requests. Dr. Brown asked for language added to the appropriations bill that would prohibit the expenditure of BIA funds to support the operation of elementary and secondary schools in Alaska, and that language was included. Annual appropriations legislation for DOI still regularly includes an administrative provision prohibiting BIA expenditures to support the operation of elementary and secondary schools in Alaska, except through the Johnson-O'Malley program.¹⁰ AFN believes this provision violates the federal government's trust responsibility to Alaska tribes as currently applied to education programs now and looking forward and asks this Committee to repeal that provision.

In a great many ways, our effort to develop a framework for compacting lines up with the interests of the Senate Committee on Indian Affairs. The most recent amendments to the Johnson O'Malley program, a cornerstone educational program for the education of Native Americans, arose in the Committee in 2017, and were enacted into law in 2018. There could well be a role for the utilization of the JOM program in the compacting of the schools, and curriculum that we are working on. More significantly, the oversight jurisdiction of the Committee could be exercised to review the need for upgrading and improving the delivery of education to Alaska Native students, which lags where it should be. We at AFN believe very strongly that there is a unique and strong role for the federal government to support efforts such as those we want to undertake. It is in fact the federal trust responsibility that underpins all the federal programs, and we cherish this relationship.

Importantly, tribal education compacts in Alaska will be negotiated and created on a voluntary basis in a manner that does not diminish the Alaska Natives' right to self-determination or the federal government's trust responsibility toward Alaska Natives.

V. Conclusion

This is a forward-looking effort, built on the experiences of our history. We cannot rewrite the difficult history of Alaska Native education in our state, but there is precedent-setting value in the idea of tribal, state, and federal collaboration to promote innovative and meaningful ways to support our children. The lessons we learn from the demonstration project in Alaska might have other local, state, or national applications in terms of American Indian/Alaska Native programs or other multi-cultural programs or services. Establishing this demonstration project is critical to the future of Alaska Native children and offers hope in an area where hope has historically been hard to find. We are excited about the possibilities, and we welcome the opportunity to work with you on this issue.

Thank you.

¹⁰ See, e.g., P.L. 110-161 (121 Stat. 2113).