

**Testimony of the  
National Fund for Excellence in American Indian Education  
Presented by Dominic Lowery, Acting-Chair**

**Before the Senate Committee on Indian Affairs  
Oversight Hearing on Education  
June 16, 2005**

**Introduction**

Good morning Senator McCain and members of the Committee. I am Nick Lowery, acting chair of the National Fund for Excellence in American Indian Education (known as the "National Fund"). I ask that a copy of my written testimony, along with the attached proposed draft amendment language, be accepted in the record of this hearing.

**Background**

The National Fund is a charitable foundation first authorized by federal statute in December 2000 and initially known as the *American Indian Education Foundation*. I am here today to provide you with a brief progress report as well as to discuss certain changes to our statutory charter that would provide the National Fund with some essential administrative flexibility and better safeguard and expand its funding base.

The National Fund was authorized by P.L. 106-568, the Omnibus Indian Advancement Act of 2000. The primary purpose of the National Fund is "to encourage, accept, and administer" donations to "**support ... the mission** of the Office of Indian Education Programs of the Bureau of Indian Affairs." 25 U.S.C. 458bbb(e)(1). There are currently an estimated 49,000 students in 184 schools that are a part of the BIA system. In addition, perhaps as many as 900,000 American Indian students are educated in public schools in 50 states, enrolled in about 10,000 school districts. Like those in BIA schools, many often exist below the radar screen of society. Most confront high rates of apathy, alienation, alcoholism, teenage suicide, teenage pregnancy and gang violence. Can anyone here today deny that more must be done to reach, train, mentor and inspire our

most precious resource? Can anyone here today, right now, deny that we must do more to help Native American youth embrace a robust self determination and higher destiny?

### **History of Formation Efforts**

When the foundation was authorized in late 2000, Congress directed the Secretary of Interior to appoint its Board and provide it with financial support. There are several models for the Foundation in the sense that they were initially created by Congress, given birth within an agency such as Interior, with the intent – and the eventual result – that they would become fully independent entities, Two years later, in 2002, the BIA Office of Indian Education Programs advertised the foundation Executive Director position and Ms. Lorraine Edmo, a member of the Shoshone-Bannock Tribe, was hired to fill this position. Since May 2002, she has been working to get the foundation organized. This has been a challenging task: having to work within an existing bureaucracy to create a new non-profit, federally-chartered foundation that has no financial resources and was initially mis-named by Congress.

Only after an executive director was hired did the Department begin the process of appointing the Board of Directors. It took nearly six months to get Board member clearances and appointments through the system and to the desk of the Secretary of the Interior for final decision. Once appointed, the Board held its inaugural meeting in March 2003 and since that time has met on four occasions to set priorities and plan for the future independence and effectiveness of the foundation.

### **Name Change**

The initial obstacle to incorporating and to filing the necessary application for non-profit, tax-exempt status was the discovery in November 2002 that another organization held prior and superior legal rights to the same name -- *the American Indian Education Foundation* -- given our foundation by the Congress in late 2000. After unsuccessfully trying to negotiate a name-sharing agreement with this other organization, the Board was forced to go back to Congress to seek a name change by amendment *before we could even legally organize*. This name change process took an entire year from July 2003 to July 2004, when the President signed P. L. 108-267, our name change

statute. We are grateful to former Chairman Ben Nighthorse Campbell and other members of this Committee as well as Rep. Rick Renzi (R-AZ) for assistance in securing the name change. It should be noted that during this time there was nominal support from the Interior Department for the name change request pending before the Congress.

The National Fund was incorporated in the District of Columbia in July 2004 as soon as its name change statute was signed. Shortly thereafter, we filed our application for non-profit, tax-exempt status, and in November 2004, we received our determination letter from the U.S. Internal Revenue Service. We have also attempted to register our new name with the U.S. Patent and Trademark Office.

Our responses to all of these formation obstacles were accomplished with the assistance of the pro bono services of Philip Baker-Shenk and his Holland & Knight law firm, who agreed to help when the Interior Solicitor's Office advised the foundation to secure independent counsel at our initial board meeting.

### **Requests for Statutory Amendments to Remove Obstacles**

At this point, the Board of Directors of the National Fund has identified several obstacles to our effective administration of the statutory purposes of the National Fund. These obstacles will require further legislative amendment of our original statute. What follows is our description of the changes needed, and why. We have attached for the Committee's perusal some draft legislative language changes that would in our view accomplish what is needed as described below.

1. **Redesignation of Chief Operating Officer.** The authorizing statute oddly requires that the "Chief Operating Officer" of the foundation must be the Board member who is the Secretary to the Board of Directors. Our Board of Directors is comprised of many accomplished education leaders, good-hearted volunteers who have all willingly answered the call of the Interior Secretary to serve as unpaid directors for the foundation but do not have the time to spend as its Chief Operating Officer. This peculiar requirement has diverted our Board's limited time and energy from more important tasks. We ask that it be removed from our statute and replaced with language allowing the Board to appoint the chief operating officer of the Foundation.

