

Testimony of Dr. David Beaulieu before the Senate Indian Affairs Committee Oversight Hearing on Indian Education: Did the No Child Left Behind Act leave Indian Students behind? June 17 2010

My name is Dr. David Beaulieu. I am a Minnesota Chippewa Tribe-White Earth enrollee. I currently serve as a Professor of Education Policy and Director of the Electa Quinney Institute for American Indian Education at the University of Wisconsin-Milwaukee. It is my pleasure to testify before this committee concerning Indian Education and the No Child Left behind Act considering the question: Did the No Child Left Behind Act Leave Indian Children Behind.

I have testified before this Committee in the past concerning Indian education as director of the Office of Indian Education in the US Department of Education during President Clinton's second term and the implementation of the President's Executive order on American Indian and Alaska Native Education and as President of the National Indian Education Association (NIEA) in 2005. It was in 2005 that the American Indian, Alaska Native and Native Hawaiian constituents of NIEA became increasingly concerned about the implementation of NCLB, Title VII. NIEA determined to conduct hearings on NCLB in Indian Country in 11 different Native American communities from Northern Wisconsin to Hawaii to better understand and represent the views of NIEA constituents which are the constituents of Title VII. The Report NCLB in Indian Country is available on line at NIEA

NIEA Hearings: NCLB in Indian Country

Despite the variety of locations at which hearings were held on NCLB by the NIEA and the number of witnesses who testified, the overall nature of testimony showed remarkable consistency in viewpoint. What emerged from the testimony were strongly held positive views about the public purposes of education for Native peoples against which NCLB and Native education was positioned. Witnesses strongly believe that a public education with broad public purposes focused not only for the world of work but for citizenship that was also reflective and supportive of their unique cultural and historical experience would provide well educated and contributing tribal citizens to the local tribal community as well as the broader community. In that regard the American Indian witnesses who testified were not that different than other American citizens.

Those who testified strongly supported the need to hold schools accountable for results but were very concerned about the negative impacts of NCLB upon the education of Native American students. Many of the views were similar to a growing chorus of negative views such as the impact upon the breath of the curriculum given the focus on testing, the inappropriate use of AYP, particularly in American Indian communities where the mobility rates of students were very high. Some comments were very specific to the Indian Education Act within NCLB itself in terms of NCLB's negative impact upon Native language and cultural programs in schools and the development of instructional and curricular approaches believed to be effective and meaningful for accomplishing and enriching the education programs for Native American students as well as the required input of parents in the development and approval of Indian education programs.

Significant to what was happening tribal leaders, Indian parents and educators focused attention on the realization of the extent to which changes were occurring that did not reflect much less consider their voice. Since then there has been a growing strong voice for increasing tribal government involvement beyond school operations to include determining the context and conditions for the education of American Indian students within the jurisdictions of tribal governments as well as influencing the federal interest for the education of American Indian students in other areas within the states. The development of a broader role for tribal government to determine the context and conditions for the public education of American Indian students seems apparent.

Witnesses were very concerned that Indian education programmatic effort uniquely supported by formula grant programs in Title VII. These efforts that were supported by a relatively small approximate \$300 per student were being supplanted by efforts that were clearly allowable in Title I. In many cases the Indian education formula grant was becoming a Title I program with little focus on its purposes as stated in statute. The NIEA Report NCLB in Indian Country is located on the NIEA web site's education issues page <http://niea.org/issues/policy.php>

New Approach Needed

Any comparison of the intentions of Congress as stated in the Indian Education Act and the broader intention of NCLB to make a significant difference with the current statistics that describe the performance of the State and Federal school systems with American students would strongly indicate that what is in place is not working. We may have actually lost ground with what is essentially one entire school generation of American Indian learners from elementary through high school in the 9 years since NCLB passed in 2001.

As early as 2003 the Council of Chief State School Officer (CCSSO) representing the state school officers with large American Indian student populations began to meet first in Denver to express concern and consider ideas on how to approach what was a significant and growing issue to them concerning the education of American Indians in their states, particularly within reservation area state public schools. An education leader and old friend from Rosebud, Lionel Bordeaux, reported that approximately 75% of all students that entered the 9th grade did not complete high school this past year. Such a statistic is believed to be representative for other areas. Though educational achievement issues have received focus through NCLB with its emphasis on testing, the larger issue for American Indian communities is the extent to which the student constituents of schools reject schooling all together. There is a belief that the operational reality of NCLB in schools contributes high dropout rates.

I would like to offer my insights concerning issues with the Indian Education Act and its implementation within NCLB for the purpose of suggesting a new framework for considering changes that would strengthen the ability of the Elementary and Secondary Education Act and the Indian Education Act to accomplish the intentions Congress

regarding improving the effectiveness, and meaningfulness as well as the quality of educational programs for American Indians.

