

**STATEMENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION BEFORE  
THE SENATE COMMITTEE ON INDIAN AFFAIRS ON BUREAU OF INDIAN  
AFFAIRS SCHOOL CONSTRUCTION**

Presented by: Lorraine P. Edmo, Executive Director  
June 10, 1998

*BIA reports that the cost of the total inventory of repairs needed for BIA education facilities is \$754 million. This includes the cost of repairs to all school buildings, including dormitories for students and employee housing. Data from our 1994 National School Facilities Survey show that, compared with other schools nationally, responding BIA schools (1) are generally in poorer condition, (2) have more unsatisfactory environmental factors, (3) more often lack key facilities requirements for education reform, and (4) are less able to support computer and communications technology. From: General Accounting Office (GAO) Report 'School Facilities, Reported Condition and Costs to Repair Schools Funded by Bureau of Indian Affairs'. December 1997*

The National Indian Education Association (NIEA), the oldest national organization representing the education concerns of over 3,000 American Indian and Alaska Native educators was established in 1969. NIEA members are school administrators, teachers, parents, and students. We are pleased to submit this statement on Bureau of Indian Affairs (BIA) School Construction issues. NIEA has an elected board of 12 members who represent various Indian education programs and constituencies from throughout the nation. NIEA holds an annual convention which provides members with an opportunity to network, share information, and hear from Congressional leaders and staff as well as federal government officials on policy and legislative initiatives impacting Indian education.

In Fiscal Year 1999, the BIA will educate over 53,000 elementary and secondary students in 185 schools across 200 reservations in 23 states. Eighty two percent of BIA's building square footage is educational space. Two percent of all these buildings are more than 100 years old, 20 percent are more than 50 years old, and 50 percent are more than 30 years old. Thirty years is normally considered the usual life of a building. In light of this situation, the BIA is including as one of its fiscal year 1999 special initiatives a focus on school restoration. This initiative is to provide for the increased construction, equipment and rehabilitation of school facilities. The BIA indicates that it seeks to provide safe, functional and economical educational facilities in Indian communities. To carry out this effort, the Department of Interior has requested \$152 million for all BIA Construction categories, of which \$86.6 million is designated for Education Construction.

The timing of this hearing on BIA school construction issues is appropriate given the recent General Accounting Office (GAO) report on BIA construction released in December, 1997.

Additionally, there have been numerous legislative proposals for national school construction initiatives. The last such hearing on New School Construction, Improvement, and Repair of BIA's School Facilities was before the Select Committee on Indian Affairs in April of 1991. School construction issues and problems are not new to BIA funded schools and we refer this committee to

some of the findings from the 1991 hearing:

April, 1991: Excerpts from David J. Matheson, Director, Office of Construction Management, DOI, prepared statement:

- The facilities inventory is comprised of approximately 3,500 buildings containing 19,800,000 square feet (excluding quarters) in over 400 locations throughout the United States.
- Educational facilities comprise approximately 80 percent of the facilities in the inventory.
- These facilities serve over 300 federally recognized Indian tribes located in 26 states, with educational facilities for approximately 40,000 Indian youths attending approximately 180 different schools.
- Of the 3,500 buildings in the facilities inventory, 1,851 are over 30 years old, and of this number, 726 are over 50 years with 16 of these being 100 plus years old.
- Ten of the twelve Area Directors reporting directly to the Deputy Commissioner of Indian Affairs have facility management staffs responsible for data collection, technical assistance, minor improvement and repair, safety, operation and maintenance oversight, and other administrative activities of the BIA's facilities program.
- In addition, there are facility management offices and staff at approximately 84 agency office and 400 facilities locations. Each of these offices is responsible for day-to-day operations, maintenance, safety quarters, and other facility related activities.

The U.S. Department of Interior, Inspector General, James B. Richards, also stated in 1991:

- During the past four years we have issued two final reports and two draft reports relating to this subject area. These reports reveal and describe a deplorable state of Indian Education facilities, which are often structurally unsound, in disrepair and poorly maintained.
- Further, the degraded conditions of Bureau of Indian Affairs classrooms, dormitories, study and recreational areas and other related facilities has undoubtedly had a profound adverse effect on the quality of education being provided to Indian children.
- Two recent audits we completed, currently in draft form, entitled "Implementation of the Education Amendments of 1978," dated February 1991 and "Facilities Maintenance," dated April 1991, confirmed the fact that the Bureau and the Department have failed to correct life-threatening safety deficiencies, code violations, and hazardous health conditions existing in schools, dormitories, and other buildings Bureau-wide for Indian students.

