

**Senate Committee on Indian Affairs**  
**Testimony of Charles Rose, General Counsel, U.S. Department of Education**  
**June 17, 2010**

**Framework: From Assimilation to Self-Determination.**

My name is Charles Rose, and I am the General Counsel at the U.S. Department of Education. On behalf of Secretary Duncan, I'd like to thank Senator Dorgan and the Committee for the opportunity to testify today regarding one of our Nation's most underserved student populations: American Indian and Alaska Native students.

Because this Committee is intimately familiar with the history between Indian peoples and the Federal Government, there is no need for me to recount that history in any great detail. Still, we must acknowledge this history to avoid repeating past mistakes, especially in the area of education. Over a century ago, the U.S. government used education as a weapon in its war against Tribes – it was a means to achieve a policy aimed at assimilating Indian children into the majority culture of the United States. The Federal Government often took Indian children from their homes, and forced them into boarding schools, some of which were far from their homelands. These schools banned Native language, dress, and religious practices, and many students experienced various forms of abuse.

After decades of failed policy, the U.S. government adopted a new policy of self-determination for Tribes in the 1970s. This new policy direction was based upon the recognition that Tribes – and not Washington – were in the best position to govern their own affairs. Since then, Tribes and the Federal Government have made strides in implementing this policy and relationship.

This Administration has taken great strides to implement a policy of Indian self-determination and strengthen and honor the government-to-government relationship with Tribal

Nations. On November 5<sup>th</sup> of last year, at the historic White House Tribal Nations Conference, President Obama reaffirmed the Federal Government's commitment to Tribal sovereignty: he promised "to develop an agenda that works for your communities because ... Washington can't - - and shouldn't -- dictate a policy agenda for Indian Country. Tribal nations do better when they make their own decisions."

### **Educational Performance of Indian Students.**

Despite these strides, there is still much work to be done with regard to Tribal sovereignty, especially in the area of education. Only about seven percent of Indian students attend schools funded by the Bureau of Indian Education. The vast majority, more than 90 percent, attend traditional, school district-operated public schools. In these schools, there are few venues for collaboration between Tribes and States, even in the case of school district-operated public schools located on Tribal lands.

And the Federal Government hasn't done enough to help in this regard, especially when Congress last reauthorized the Elementary and Secondary Education Act of 1965 (ESEA) through the No Child Left Behind Act (NCLB). NCLB deserves credit for exposing the achievement gap between poor and minority students and their middle-class, white counterparts. It has provided us with statistically reliable evidence that Indian students perform at levels far below their peers on academic assessments in grades 3-8 and high school.

For example, in 2007, Indian students attending public schools under the jurisdiction of States scored 11 points lower in math than the general student population on the fourth-grade National Assessment of Educational Progress test. Unfortunately, when they reached the eighth grade, the achievement gap widened to 17 points. Indian students attending schools funded or

operated by the Department of the Interior's Bureau of Indian Education scored 33 points lower in math than their peers in fourth-grade and 38 points lower in eighth-grade.

These statistics make one thing clear – at least in the area of education, the Federal Government has failed to live up to its responsibilities to Indian children.

In addition, by narrowing the school curriculum, in other words, by building an accountability system based almost exclusively on math and reading, NCLB has had the unintended consequence of contributing to the erosion of Native languages and cultures. By some estimates, fewer than 150 Native languages – out of many hundreds that once existed – remain, and many of those are on the verge of extinction, and often, stories and oral histories are dying with the last speakers of these languages.

#### **What the Department Heard on Its Regional Consultations.**

Historically, the Department has not engaged Indian Country in a meaningful way. We can avoid repeating past mistakes, however, with regular consultation and a meaningful partnership between the U.S. and Tribal nations. I am pleased to report that, under President Obama and Secretary Duncan's leadership, our focus on Indian Country has increased dramatically. In 2009, Secretary Duncan and senior staff, including myself, held several listening sessions at Tribal schools in Montana, New Mexico and North Dakota. On January 11, 2010, Secretary Duncan, along with other senior officials, participated in a meeting with Interior Secretary Ken Salazar, Senior Policy Advisor for Native American Affairs at the Domestic Policy Council, Kimberly Teehee and Indian education experts regarding ways in which to improve education for Indian students. In March, Secretary Duncan held a teleconference with Tribal leaders from across the country, specifically on reauthorization of the ESEA.

