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**TESTIMONY OF
CEDRIC CROMWELL, CHAIRMAN, MASHPEE WAMPANOAG TRIBE
ON BEHALF OF
THE UNITED SOUTH AND EASTERN TRIBES, INC.
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING
S. 1262, THE NATIVE CLASS ACT**

JUNE 30, 2011

Good afternoon Mr. Chairman and members of the Committee. My name is Cedric Cromwell. I am Chairman of the Mashpee Wampanoag Tribe in Massachusetts. I appear here today to present testimony on behalf of the United South and Eastern Tribes on S. 1262, the Native CLASS Act which makes valuable and needed revisions to Federal education laws to improve the educational experience of Indian children.

The 26 Tribes that comprise USET are located in 12 states -- from Maine to Florida and west into eastern Texas. In comparison to our sister tribes west of the Mississippi River, the USET tribes have smaller populations and smaller reservations. Nonetheless, through the strength that comes from unity of purpose and the shared objectives of improving the quality of life of Indian people and full recognition of the sovereign rights of tribal governments, USET has become a highly regarded Indian Country advocate over the past 42 years.

In the case of the Mashpee Wampanoag Tribe, we are a Tribe without a federal land base, so we have no reservation on which to conduct our governmental activities, including economic development, housing, health care, and education. Our people suffer disproportionately from poverty-related illnesses and issues, including a high school graduation rate of only 48%. It is our belief that education is the surest way to not only provide our children with the tools they need to be successful, productive adults, but also to lift our Tribe out of poverty for generations to come.

While our Tribe has taken great steps to offer support to and advocate for our children in the public school system, we simply do not have the resources to fully address the problem. Too many of our children are desperate to be treated with respect and dignity in the education system. Too often, children with learning challenges or different needs are overmedicated, and their individual and culturally-specific needs are ignored.

We need the tools to do more for our children. We need the funding and the authority to partner with the public schools to make sure our children are receiving the services they may need, to help combat health-related issues, provide culturally-appropriate curriculum, give Native parents a voice of boards and committees, and to train Native teachers.

That is why I am here today to express my support for the Native CLASS Act.

S. 1262 has two core and inter-related themes: First, requiring schools to take seriously their responsibility to meet the unique educational needs of Indian children in order to help them achieve academically; and second, recognizing that Indian tribes possess governmental authority in the performance of elementary and secondary education programs for their children.

USET is particularly equipped to address S. 1262 issues because the children of our member tribes are educated in both public schools and in tribally-operated schools funded by the Bureau of Indian Education. S. 1262 contains important provisions for Indian children enrolled in both types of schools. Working with our sister organizations, the National Congress of American Indians (NCAI) and the National Indian Education Association (NIEA), USET helped develop legislative recommendations for the Committee's consideration. We are very pleased that a large percentage of our recommendations were included in S. 1262.

USET CHILDREN IN PUBLIC SCHOOLS

Where our USET tribal children are educated in public schools, they constitute a small percentage of the overall student population, a circumstance that often means our Indian children are overlooked by school authorities. Since some 90% of Indian children in the nation are educated in public schools, tribes must have a meaningful role in the delivery of services to these students. Thus, we are particularly supportive of the S.1262 provisions intended to require States and local public schools that educate Indian children to take into account the educational and cultural needs of those children in designing their educational plans. We also heartily support requiring these public schools to provide training for teachers in the Indian cultures of the Indian children, and to develop culturally responsive teaching and learning strategies to better serve our children. Contracts with Indian tribes would be the most effective way to carry out these obligations.

USET applauds the insertion of requirements throughout the ESEA titles for States and local educational agencies to consult with tribes on a continuing basis in the development of school plans and programs, and the establishment of meaningful mechanisms through which Indian tribes can elect to exercise hand-on control over educational programs.