- These current audits show that Indian children have not been provided with facilities that are safe, healthy, or conducive to a quality education. In many instances, Indian school facilities are often so deplorable as to impede the educational process.
- These standardized tests resulted in scores that ranged from the 24<sup>th</sup> percentile on grades 3 through 9 to the 32<sup>nd</sup> percentile for high school seniors. In other words, we note that similar test scores for students at all grade levels were exceedingly low. We did note that similar test scores for Indian children attending public school were somewhat higher.

During the 1991 hearing, one witness indicated an estimated backlog in BIA maintenance and repair deficiencies of approximately \$850 million. The 1998 estimate, according to the BIA Fiscal Year 1999 Budget Justification, projects a backlog in the Education Facilities Improvement and Repair Program at \$695 million and \$63.8 million in Education Quarters for a total of \$758 million. The immediate conclusion is that few financial resources have been focused on the school facilities dilemma over the past seven years. The fact of the matter is that problems with all facets of education construction at Bureau funded and operated schools have been evident for decades. The Education Amendments of 1978 (Title XI of Public Law 95-561), which govern certain BIA services, require that education facilities be safe and adequate to serve the needs of Indian children. The 1991 Inspector General's report did, however, bring to light a pattern of neglect and the cumbersome administrative process inherent in all construction-related decisions. The deterioration of education facilities continues to this day and will plague any real advancement toward educational excellence until some solutions are found.

The school facilities/construction dilemma is not unique to Bureau funded schools. Nationally, America's schools, colleges, and universities also face aging and inadequate facilities. New resources for facilities are required to maintain low class size, enhance school discipline and safety, and accommodate new learning technology. Indicators of the national problem include:

- Colleges and universities require approximately \$60 billion to modernize and replace aging facilities.
- U.S. K-12 schools require \$112 billion to repair or upgrade dangerous or sub-standard facilities and an additional \$73 billion to meet increased enrollments.
- One-half of all schools have inadequate wiring for computers and communications technology.

The situation at BIA schools is compounded by the fact that tribes, as sovereign nations, generally do not have the capacity to leverage the bonding authority needed to construct new education facilities. The inability to tax members living within tribal boundaries results in fewer avenues for supporting such large scale initiatives as new school construction.

NIEA is aware of proposals from various Indian school board associations that would make an attempt at reversing the school construction and renovation needs. These proposals represent innovative local strategies for dealing with the school renovation/construction problems. BIA

schools that are located on Indian reservations do not have the requisite tax base for ensuring and paying for any bonds that might be needed for new school construction and renovation projects. As a result these schools rely solely on federal funding through the BIA for meeting their school construction/renovation needs. Since FY 1996, the average appropriation for education construction was \$43.3 million with the FY 99 request the largest in several years at \$86.6 million. At the \$43.3 million average, it would take almost 20 years to eliminate the backlog and at the fiscal year 1999 request, it would take ten years. Below, we look at some of the different proposals that have been circulating throughout Indian Country for funding school construction. This year's Budget Resolution will have a definite impact on any school funding initiative.

### **Fiscal Year 1999 Senate Budget Resolution**

On April 2, the Senate passed its version of the fiscal year 1999 Budget Resolution. Attached to the resolution was an amendment introduced by Senators Pete V. Domenici (AZ-), Patty Murray (WA), and Tim Johnson (SD) which adds an additional \$80 million to the BIA FY 1999 Education Construction request of \$86 million. This brings the total request for BIA school construction to \$166 million. This proposal would by far provide the best solution to the construction backlog if it were applied consistently over the next five years.

On June 5<sup>th</sup> the House passed its version of the House Budget Resolution which did not contain a similar proposal. The likelihood of the Senate version being fully funded during the upcoming conference is minimal considering the House version cuts \$1 00 billion (over five years) from domestic spending. It is possible that the final total for Education Construction could be in the range of \$126 million if the President's request is approved in September. The major obstacle would be ensuring that the amount stays in during the fiscal year 1999 appropriations process. If the House and Senate Budget Resolution cuts hold up in the appropriations process, all education programs nationwide will suffer. It will be increasingly more difficult to find any money for tribal facilities construction and repair as well as non-tribal funding.

