

**ASSOCIATION OF COMMUNITY TRIBAL SCHOOL INC.
616 4TH AVE. WEST SUITE 900
SISSETON, S. D. 57262**

Testimony before the Senate Committee on Indian Affairs

June 16, 2005

My name is Dr. Roger Bordeaux; I serve as the superintendent of Tiospa Zina Tribal School, the Executive Director of the Association of Community Tribal Schools Inc. (ACTS) and a board member of the Oceti Sakowin Education Consortium. I have been the Superintendent for 15 years and the Executive Director for 20 years. I was also probably one of the first Title I students in the late 1960's.

Tiospa Zina Tribal School is on the Sisseton Wahpeton Dakota reservation in northeast South Dakota and southeast North Dakota. Tiospa Zina started in the spring of 1982 with 12 students and now serves over 600 students. The primary reason for the growth of the school population relates to the schools strong commitment to cultural relevancy and use of the Effective Schools continuous improvement model. Our school mission is "Learners will retain their own unique culture and be prepared for a technological/multi-cultural society." **Tiospa Zina has been in and out of school improvement for the last 3 years primarily because of the NCLB requirement where a school is deemed to have not made Adequate Yearly Progress if any of their disaggregated group does not make AYP.**

The Spring 2005 achievement results are shown with and without SPED student data.

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Reading Comprehension

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

Math Problem Solving

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

Language Arts

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

Science

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

Social Science

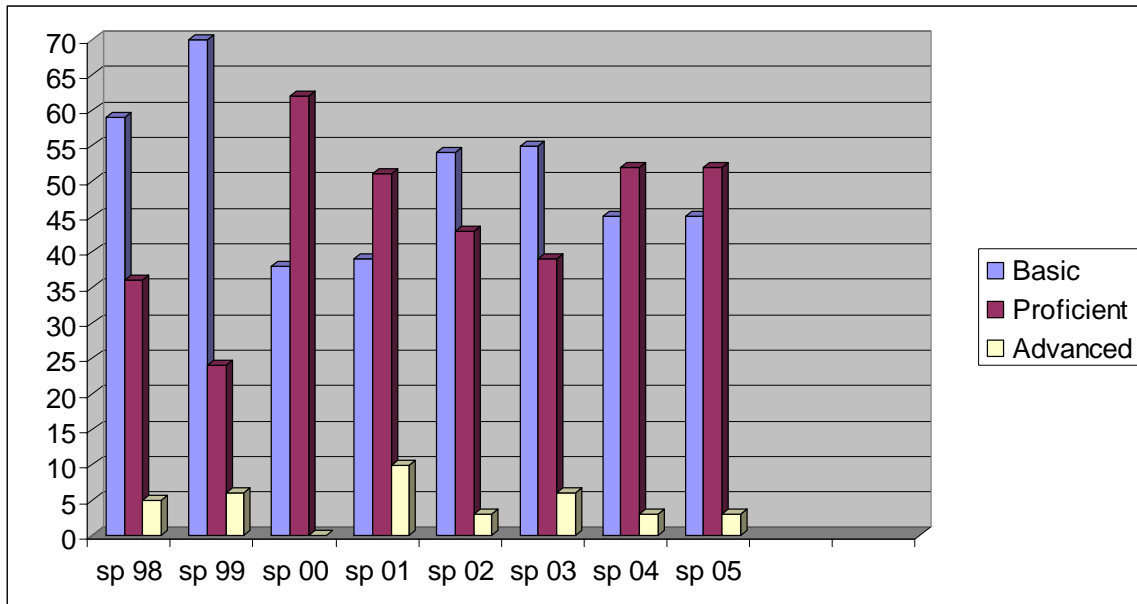
	All Students		Without SPED students	
Basic	65	(29%)	42	(26%)
Proficient	146	(63%)	110	(68%)
Advanced	11	(4%)	10	(6%)

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The 2 charts below show the percentage of students tested that were basic, proficient or advance on a standardized achievement assessment.