In answer to the question posed by this hearing it is my view that the No Child Left behind Act has left Indian students behind. I believe NCLB left Indian students behind essentially because the Indian Education Act within NCLB has been “left behind”. The provisions affecting Congress’ policy intentions for education of American Indians and Alaska Natives have been de-emphasized or disregarded by the Department of Education, the Bureau of Indian Education, and state education authorities.

Issues and needs

1. Alignment of Title VII purposes with Title I: The NCLB has a number of issues which are structural in character with the relationship of Title VII with in NCLB. The implementation of the intentions of Congress for the education of American Indians as indentified by the purposes of the Indian Education Act have no identifiable linkage within the basic program requirements in Title I . There must be an alignment of the required comprehensive Indian education plans required in Title VII with the requirements for state and local education plans by states and the BIE
2. Enable tribal education governance: The advice and input structures put into place for American Indian parents and tribal governments within statute are impotent to the task of creating positive local education change. What is available, however, is of limited scope, advisory and often not paid any attention. The avenues available to express a parental and tribal government voice are essentially irrelevant for generating local positive education change within the existing federal education framework provided by NCLB. The federal trustee relationship must become a viable and active relationship for tribal governments which includes tribal authority to determine the context and conditions for the education of American Indian students under a federal framework for all school systems within a tribal jurisdiction and for the federal interest for the education of American Indians in state school systems elsewhere. Create a tribal-state compact or agreement for the education of American Indians under a federal framework which allows the context and conditions of the education American Indian students consistent with comprehensive education plans. For proposes of ESEA this would include BIE acting as a “state” for purposes of education.
3. Incorporate federal Native language policy into NCLB: There exists incongruence with federal laws related to protecting and preserving Native American languages such as the Native American Languages Act and the Ester Martinez Native Language Preservation Act with the NCLB. Theses efforts include support for a number of Native language immersion schools and programs operating in state public schools and BIE funded schools. School time is prime time that can be spent in the learning of a Native language. Title VII supports native language and

culture programs; other areas of NCLB particularly Title I and Title III need to reference to the federal government's support for the preservation and maintenance of Native American Languages as well as accommodating the needs of Native language immersion efforts with regard to allowing assessments in the language of instruction in the early years for student in Native language medium school based programs

4. Coordinated tribal government focus on the wellbeing of Native children and youth: There is a need to significantly improve the well being of American Indian children and youth in concert with revitalized efforts to improve the education of American Indian students. These concerns are inseparably linked and require a coordinated response of tribal government as suggested with all school systems, state and BIE within a tribal jurisdiction. The need is to recognize schools as more than places of schooling put as places of community. Efforts generally allowable in NCLB such as Promise Neighborhoods, 21st Century Learning Centers, and Successful, Safe and Healthy Students efforts need to become models for school development utilizing a coordinated tribal education involvement along with coordinated human service delivery efforts focused on school communities.

Expansion of Recommendations

1. Alignment of comprehensive Indian education plans (Title VII) with state and local education plans (Title I)

Since the passage of NCLB there has been a growing incongruence between the purposes of Title VII and the general operating principles and consequently the implementation of NCLB by state public schools and the BIE for federal and tribal schools for American Indian students. This incongruence is significant and needs to be changed so that NCLB works in the interests of American Indian students.

The broad purpose of Title VII (section 7101) is stated as follows "It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, **but also** the unique educational and culturally related academic needs of these children.

The Indian Education Act not only seeks to assist schools to improve the achievement of Indian students in academic subjects and in ways that uniquely involve culturally based educational approaches and the expansion of educational opportunities; it also seeks to ensure that schools with Indian students reflect the cultural heritage of those students directly.

The goal of improving the academic achievement of American Indian students is not the sole responsibility of Title VII and is shared by the other titles of NCLB; consequently it is vital that the expression of purposes for the education of American Indian students have a vital influential connection with the basic program requirements of NCLB. Looking to the Indian education Act there exist language to address that need but it is not paid any attention.

The Indian education Act is not only comprehensive in its scope in terms of what programs can be offered through funds but most importantly it also intends to be the statutory vehicle that focuses reform of schools as it affects Indian students uniquely through the required development of a comprehensive program design required of schools that engages other federal efforts within NCLB particularly Title I and state resources and as well as efforts offered specifically through the Indian Education Act to meet the comprehensive needs of Indian students.