### **A. Dakota Area Consortium of Tribal Schools, Inc. (DACTS) School Bonding Proposal**

The National Indian Bonding Authority Pilot Project Act of 1996, H.R.4151, was introduced by Senator Tim Johnson (SD) on September 24, 1996, at the conclusion of the 104<sup>th</sup> Congress. It is structured after the "Moral Obligation Debt" which is used by many state and local governments to conduct so-called off-balance sheet borrowing. This method of financing bonds does not count against the issuer's total outstanding debt. The pilot project would use existing tribal education funds for bonds in the municipal finance market which currently serves local governments across the nation. Instead of funding construction project directly, these existing funds would be leveraged through bonds to fund substantially more tribal school construction, maintenance and repair projects. The initial draft of the legislation called for the creation of a new federal agency with the ability to issue certificates of participation (COP's) that are backed by future federal appropriations to raise capital from the taxable municipal market for school improvement. The pilot project would issue up to \$20 million of COP's per year, with an overall debt cap of \$200 million. The legislation requires that the federal government make appropriations to the authority for the first four years, with additional appropriations dependent on further legislative action.

Investors who purchase, or back the COP'S, would be subject to increased risk, when compared -

with more traditional bonding mechanisms since they are not backed by collateralized mortgages or other valuable assets. Tribal, or reservation-based schools, would be valued less than say a public school where a tax base is present.

NIEA supported this concept through Resolution 95-14 in 1995 at our annual convention. Since that time NIEA has learned there are concerns about the creation of another level of bureaucracy to administer this program. We are not sure if other Indian school board associations are in support of the DACT's proposal. It is our understanding that the DACT's proposal would be a national program.

### **B. S.12. Modernize Schools for the 21st Century**

The President's FY 99 Budget proposes Federal tax credits to pay interest on nearly \$22 billion in bonds to build and renovate public schools. This is more than double the assistance proposed last year, which covered up to half the interest on an estimated \$20 billion in bonds. The new proposal (S.2044 & H.R.3813) provides tax credits in lieu of interest payments for investors in two types of School Modernization Bonds: Qualified School Construction Bonds (a new proposal) and expansion of the Qualified Zone Academy Bonds created last year. The Department of the Treasury estimates that the revenue loss associated with the bonds would be \$5 billion over 5 years and over \$11 billion over 10 years. The U.S. Department of Education, shows by the following scenario, how the funding for an Indian School would occur:

#### School District C -- A School District on a Poor Indian Reservation

This poor public school district needs funds to renovate a school and build a new school but is unable to issue bonds itself because of its small tax base. School District C would receive a heavily subsidized loan from the State. The State would subsidize the loan either by contributing the State's own funds toward the loan or by decreasing the amount of the subsidy other communities would receive under School Modernization Bonds in the State. School District C would not issue the bond itself, the State would issue it on behalf of School District C and several other school districts. School District C would use the funds to plan, design, and construct its new building and to renovate its existing school. The State could guarantee that School District C would repay the loan by retaining State aid in event that the school district stopped making payments. School District C would pay only a portion of the principal on the loan to the State because the loan is subsidized. The bond holders would be repaid as described in the above examples, except the State rather than the community would repay the principal to the bond holders.

*NIEA Concern: States have not traditionally supported payment of education services for members of Indian tribes. In fact, in many instances they are resistant to providing any services to Indian people. For this reason NIEA is concerned that without a set-aside funding formula specifically for Indian tribes this plan may not be conducive to tribal involvement. NIEA is also concerned that the above scenario indicates that state aid would be withheld from Indian school districts that stopped making payments. We are not sure that Indian schools located on a reservation would be receiving any state aid at all.*

### **C. Association of Contract Tribal Schools (ACTS)**

ACT's has developed an initiative which may provide a more national approach to the school - bonding dilemma by providing for the use of multi-year bonding and leasing agreements. The plan is similar to the one used by the military when it seeks to build large aircraft carriers or other multi-billion dollars projects where the reimbursement occurs over several years. After funding a typical project under the ACTS plan, the facility would be leased simultaneously over the period of the loan until it is paid off. This type of funding would require the encumbrance of future Congresses which would be difficult given the general climate in Congress today and the lack of a tax base on Indian lands. NIEA has not reviewed the full extent of this proposal, but would likely support it if education construction dollars were made available under this or a similar proposal. As more information becomes available, we will provide it to the committee.