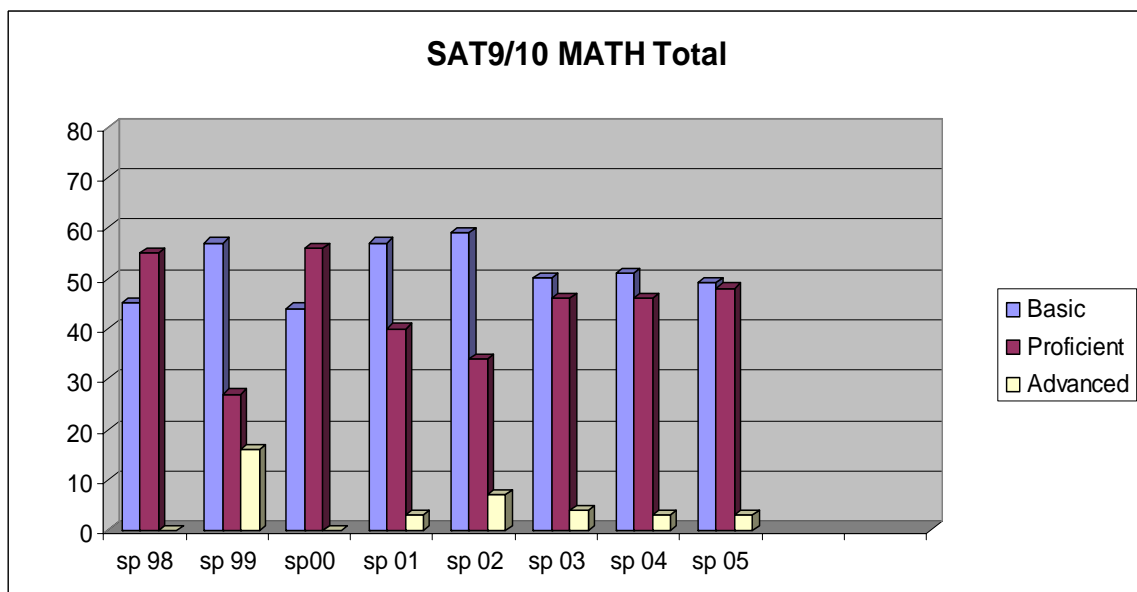
Reading Comprehension (Grades 4, 8 and 11 through 2002 then grades 3-8 and 11)

Percent of All Students identified as Basic, Proficient or Advanced



Math Problem Solving Grades 4, 8 and 11 through 2002 then grades 3-8 and 11)

Percent of All Students identified as Basic, Proficient or Advanced



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The tribal school movement started in 1966 with Rough Rock Demonstration School. Now there are over 28,000 students in tribal elementary and secondary schools. The schools are in the states of Maine, Florida, **North Carolina**, Mississippi, Louisiana, **South Dakota**, Minnesota, **North Dakota**, Michigan, Iowa, Wisconsin, Kansas, **Wyoming, Oklahoma**, Montana, California, **Washington, Idaho**, Nevada, **Arizona**, and **New Mexico**. ACTS represents a significant number of the over 125 tribally controlled elementary and secondary schools. Our mission is to “assist community tribal schools toward their mission of ensuring that when students complete their schools they are prepared for lifelong learning and that these students will strengthen and perpetuate traditional tribal societies.”

Indian Education Issues Effecting Tribal Schools

1. Lack of respect from state and federal government.

There are at least 20 programs that are within the Department of Education that tribal schools are not eligible for but public schools can access these programs. Many states do not recognize tribal schools as equals to their own public schools. A group of South Dakota schools have submitted a written request for technical assistance from BIA-OIEP to develop an alternative definition of AYP, the BIA-OIEP has not responded.

2. Implementation of the No Child Left Behind Act and Individuals with Disabilities Act.
 - a. The BIA reorganization violated the NCLB Act.
 - b. The **BIA-OIEP-Center for School Improvement is dictating what is best for tribal students** by using their position power to tell schools how to write and implement their school improvement plans.
 - c. The **BIA-OIEP-Center for School Improvement is dictating what is best for tribal students with handicapping conditions**. For the last 3 years CSI has ignored Individual Education Plan's and told school's what they could

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have for their children. The delay in funding programs has disrupted the delivery of SPED services.