The recognition that education is an aspect of the trustee relationship of the federal government to American Indian tribes, included for the first time in NCLB; the propose of meeting the unique educational and culturally related academic needs of American Indian and Alaska Native students as a distinct concern and through teaching and educational approaches appropriate to the accomplishment of required standards; the requirement for a comprehensive plan for meeting the education needs of American Indian students by a local education agency based on comprehensive local assessment and prioritization of the unique educational and culturally related academic needs of the American Indian and Alaska Native students; the requirement for a description of how the best available talents and resources, including individuals from the Indian community will be used to meet the needs of Indian students, finds no voice in the statute except in Title VII and despite the fact that Title VII programs are in nearly every State public school with American Indian students and all BIA funded school in the country both the States and the BIA in reliance of the operating principals and state and local plans of NCLB increasing disregard or do not pay attention to the principles and purposes of Title VII.

The formula grant program which contains the requirement for local education agencies to develop comprehensive education plans for the education of American Indian students is currently funded at approximately \$300 per eligible student in a local LEA. Those funds are used entirely to offer programs for Indian students within schools for the purpose of meeting the unique education and culturally related needs of American Indian students.

It is impossible and unreasonable to consider that the approximate \$300 available through the formula grant program should be the sole basis for meeting the educational needs of American Indian students and improving the education ability of schools with American Indian students to meet those needs through a comprehensive program design. It is also impossible and unreasonable to assume that \$300 per student is sufficient to accomplish the development of a comprehensive plan as required in the statute and as it should be

accomplished to meet the educational needs of American Indian students as defined in the statute.

There is a linkage in Title VII to the rest of NCLB in the section that requires that comprehensive plans be consistent with the State and local plans submitted under NCLB including academic content and student academic achievement goals for American Indian students, and benchmarks for attaining such goals, that are based on the challenging State academic content and student academic achievement standards adopted under Title I for all children how Federal, State, and local programs, especially programs carried out under Title I, will meet the needs of American Indian students; the professional development opportunities that will be provided, as needed, to ensure that teachers and other school professionals who are new to the Indian community are prepared to work with Indian children; and that all teachers who will be involved in programs assisted have been properly trained to carry out such programs and describes how the local educational agency will periodically assess the progress of all Indian children enrolled in the schools of the local educational agency, including Indian children who do not participate in programs assisted under this subpart, in meeting the goals described in paragraph. The requirement that comprehensive plans be consistent with state and local plans does not mean that they must be the same. They can be aligned and incorporated within state and local plans.

Though these requirements are in Title VII there is no comparable language in the basic program requirements of NCLB for state and local plans which would provide the guiding light for the long term development of educational programs for American Indian students nor is there a viable mechanism to accomplish an American Indian State and local education plan. This needs to change.

2. Tribal government involvement:

The statement “It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children” in Title VII requires greater definition and viability in the ESEA. The current input and advice structures in ESEA for Indian parents and tribal governments for the education of American Indians are extremely ineffective, so limited in scope and advisory that school authorities rarely pay attention to them.

Parent advisory committees have little impact on the long term development of school education programs and tribal government involvement in Impact Aid is limited to complaining that policies and procedures for parent advisory input have not been developed. The NCLB recognizes the ability of tribes to seek a waiver of AYP and develop their own standards, use state standards or use BIE developed standards for BIE funded schools but support for this was withdrawn as the BIE moved BIE funded schools to the state standards and assessment systems where the school was located.

Nonetheless alternative definitions of AYP are allowable for tribal governments in the case of tribal schools and tribal governments could potentially develop these alternative

standards and assessments systems including developing state and local education plans which are incorporated into state and local education plans required by NCLB consistent for all schools within a tribal jurisdiction, federal and state.

The current political legal structure of Indian education, the relationship of state, federal and tribal governments in the education of American Indians was put in place with the original Johnson O'Malley program that withdrew significant federal involvement in the education of American Indians in favor of increased state public school involvement under certain conditions. The federal government attempted to see that the unique needs of Indian students were met in these state schools initially in state contracts for JOM and funds provided the state for this specific purpose. Minnesota's original contract with the federal government had language where the state agreed to meet the unique needs of Indian students, ensure that Indian students were not denied that provided other students and to maintain schools in distinctly Indian villages for Indian students.

It can be argued that the Indian Education Act of 1972 that passed approximately 35 years after the negotiation of the JOM contracts was an attempt to continue to have states uniquely focus on the needs of American Indian students in state public schools irrespective of location.

It is this arena of the interrelationships of federal, state and tribal government involvement in Indian education that needs to be impacted in a positive manner for Indian education. This arena is among the most complex imaginable with each government providing schools for Indian students often in the same community with overlapping programs, regulations and services that have little coordination or common purpose and with very little or no coordinated effort.

Issues concerning the complexity of the intergovernmental arena with Indian education were identified as the first JOM contracts were being negotiated in the 1930s though recent attention was focused through the Education Commission of the States Indian education Project in 1980 and President Clinton's executive order which specifically required the development of ideas that would improve inter-governmental cooperation in Indian education.