### **D. S.456 and H.1104, Partnership to Rebuild and Modernize America's School Act of 1997**

Introduced by Senator Carol Moseley-Braun on March 18, 1997 and Representative Nita Lowey. This \$5 billion proposal was introduced as President Clinton's 1997 School Construction Initiative and would leverage \$20 billion in upgrading and new school construction. The initiative would provide Federal tax credits to pay interest on bonds -making them interest-free to help local communities make their school bonds go much further in renovating and building needed schools. The proposal would build approximately 1,000 new schools and renovate more than 5,000 others. Two percent of funds would be allocated to the BIA (approximately \$60 million) and territorial schools. This bill failed as an amendment to 1998 Budget Resolution.

### **E. S.1705, The Public School Modernization Act of 1998 and S. 1708 Revitalize and Empower Public School Communities to Upgrade for Long-Term Success Act**

S.1705 was introduced by Senator Carol Moseley-Braun on March 4, 1998 and does not include any set-aside or funding provisions for Bureau of Indian Affairs Schools. S.1708 was also introduced on March 4 by Senator Daschle. It contains several FY1999 Democratic education proposals, including a title which is identical to S. 1705.

### **F. S.1160, Education Facilities Improvement Act**

Introduced by Senators Daschle and Moseley-Braun on September 10, 1997. Would utilize \$1.9 billion made available through a restructuring of foreign tax credit carryover. S.1160 would reserve 1.5 percent of funds for BIA schools, 0.5 percent for Territories, and 0.1 percent for data collection and study of school conditions.

### **Indian Schools and the Learning Environment**

NIEA has been acutely aware of the facilities needs in Indian Country for years. We realize it is difficult to attain any measure of educational excellence when the tools for achieving even minimal progress are impeded by an inadequate learning environment. How can a student learn in a classroom with no air conditioning where the temperature exceeds 100 degrees in the summer and where a coat must be worn to stay warm in the winter. We venture to say that if the conditions that exist in today's Indian schools were prevalent in the nation's public schools that the situation would not be tolerated by the general public nor the Congress.

The Department of Education has commissioned several studies on the affect of classroom

environment on the ability to learn. These studies provide insight into the interrelated factors that affect all students. While the studies in question were conducted in non-BLA/tribal schools, they illustrate the relationship between a student's environment and his/her capacity to learn.

**U.S. Department of Education Studies on School Facilities and Learning** (*Footnotes are provided in Appendix I*)

**1. Impact of Inadequate School Facilities on Student Learning**

A number of studies have shown that many school systems, particularly those in urban and high-poverty areas, are plagued by decaying buildings that threaten the health, safety, and learning opportunities of students. Good facilities appear to be an important precondition for student learning, provided that other conditions are present that support a strong academic program in the school. A growing body of research has linked student achievement and behavior to the physical building conditions and overcrowding.

**2. Physical Building Conditions**

Decaying environmental conditions such as peeling paint, crumbling plaster, non-functioning toilets, poor lighting, inadequate ventilation, and inoperative heating and cooling systems can affect the learning as well as the health and the morale of staff and students.

**3. Impact on student achievement**

A study of the District of Columbia school system found, after controlling for other variables such as a student's socioeconomic status, that students' standardized achievement scores were lower in schools with poor building conditions. Students in school buildings in poor condition had achievement that was 6% below schools in fair condition and 11% below schools in excellent condition. (Edwards, 1991)