- d. **The BIA-OIEP does not allow for Safe Harbor** even though the rest schools who receive NCLB funds have access to this provision.
- e. The BIA is also using delay tactics to not implement the new funding provisions of IDEEA 2005.
- f. The BIA-OIEP Adequate Yearly Progress definition may infringe on tribal sovereignty by first having schools use the states definition and then waiving any and/or all parts of the definition.
- g. BIA Office of Facility Management Center has arbitrarily deleted information that schools put into the FMIS System.

3. Negotiated Rule Making

- a. The tribal caucus seeks assistance to insure that the tribal governing body of a BIA funded school is the final approver of any closure, consolidation, transfer or substantial curtailment of such school. The federal caucus believes the Secretary of Department of Interior can close, consolidate, transfer, or substantially curtail a school or program without the approval of the tribal governing body.

School closure issue. One key issue on which the Tribal and Federal representatives on the Negotiated Rulemaking Committee could not agree was whether tribal governing body approval is required before the Secretary can close, consolidate or transfer a BIA funded school to another authority or curtail programs at a school.

Tribal representatives steadfastly maintained that tribal governing body approval is required by the law. In fact, we find the law direct and unambiguous. It states:

"The Secretary may, with the approval of the tribal governing body, terminate, contract transfer to any other authority consolidate, or substantially curtail the operation or facilities [of a BIA-funded school]."
25 USC §2001(d) (7).

The Federal Committee members, however, insisted that the Secretary can take any of these actions without tribal governing body approval if she goes through the evaluation steps set out in the law. This conclusion simply ignores the clear language of the law.

Nonetheless, over the Tribal Caucus's objection, the Department went forward to issue proposed regulations that do not require tribal approval for a closure or other action. The Department tried to justify its action by saying that since statute says "may" rather than "shall not", tribal governing body approval is discretionary.¹ This makes no sense.

¹ See preamble to proposed regulations in FEDERAL REGISTER Vol. 69, p. 41771 (July 12, 2004).

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It is clear that Congress said the Secretary may take such an action, but before she does so, she must obtain tribal agreement.

The Department's position is not only a gross mis-reading of a federal law, it also violates basic Federal policy toward Indian tribes generally, and Indian education in particular. In the statute, a few pages before the school closure section, Congress expressly recognized that the Federal government has a trust responsibility for Indian education. It also said that Federal policy is "to work in full cooperation with tribes" to reach the goal of a quality education system. Congress should be as annoyed as we are that the Department ignores Congress's directive "to work in full cooperation with tribes" and instead proposes a regulation that would do just the opposite.

We ask this Committee to instruct the Department to withdraw its proposed regulation and draft one that follows the law Congress wrote.

- b. The federal caucus did not agree to add any regulations about space requirements for the home-living standards. They said that it will be covered by the next negreg committee on school construction.
- c. The negreg committee for facilities regulations needs to start because OFMC is determining space, facility needs, etc. with no input from schools and tribes.

Facilities Negotiated Rulemaking Committee. In the *No Child Left Behind Act*, Congress ordered GAO to survey facilities conditions at BIA schools and report to Congressional committees and the Secretary of the Interior. Then the law directed the Secretary to set up a Tribal/Federal Negotiated Rulemaking Committee to examine a variety of education facilities issues and make recommendations to the Secretary and Congress.

Since GAO had issued a report comparing BIA school funding with the DOD schools shortly before NCLBA was enacted, it did not feel a facilities baseline study was warranted. Instead, GAO examined and issued a report evaluating the BIA Facilities Management Information System -- GAO Report 03-692, dated July, 2003. We understand they consulted with the Congressional authorizing committees on this approach.

Since the FMIS report has been available for nearly two years, it is now time for the Secretary to establish the Neg Reg Committee to perform the facilities evaluation and recommendation tasks set out in the law. In fact, the Secretary was supposed to have created this Committee six months after the GAO report.