Further, in just the past two months, we have held several regional consultations with Tribal leaders across the country. On April 16, Assistant Secretary Thelma Melendez and Senior Advisor Greg Darnieder were at the Cook Inlet Tribal Council in Anchorage, Alaska, visiting schools and seeking feedback from Tribal officials. On April 19, Assistant Deputy Secretaries Jim Shelton and Kevin Jennings, and I held a consultation with Tribal officials in Shawnee, Oklahoma. On April 28, Deputy Assistant Secretaries Carl Harris and Frank Chong, and I were on the Pine Ridge Reservation in South Dakota, and held a consultation at Pine Ridge High School – a BIE-operated school. Finally, on May 3, Under Secretary Martha Kanter, Deputy Assistant Secretary Ricardo Soto, and Deputy General Counsel Nia Phillips were on the Espanola reservation in New Mexico and held a consultation at the Santa Clara Day School – a BIE-funded school.

I am also pleased to report that the Department of Education and the Department of the Interior have been collaborating with one another since Secretary Duncan and Secretary Salazar had their historic meeting regarding Indian education on January 11. Specifically, I have been working closely with Assistant Secretary EchoHawk and his staff to combine and coordinate the Departments' resources, and to maximize our impact on Indian education. It has been an honor working with him.

All of these efforts are part of the Department's commitment to renew our engagement with Indian Country, and we made a real effort to meet Tribal leaders on their lands. During these consultations, we've heard specific ideas from Tribal officials about what works for Indian Country. There were several common themes we heard at consultations, including that Tribes:

- Want to collaborate with States about how Indian students are educated. Many Tribal leaders testified the best way to promote Tribal-State collaboration would be to elevate and fund Tribal Education Agencies.
- Want States and Tribes to have the flexibility to consider Native languages as foreign languages.
- Believe that language immersion programs are the best way to increase fluency in Native languages and that we should increase support for these programs.
- Generally lack the capacity to compete with States or school districts for competitive funding.
- Want increased coordination and collaboration among Tribes, States, and the Federal Government - to fully address the needs of Indian students. In particular, we heard about the importance of close collaboration between the Department of Education and the Department of the Interior – to which we are fully committed.

We also heard that:

- Due to high mobility, small numbers, and the fragmentation of the education system for Indian students among school district-operated, BIE-operated, and Tribal schools, there is a lack of high-quality, reliable data on Indian students in the U.S.
- Many schools located on reservations are in dilapidated condition – some of them are a century old, and have never been renovated.
- Due to violence, alcohol and drug abuse, and high unemployment rates on reservations, Indian students face additional educational challenges at school.
- Teacher recruitment and retention is a tremendous challenge for schools on reservations. That is why Tribal leaders recommended that ESEA reauthorization

should increase existing support for “grow your own” teacher programs that train Tribal citizens to teach in their own schools.

- Finally, at every consultation, Tribal leaders emphasized the importance of follow-up. One Tribal leader even said “consultation” had become a “bad word” in Indian Country because to “consult” only meant to “confer,” and did not require true collaboration or partnership.

### **Current State of Indian Education.**

This is why we need to follow up on what we heard, and reauthorization of the ESEA provides us with a unique opportunity to take action. Reauthorization can be the vehicle that allows us to ensure that States, school districts, and the BIE are meeting the needs of Indian students and preparing them to graduate from high school prepared for college and careers.

There are approximately 644,000 Indian students enrolled in K-12 schools throughout the U.S., and they represent just over 1 percent of all public school students. In five States, however, they account for more than 10 percent of total enrollment, and over 30 percent of Indian students are in schools where they are the majority of the student body. They also disproportionately attend schools that are poor and remote: nearly 60 percent of Indian students attend schools where more than half of students are eligible for free or reduced-price school lunch, and almost 50 percent attend schools in remote areas.

As I mentioned earlier, the vast majority of Indian students attend regular public schools, while about 7 percent attend schools funded by the BIE. Under the ESEA, the Department provides support both to public schools serving Indian students and to BIE schools, including through programs specifically targeted at the unique educational and culturally related academic needs of Indian students. A significant portion of this support comes through the Title I

program, which provides \$14.5 billion to high-poverty schools in order to ensure that all students have the opportunity to meet high standards.