2. **Adjustment to Ceiling Set on Administrative Costs.** The authorizing statute places a ten per cent (10%) limitation on administrative spending for the National Fund, under 25 U.S.C. 458bbb(l). This is a very restrictive provision, especially for an organization beset with the organizing obstacles we have faced. **We know of no similar restrictions being placed upon other similar fundraising organizations that need to spend money in order to raise money.** Indeed, neither the IRS nor District of Columbia corporate law impose such tight restrictions. We ask that the statutory limitation be raised to twenty-five per cent (25%), under the circumstances. In addition, with the extreme fluctuations and diversions in charitable giving that are affected by surprise events (e.g., the September 11<sup>th</sup> attacks; the recent tsunami disaster), our statutory language should also place some discretion in the Interior Secretary to waive this limitation for good cause shown.

3. **Repeal of Reimbursement Requirement.** Section 502 of the authorizing statute specifies that the Secretary may reimburse Board members for travel and may provide "personnel, facilities, and other administrative support services" to the foundation for up to a five-year period after it is established. 25 U.S.C 458bbb-1(a). However, the statute further requires that the foundation "shall" reimburse the Department of Interior for services and funds so provided. Id. **The Board asks that this reimbursement requirement be removed from the statute. We know of no similar reimbursement requirements being placed upon other similar fundraising organizations that need to spend money in order to raise money, especially in their formation years.**

### **Request for Oversight Assistance to Transfer Donated Funds**

In September 2004, former Assistant Secretary Anderson identified approximately \$1.6 million in donated funds held by the Department for the foundation. Some \$200,000 of these funds are restricted with specific provisions for expenditure. The remaining funds appear to be unrestricted by the donors. Pursuant to 25 U.S.C. 458bbb(m), the Secretary is authorized to transfer to us such donated funds received by the Department.

The foundation Board has met twice with tribal accounts managers for the Department's Office of Special Trustee to discuss how these funds might be transferred.

We have desperately needed these funds for initial operations support so that we could become more independent of the Department. All indications are that we were intended by the authors of the originating legislation to be structured similar to the U.S. National Parks Foundation and the U.S. Fish and Wildlife Foundation.

In addition, a cooperative agreement was drafted last year and presented to the Assistant Secretary's office through the Interior Solicitor's Office to provide \$450,000 in start-up funds for building administrative and fundraising capacity. The \$450,000 was identified and placed on reserve by the Assistant Secretary within the Office of Indian Education Programs. However, the Solicitor's Office subsequently ruled that these donated funds could only be used by the National Fund for the reimbursement of Board travel expenses (it should go without saying that we need these funds to operate, not to pay for that much Board travel). We appealed this decision; however, to date the funds are still held by BIA and have not been released to the foundation. It is our contention that such a non-binding opinion goes to the heart of our presence here today: that we are not receiving enough of the support intended by the Congress and this committee in December 2000 in the initial legislation to engage in the organizational and fundraising activities fundamental to achieving both the independence and mission of our foundation. **We simply cannot have any meaningful impact in supporting the mission of the Office of Indian Education, its schools and students without these changes.**

**We request the Committee's assistance in getting the Department to promptly inform us of the status of these funds and to promptly release them to the National Fund to enable the foundation to begin its important programmatic and fundraising efforts.**

In addition to releasing these funds in short order, we will ask the Committee and the Congress to work with us to authorize and fund an endowment appropriation by which we can begin to operate the National Fund and raise private contributions and offer program services in order to accomplish our mission of support for the education of Indian children in BIA-supported schools.

### Conclusions

The National Fund's Board of Directors desire this Committee to know that despite all of the obstacles identified along the way, we are proceeding as best we can. It seems that the actual process of putting the organization together highlights new challenges, all of which were unanticipated by the National Fund's originators and sponsors. Without any funding, foundation board and staff have begun to identify private sources of support and are drafting grant fund proposals that will generate some revenue for marketing purposes and other initial costs. Our testimony reflects a summary of the concerns and accomplishments of the Board of Directors of the *National Fund for Excellence in American Indian Education*. **The Board took an oath to serve the best interests of American Indian Education: we request the Committee's help in modifying the statute as well as providing some assistance in gaining greater financial support for the Fund. We have attached proposed draft legislation on the statutory amendments we need.**

An estimated **60%** of the 49,000 students in the 184 BIA schools are dropping out. Approximately **three-fourths** of schools in the system are failing the *No Child Left Behind's Annual Yearly Progress (AYP)* standards. This does not include the close to 500,000 Native students at non-BIA schools. The time is now to do all we can to build as much sense of urgency, leadership, vision and capacity into the system as we can.

Mr. Chairman, on behalf of the Board of Directors, I wish to extend to you and the members of the Committee our gratitude for this opportunity to testify at the hearing, and thank you for the time and attention you have given us and our concerns. I would be happy to answer any questions you may have.

(attachment)