The statutory language requiring the Neg Reg Committee and outlining its tasks was developed by the Senate Indian Affairs Committee. ***Thus, we ask for your help to assure that the panel you wanted -- and tribal schools supported -- is created so it can begin its work.*** You know as well as I do that schools on many reservations are in deplorable condition, and many lack basic educational facilities such a libraries and

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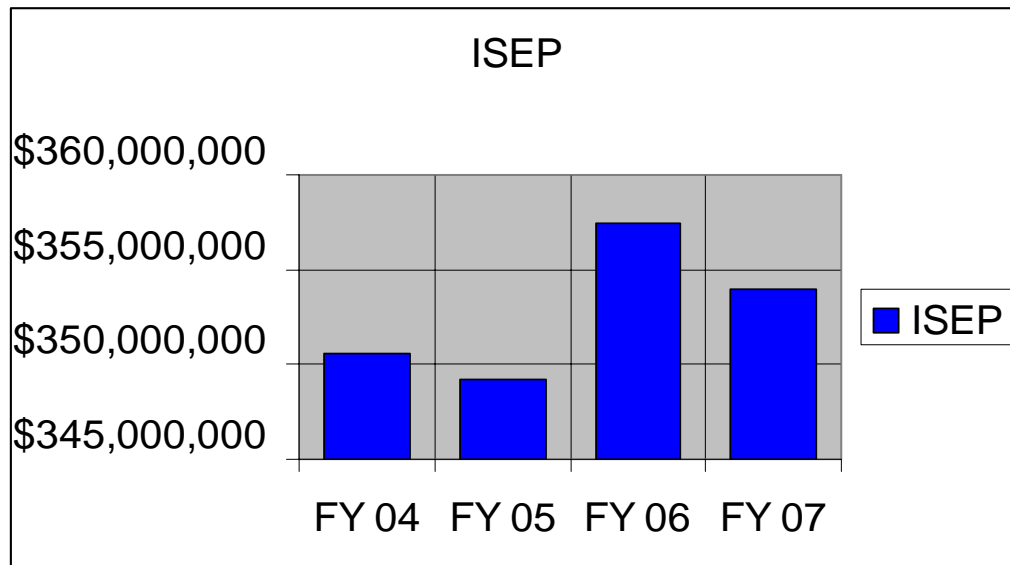
computer labs. We must acknowledge these facts. Thus, it is vital that we start examining the current process for determining where and when replacement schools are built and how facilities improvement and repair projects are selected and funded.

We must also assure that schools get sufficient funding to maintain our buildings. Both old and new facilities require on-going, routine maintenance. Yet, our annual appropriations fall far short of the amounts needed to operate and maintain our buildings in safe and habitable condition. It makes no sense for the Federal government to invest millions of dollars to build new schools but then provide insufficient resources to maintain them.

Will the Committee help us to get the Facilities Neg Reg Committee established?

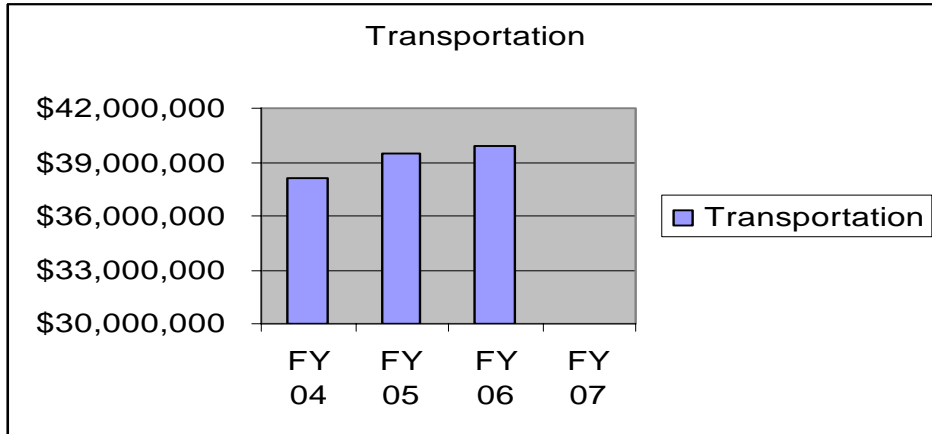
4. Appropriations

- a. The funding from the Department of Education is dictating what is best for Indian children. The schools are being forced to concentrate on NCLB and IDEEA and not on preparing children for life.
- b. The basic funding source for BIA funded schools is forcing schools to delay needed progress because they are under constrained revenues of approximately 70%. This will cause delays in academic progress, accountability, proper fiscal and program management, and will escalate facility deterioration.
- c. **Indian School Equalization Program** has not had any significant increases to cover the basic costs of running the instructional programs at schools and has no quality of life increases.