Since the public school student populations of USET tribes is comparatively small in the communities in which they are located, our tribes will not qualify for the bill's innovative programs for tribes whose children constitute high percentages of public school populations – particularly on-reservation public schools. Thus, I want to focus on the bill's provisions that have the potential to affirmatively impact the public schools in which USET tribal children are enrolled.

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Safe and Healthy Schools for Native American Students. USET supports bill Sec. 141 which requires the Secretary of Education to create unique programs to target social and nutritional issues prevalent in Indian communities, such as alcohol/drug abuse; suicide; violence; teen pregnancy; obesity; and school dropout. One affirmative effort expressly mentioned is establishment of tribal-specific school gardens to aid Indian students in pursuing sound nutrition goals.

○ **Recommendations:**

(1) Sec. 141 does not identify the schools that should offer the programs the Secretary develops under this authority. The provision should be amended to require the Secretary to supply these programs to all public schools that are eligible for the Formula Grant Programs under Title VII (schools with 10 or more Indian students are eligible), and to strongly encourage them to provide appropriate programs for their Indian student population, perhaps as part of the program carried out under the Formula Grant.

(2) It seems to us that Indian tribes are well-equipped to work with the Secretary in designing the programs called for by Sec. 141. Thus, we suggest the provision be amended to direct the Secretary to work in cooperation with tribes, to the extent practicable, in developing the programs.

(3) We recommend that Sec. 141 be amended to require the Secretary to establish these programs within one year after enactment of S. 1262.

Title VI, Part A – Formula Grant Program [Bill Secs. 152-159]. This is a significant program for USET tribes that operate BIE-funded schools, but it is even more significant for the tribes whose children attend public schools where Indian components in the curriculum are not customary. Its purpose is to infuse into the educational program an Indian component for these students who might otherwise have no opportunity for culturally relevant curriculum. Since tribes are already involved in development of the Title VII programs offered at the *BIE-funded schools*, I will focus my comments on the revisions that strengthen this program for Indian children in *public schools*. I express gratitude to the bill's sponsors for accepting these recommendations offered by our tribal organization workgroup (NCAI, NIEA and USET).

- **Indian-specific programs.** We applaud the bill language that would give public schools greater flexibility in designing programs to meet the needs of their Indian students. The current law ties the Title VII program too closely to Title I requirements, leaving little opportunity for schools to offer programs that address the specific educational and cultural needs of the Indian student population. Similarly, we support the requirement that a school proposing to combine Title VII grant funds into a schoolwide program (serving all students in the school, both Indian and non-Indian) must first demonstrate that a schoolwide program would provide benefits to the Indian students that would not be achieved if the funds were used for a program serving Indian students, only. The "Indian" character of these funds should be preserved.
- **Tribe-School cooperative agreements.** We also strongly support the requirement for a Local Educational Agency, at the request of a tribe with a plurality of Indian children enrolled with the LEA, to enter into a cooperative agreement with the tribe to assist with the planning and operation of the program. Not only will this provision advance the concept that Indian tribes have the right and responsibility to be meaningfully involved in educational matters, a partnership between the LEA and the tribe will result in more focused and effective programs.

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- ***Tribal representation on Parent Committee.*** A core component of the Formula Grant Program is the requirement for the LEA to develop programs in consultation with a committee comprised of Indian parents and teachers. As recommended by USET, S. 1262 expands that committee to include representatives of *Indian tribes* located within 50 miles of the school if such tribes have children enrolled in the school. This provision recognizes that often Indian people prefer to act through their tribes in relationships with non-tribal entities such as public school districts. Plus, tribal representation on these committees can provide valuable program experience and continuity that individual parents alone cannot provide, as when their children age out of school, parental participation is likely to end.
- ***Provisions that facilitate establishment of a program.*** It is unfortunate that some eligible LEAs do not bother to apply for a Title VII grant. S. 1262 seeks to change this outcome by making it easier for an Indian entity to apply for a grant when the LEA does not do so. It authorizes a tribe representing a plurality of the students to apply for the grant and operate a program. Or if neither the LEA nor a tribe applies, a committee comprised of Indian people in the community may apply to be the grantee. That latter option can help provide a program for Indian children in schools that are far distant from any tribe. We also support the provision requiring the Secretary of Education to perform outreach to eligible LEAs who have not applied for a grant and supply technical assistance to help them do so.