The ESEA also authorizes the Indian Education Program, currently funded at \$127 million, to help meet the specific needs of Indian students. This program provides formula grants to school districts, BIE schools, and Tribes, as well as competitive grants for demonstration projects and pre-service training for Tribal individuals to become teachers or school leaders. Services provided by districts under the Indian Education Program must be designed with special regard for the particular language and cultural needs of Indian students, and can include a variety of specific activities. Other ESEA programs of particular importance to schools that serve Indian students include the Rural Education Achievement Program, which provides \$175 million to small, rural school districts and rural, low-income districts, and the Impact Aid Program (\$1.3 billion), which assists districts that are affected by Federal activities, such as those on Indian reservations.

### **Goals for ESEA Reauthorization.**

We have five broad goals for this reauthorization: (1) preparing college- and career-ready students, through raising standards, improving assessments, and helping States and districts provide a complete, well-rounded education; (2) great teachers and leaders in every school, through improving teacher and leader effectiveness, ensuring that our best teachers and leaders are in the schools where they are most needed, including schools that serve Indian students, and strengthening teacher and leader preparation and recruitment; (3) equity and opportunity for all students, through rigorous and fair accountability at all levels, meeting the needs of diverse learners, and greater resource equity; (4) raising the bar and rewarding excellence, through incentives such as Race to the Top, supporting effective public school choice, and promoting a

culture of college readiness and success; and (5) promoting innovation and continuous improvement, through programs such as the Investing in Innovation Fund (which supports, recognizes, and rewards local innovations) and supporting student success by providing comprehensive services. These goals are critically important to improving education for all students, and especially for Indian students.

We also have goals and plans for addressing the needs of schools that serve Indian students. We know that Federal funding is crucial for these schools, especially since they are generally small and remote. Our proposal would continue foundational formula funding in Title I and Title II-A, along with formula funding in the Rural Education, Indian Education, and English Learner Education programs, among others.

For most schools serving Indian students, we want to promote Tribal sovereignty by allowing these schools to implement locally designed strategies to improve student achievement, such as culturally based education and Native language instruction. We want to give grantees more flexibility under the Indian Education Program to carry out Native language restoration and immersion programs, and we want to make it easier for Tribes to apply for grants under this program when districts choose not to.

But we also know that many schools with high percentages of Indian students are among the lowest-performing. For example, ninety percent of Montana's schools in "restructuring" status under ESEA's Title I accountability system are Indian schools, and nearly half of all BIE schools are in restructuring, having failed to make adequate yearly progress for at least five consecutive years. Our reauthorization proposal and fiscal year 2011 budget focus significant attention and support on persistently low-performing schools, with \$900 million in the School Turnaround Grants program to support the implementation of one of four school turnaround



models in these schools – with the choice of which model left to the school district. The BIE would receive its share of these funds to turn around its lowest-performing schools.

Our proposal will also address teacher and leader recruitment and retention, especially for schools, like those in Indian communities, where they are needed most. The Administration’s proposal includes \$405 million for programs that create or expand high-quality pathways into teaching, along with programs that recruit, prepare, and retain effective teachers, principals, and other school leaders. These programs will be focused on preparing teachers and leaders to work in high-need areas.

Finally, in order to further the Administration’s policy of self-determination for Tribes, and to further Tribal-State collaboration, the Department is exploring options to strengthen Tribal Education Agencies (TEAs) through ESEA reauthorization. TEAs are executive branch departments of sovereign Tribal governments that are responsible for education-related matters (TEAs are not schools, and generally don’t deliver educational services directly to students). Several Tribal officials have testified that strengthening TEAs may provide a mechanism for the Federal Government, TEAs, and SEAs to combine and coordinate Federal, Tribal, and State resources, and develop partnerships that would promote Tribal sovereignty, increase capacity, and improve accountability in schools with high percentages of Indian students. Part of strengthening TEAs must include the provision of targeted technical assistance, as well as providing TEAs with data about Indian students – as we heard during our consultations, there currently is a lack of such data.

**Conclusion.**

As ESEA reauthorization moves forward, we expect to continue our dialogue with Tribal leaders and refine the Department’s proposal. We’re looking forward to working with the

Committee to achieve our goals for all Indian students. Thank you, and I would be happy to respond to any questions that you have.