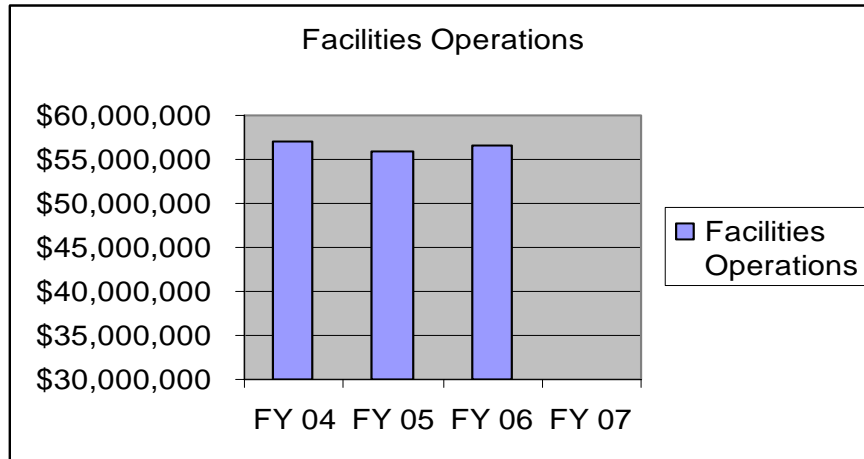


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- d. **Transportation** has not had any increases to cover the basic costs of running school buses and has no quality of life increases

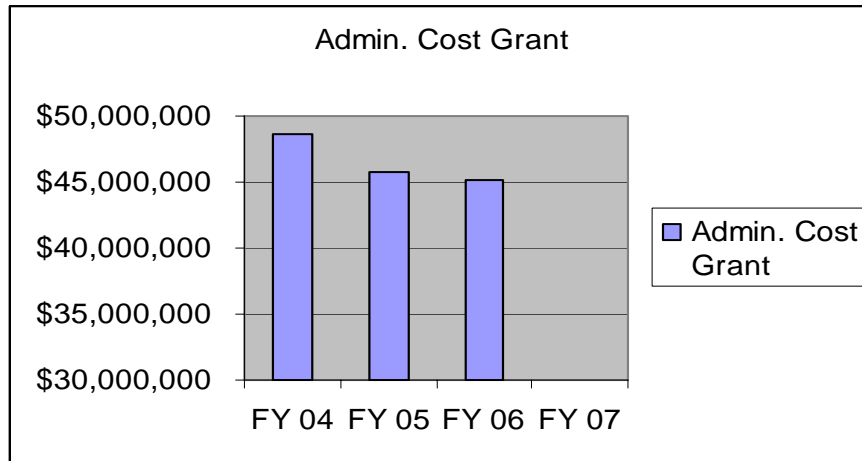


- e. **Operation and Maintenance** has not had any increases to cover the basic costs of maintaining a school and has no quality of life increases. This shortfall will force schools to have no preventative maintenance and increase the deficiency rate.



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- f. **Administrative Cost Grant** FY 06 funding will not provide needed funding for accountability and management. The ACG has not kept pace with increases in grant schools nor has it kept pace with quality of life adjustments.



- g. **School Construction** is being cut by over \$ 60 million which happens to be the approximate amount of the proposed increase for BIA Administration.

4. Other Issues

- We encourage the Senate to fund a pilot program for the Child Nutrition Program to implement the elimination of reduced price meals in school meal programs and designate all BIA funds schools as pilot schools.
- The Senate needs to revisit the intent of the Indian Child Protection Act and clarify the extent of need for required background checks. Current interpretation requires schools to have parents of FACE children complete background checks.