- Cash (1993) examined the relationship between building condition and student achievement in small, rural Virginia high schools. Student scores on achievement tests, adjusted for socioeconomic status, was found to be up to 5 percentile points lower in buildings with lower quality ratings. Achievement also appeared to be more directly related to cosmetic factors than to structural ones. Poorer achievement was associated with specific building condition factors such as substandard science facilities, air conditioning, locker conditions, classroom furniture, more graffiti, and noisy external environments.
- Similarly, Hines' (1996) study of large, urban high schools in Virginia also found a relationship between building condition and student achievement. Indeed, Hines found that student achievement was as much as 11 percentile points lower in substandard buildings as compared to above-standard buildings.
- A study of North Dakota high schools, a state selected in part because of its relatively homogeneous, rural population, also found a positive relationship between school condition (as measured by principals' survey responses) and both student achievement and

student behavior. (Earthman, 1995)

- McGuffey (1982) concluded that heating and air conditioning systems appeared to be very important, along with special instructional facilities (i.e., science laboratories or equipment) and color and interior painting, in contributing to student achievement. Proper building maintenance was also found to be related to better attitudes and fewer disciplinary problems in one cited study.
- Research indicates that the quality of air inside public school facilities may significantly affect students' ability to concentrate. The evidence suggests that youth, especially those under ten years of age, are more vulnerable than adults to the types of contaminants (asbestos, radon, and formaldehyde) found in some school facilities (Andrews and Neuroth, 1988).

*References for the above bullets are included in Appendix I.*

### **Conclusion**

NIEA views Indian education as the trust responsibility of the Federal Government. This responsibility has been continually upheld through Treaties, Court decisions, Executive Orders, and Congressional programs and initiatives. Construction and maintenance of safe and healthy schools is a major concern of our association. As you have heard in the testimony presented to this committee today, the education funding needs are great. The \$754 million backlog in School Facilities Renovation and Repair is staggering. Since the last hearing in 1991, little has changed. The backlog has been evident for decades and as mentioned in the GAO report of December, 1997 "band-aid" approaches have been applied without any measurable success. There needs to be a strong commitment on the part of this committee and Congress that school facilities problems will be remedied by Congress, the Interior Department and Tribes working together.

As a beginning point we would recommend that the Bureau of Indian Affairs try to streamline the approval process for school facilities and construction projects as well as management of the school facilities at the local level. There appear to be about eight levels of federal authority responsible for management and administration of the BIA's facilities program. These lines of authority were spelled out by David Matheson, Director of the Office of Construction Management, in his April 24, 1991 testimony to Congress. No doubt, these lines of authority are the same today. Perhaps this proposed streamlining would allow for quicker approval of projects for repair of schools.

Congress also needs to commit funding to see that schools are repaired and replaced over a number of years. Domestic discretionary spending, especially for education needs to be increased, not decreased. We totally support the proposed BIA request of \$152 million in BIA construction funding in the FYI 999 budget.

We commend the Indian school board associations which have developed innovative approaches for dealing with this enormous problem. I am pleased to answer any questions the Committee

may have.

## APPENDIX I

### REFERENCES

Andrews, James B., and Richard Neuroth (October 1988). "Environmentally Related Health Hazards in the Schools." Paper presented at the Annual Meeting of the Association of School Business Officials International in Detroit, Michigan. ED 300929.

Cash, Carol (1993). A Study of the Relationship Between School Building Condition and Student Achievement and Behavior. Unpublished doctoral dissertation. Blacksburg, VA: Virginia Polytechnic Institute and State University.

Earthman, Glen (1996). "Review of Research on the Relationship Between School Buildings, Student Achievement, and Student Behavior." Draft position paper prepared for the Council of Educational Facility Planners, International. Scottsdale, AZ.

Earthman, Glen, Carol Cash, and Denny Van Berkum (September 1995). "A Statewide Study of Student Achievement and Behavior and School Building Condition." Paper presented at the annual meeting of the Council of Educational Facility Planners, International. Dallas, TX. ED 387878

Edwards, Maureen M. (1992). Building Conditions, Parental Involvement and Student Achievement in the D.C. Public School System. Unpolished Master Degree Thesis, Georgetown University, Washington, D.C. (ED 264285).

Hines, Eric (1996). Building Condition and Student Achievement and Behavior. Unpublished doctoral dissertation. Blacksburg, VA: Virginia Polytechnic Institute and State University.

McGuffey, Carroll (1982). "Facilities." In Herbert Walberg (ed.), Improving Educational Standards and Productivity. Berkely: McCutchan Publishing Corporation.