Recommended revision: On page 103, lines 6-7 should refer to "schools funded by the Bureau of Indian Education" rather than only to schools operated by the BIE, as the Secretary's outreach and assistance efforts should extend to all BIE-funded schools, both those operated by BIE and those operated by tribes.

- ***Student Eligibility Forms.*** We thank the bill sponsors for including the USET recommendation that would require an LEA to maintain in its records a determination that a child is an eligible Indian and thus prohibit a practice at some schools that a student's Indian eligibility be re-proved year after year.

Coordination of Indian Student Information. USET supports the proposed new Sec. 7137 for creation of a mechanism to facilitate the orderly exchange of Indian student educational and health records between schools. The mobility of Indian children between public schools, between BIE-funded schools, and between public and BIE funded requires a system for schools to easily access and supply student records so that the educational progress of the student is not interrupted by the failure of his/her records to follow the student to a new school.

Tribal Education Agencies Pilot Project. This innovative provision would create a new Sec. 7124 to authorize tribes (or tribal consortia) to administer State educational agency functions through grants from the Secretary of Education. The ultimate objective is to give tribes a meaningful opportunity to exercise their governmental authority over elementary and secondary education affecting their children.

- ***Recommendation:*** USET is disappointed that S. 1262 does not include a key recommendation of the tribal organization team that called for creation of Centers for Innovation in Tribally-Directed Education in ESEA Title V [Innovative Programs]. The purpose of this proposal is to assist tribes with capacity-building to enable them to

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effectively exercise their rights and authority to direct delivery of educational services to Indian children. We urge the Committee to amend S. 1262 to include this proposal.

Authorization of Appropriations for Title VII, Part A. Our tribal organization team recommended new funding levels for the programs authorized by Title VII, Part A to properly fund both existing programs and the new ones recommended by the team. Those recommendations are included in S. 1262 as revisions to Sec. 7152. We must point out, however, that since the Akaka bill adds three additional new programs to Part A, the authorization of appropriations must be increased to appropriately fund all programs. The three additional programs added to Part A by S. 1262 are laudable and should not have to compete with other existing and new programs for funding. The three programs added by S. 1262 are:

- Bill Sec. 162 creating a new Sec. 7125 – Teacher and Administrator Pipeline for Native American Students
- Bill Sec. 163 creating a new Sec. 7126 – National Board Certification Incentive Demonstration Program
- Bill Sec. 164 creating a new Sec. 7127 – Tribal Language Immersion Schools. We note that this provision carries its own authorization of appropriations; thus, notice of this separate authorization should appear in Sec. 7152 to avoid any confusion.

USET CHILDREN IN BUREAU OF INDIAN EDUCATION-FUNDED SCHOOLS

Seven USET tribes operate a total of 16 schools on their reservations that are funded by the Bureau of Indian Education in the Interior Department. These schools are operated under Indian Self-Determination Act contracts or Tribally Controlled Schools Act grants. USET has a keen interest in assuring that these schools are adequately funded and that the tribes have the authority to operate these schools efficiently and effectively. For these reasons, USET worked with the tribal organization team to recommend provision to help achieve these goals.