We have tried everything within the current intergovernmental framework and we have particularly since 1972 grown significantly in our knowledge of Indian education and what works, but we have not impacted the performance of schools. We could say that we have outgrown the intergovernmental "suit of pants" we have worn and need something larger and brand new.

We have as it were, out grown the current intergovernmental framework of federal, state and tribal government relationships. Tribal government needs a greater role which expands from limited school operations to include a role in determining the education conditions and context for the education of American Indian students in all school types within a tribal jurisdiction.

In nearly every area of intergovernmental relationships between state and tribal governments there has developed some form of negotiated contract or agreement except in the area of education. These intergovernmental relationships range from compacts for gaming, the collection and distribution of sales taxes, hunting and fishing rights and enforcement, including cross deputation of sheriff's deputies, police and game wardens but hasn't so far included education.

Tribal government consultations exist with federal agencies particularly the Interior and Education, but tribal governments within their tribal jurisdictions, currently do not have a framework for negotiating the specific conditions and contexts for the education of American Indian students in BIE schools or state schools consistent with the requirements for state and local education plans and comprehensive education plans required in NCLB.

Within the jurisdiction of tribal governments it makes sense that the political legal "center stage" needs to be tribal government and authority in education where the context and conditions for the education of American Indians could be negotiated with state governments and the BIE under a federal framework as discussed. Other tribal governments collectively could develop similar plans and agreements with states for what essentially represents the federal interest in the education of American Indians where the state government and its education authority would provide the political legal "center stage" such as in urban areas. In each situation I believe it is important to maintain Indian parent involvement and input.

The requirements for the development of state education and local education plans in Title I, the development of comprehensive education plans should be a major aspect of the negotiation of tribal governments with state governments as well as the BIE under a federal framework for this purpose.

Moving in this direction further allows for the development of congruent tribal education ordinances and programs in a number of areas that affect the well being Indian children, their families and communities.

3. Improve the well being of Indian children and youth

Improving the education of American Indians students requires more than just a consideration of what we can do to positively impact education programs. It requires that we consider the whole range of needs of Indian children and youth that impact on their well being and focus on these holistically at a local level.

As President of NIEA, I initiated the Native American Children's agenda to focus interest and concern of the well being of Indian children and youth as well as its relationship to education performance and progress. I thought then that a significant aspect of this agenda needed to be locally conceived and coordinated and that schools simply because Indian young people and their families were present for significant periods of time could be instrumental as places to coordinate services and to build the community of the school

away from the school building through providing coordinated services among members of the community of school.

Issues which impact the well being of Indian children and youth have a direct impact upon their ability to participate and respond educationally within schools. Educational issues and issues of wellbeing are linked and require a coordinated response of tribal government as suggested with all school systems within a tribal jurisdiction

The need is to recognize schools as more than places of schooling but as places of community. Efforts generally allowable in NCLB competitively such as Promise Neighborhoods, 21st Century Learning Centers, and Successful, Safe and Healthy Students efforts need to become models for school development utilizing coordinated tribal education involvement along with coordinated human service delivery efforts focused on state and school communities. Because exiting programs are competitive with very little opportunity for Indian reservation communities to participate to the extent needed providing tribal governments with planning and coordination funds through any number of possible authorities including ESEA grants to bring together available community services as provided by existing state, federal and tribal agencies and focused in school communities similar to the purposes of these other programs may have significant promise.

Schools, the one place today where children and their families are most represented can be more than a place just for education but also a community and community building and developing place. As the community is involved so the community develops and grows and the well being of children is enhanced.

4. Incorporate federal Native language policy into NCLB

There is policy incongruence between federal Native language policy and the implementation of NCLB. The federal policy focused on revitalizing and maintaining Native languages needs to find a viable functional reference within NCLB so that federal education policy enables rather than stunts existing school based efforts such as immersion schools and programs, language nests and other such efforts in state and BIE schools. The Native American languages such as the Native American Languages Act and the Ester Martinez Native Language Preservation Act with the NCLB should be referenced in alignment with Title I- Title III and Title VII so that federal language efforts supported by the federal government in State and BIE schools are supported with education requirements appropriate to their purpose.

Summary:

We need a new Indian Education Act within ESEA, one which brings the purposes of the existing Indian education act fully to the forefront of the purposes of ESEA now NCLB, an Indian education act which recognizes tribal government authority in the context of the federal trustee relationship for the education of American Indians. We need a system of education which makes sense to American Indian people and Indian students who all

desire to be actively engage in creating their own future while maintaining a continuity of their unique language cultural and historical experience.

All school systems that provide education need to be focused on a vision that places Indian children and youth at the center of it attention. American Indian students need to see a personal future that connects to the education mission of the schools they attend. It is vital to their improved achievement, continued education and to a future their uniquely their own.