We identify below provisions in S. 1262 that directly benefit tribally-operated BIE schools and urge the Committee to retain them:

- **ESEA Title I – Improving the Academic Achievement of Disadvantaged Students.** These revisions to NCLBA Sec. 1116(g) are intended to facilitate approval of a tribally-proposed alternative definition of Adequate Yearly Progress by placing a deadline on the Secretary of the Interior for action on a tribal proposal. Current law imposes no deadline for agency action, a circumstance that has prevented any tribal proposal from being approved.
- **ESEA Title II – Recruiting High Quality Teachers and Principals.**
 - S. 1262 accepts our recommendation to include BIE-funded schools in the definition of "high needs LEA" to make these schools eligible for funding to aid in the recruitment and retention of high quality education professionals.
 - We also support the proposal to increase to 5% the set-aside for distribution to BIE-funded schools for teacher/principal recruitment and retention activities.
 - The bill would also make information from State teacher recruitment clearinghouses available to BIE schools in the State.
 - Amendments to the Math and Science Teacher program and the Troops to Teachers program to provide for BIE schools eligibility.

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- USET also strongly supports the proposed new Sec. 2161 which creates an Indian Educator Scholarship Program intended to encourage more Indian people to enter the teaching profession and to serve in schools with significant Indian enrollment (both public schools and BIE schools).
- ARRA "Race to the Top" elementary and secondary school reform program. BIE-funded schools were inadvertently omitted from this multi-billion dollar competitive grant program. Sec. 201 of S. 1262 would cure this omission.
- ARRA funding for Early Childhood Education. Sec. 201 of S. 1262 would also cure the omission of any mention of a tribal role in the development of early childhood programs for which \$500 million is now available. The bill's provision would require States to collaborate with tribes to assure that services are provided to Indian children, and authorizes States to make subgrants to tribes. In fact, it would be a good idea to amend the provision to give competitive preference points to States that demonstrate they will award subgrants to tribes.
- Tribal Education Policy Advisory Group. Bill Sec. 203 would require the Secretary of the Interior to establish an advisory group comprised of elected tribal leaders to advise the Secretary on budget and policy issues affecting the BIE school system. It is intended to give elected officials of tribes which host BIE schools a greater role in policymaking.
- BIE school budget requests. Bill Sec. 204 requires the Secretary of the Interior to reveal in annual budget submissions the amount necessary to sustain BIE school academic and residential programs pursuant to the regulations at 25 CFR Part 39, subpt. H. This regulation has been in effect for several years, but the Secretary's budget requests have not provided the information required by the regulation.
- Amendments to the Tribally Controlled Schools Act. Most of the USET tribes with BIE schools operate those schools through grants authorized by the TCSA. We support the technical amendments to that law, including creation of a mechanism for tribes to amend their TCSA grants.

Puzzling Omission: Proposed amendment to Administrative Cost Grant provision for Tribally-operated BIE Schools. We are disappointed that S. 1262 does not contain an important amendment proposed by the tribal organization team that is intended to improve the funding of administrative costs provided to tribes that operate BIE schools. (Administrative cost grants have been renamed "tribal grant support costs" by the BIA budget.) Administrative cost grants have been so chronically under-funded that BIE is now providing only 61% of the amount required by law (25 USC §2008) to adequately cover the indirect/administrative costs of tribes and tribal school boards.

The tribal organization team recommended that when submitting AC Grant budget requests, the Secretary of the Interior be required to request a separate budget to fund the first year AC Grant for schools that newly convert to tribal operation, and to include that amount in the subsequent year's budget for AC Grants. The objective of this recommendation is to prevent further reduction in funding for tribes that operate BIE schools. Under the current practice, when a new school converts to tribal operation, funding to tribes who already operate such schools is reduced to provide funding for the new conversions. The United States has an obligation to

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properly fund the administrative/indirect costs of tribes who operate BIA and BIE programs. That obligation is being flagrantly violated with regard to tribes who operate BIE schools.

Thus, we urge the Committee to amend S. 1262 to include the amendment to this provision recommended by the tribal organization team.

CONCLUSION

On behalf of the United South and Eastern Tribes, I express gratitude to this Committee for the attention it has given to the need to amend Federal education laws for the benefit of Indian students and to enhance the authority of Indian tribes to have a meaningful role in the education of their children.

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