
STANDING ROCK/FT YATES COMMUNITY SCHOOL

TRIBAL AND STATE RELATIONS

COMMITTEE



THURSDAY, JANUARY 31, 2008-9 AM

CONFERENCE ROOM A:

SKY DANCER HOTEL AND CASINO

HIGHWAY 5 WEST,

BELCOURT, N.D.



STANDING ROCK/FT YATES COMMUNITY SCHOOL

FINANCIAL IMPACTS (2)

**FINANCIAL DATA AND ITS IMPACT
ON K-12 EDUCATION**

STANDING ROCK COMMUNITY SCHOOL

**CLYDE NAASZ,
ASSISTANT SUPERINTENDENT**

TRIBAL AND STATE RELATIONS COMMITTEE

THURSDAY, JANUARY 31, 2008
SKY DANCER HOTEL AND CASINO
HIGHWAY 5 WEST
BELCOURT, N.D.

Committee Members: *Representative Merle Boucher, Representative Dawn Marie Charging, Representative Duane L. DeKrey, Senator Stanley W. Lyson, Senator Tim Mathern, and Senator Dave Oehlke.*

1. **Introductions:** *(Dr. Harold K. Larson, Superintendent of Schools, Standing Rock/Ft Yates Community School)*

School Board Members Attending: *(Dennis Archambault, President-Ft Yates Public School; Randez Bailey, Vice President-Ft Yates Public School; Virgil Taken Alive, Tribal Grant School Board Member; and Douglas White Bull-Tribal Grant School Board Member.*

Presenters: *Steve Emery, ESQ-Attorney-at-Law; Clyde Naasz, Assistant Superintendent; and Dr. Harold K. Larson, Superintendent of Schools.*

1. **Overview:** *Dr. Harold K. Larson, Superintendent*
2. **Financial Impact:** *Clyde Naasz, Assistant Superintendent*
3. **Legal Implications:** *Steven Emery, Attorney-at-Law*
4. **Conclusion:** *Dr. Harold K. Larson, Superintendent*



FUNDING ISSUES

CLYDE NAASZ, ASSISTANT SUPERINTENDENT

Mr. Naasz will review the funding issues confronting the Standing Rock/Ft Yates Community School system as a result of inadequate funding by the State of North Dakota.

Mr. Naasz' presentation will focus on the following:

1. **Ft Yates Public School District #4:** *The Ft Yates Public School is in a financial crisis based upon inadequate State funding. Mr. Naasz will review the financial detail and rationale for that assumption.*
2. **Funding Concerns:** *Mr. Naasz will highlight Funding mechanisms for the purpose of creating awareness of the categorical funds received by the school.*
 - a. **Transportation**
 - b. **Special Education**
 - c. **Capital Outlay Funds**
 - d. **REA Concerns**
 - e. **Title I Grants**
 - f. **Title II- Part D Grants**
3. **Standing Rock Community School:** *The Standing Rock Community School is being deprived of North Dakota Education Foundation Revenues for the past twenty-nine years. The Standing Rock Community School transitioned from the classification of a Bureau of Indian Affairs (BIA) school to a Tribal Grant School on July 1, 1994. A single word/phrase in the Century Code denies Education Foundation Funding to the Tribal Grant School and millions of dollars have been deprived 81% of the Indian children of the Standing Rock/Ft Yates Community School. Mr. Naasz will provide summary data relating to that circumstance. The Education Foundation Aid to Standing Rock Community School was denied subsequent to the separation of the Ft Yates Public School and the Standing Rock Community School in 1978-79.*

Mr. Naasz will share the impact of that loss of funds to the children of the Standing Rock/Ft Yates Community School.

Item 1

Standing Rock/Fort Yates Community School

9189 Hwy 24
Fort Yates, North Dakota 58538

Fort Yates Public School District #4

State Foundation Payment	\$ 1,016,315.23
Transportation	\$ 49,756.33
Total	\$ 1,066,071.56

Impact Aid – Fort Yates Public School District #4

Impact Aid 8003 Payment	\$ 831,198.00
Middle School Building Payment on Bonds	\$ 539,702.51
Funding left over	\$ 291,495.49

Special Education

SR/FYCS	27%	State Average 13%
IDEA Part B	\$ 88,919.00	
PRE-School	\$ 7,761.00	
Special Ed. – State	\$ 26,045.65	
Foundation Aid		
Impact Aid – SPED	\$ 26,000.00	
Total	\$ 148,725.65	

One student is costing the school district over \$ 85,000.00. The majority of the rest of the special education costs are coming from the general budget.

Title III \$ 27,513.00

Standing Rock/Fort Yates has identified 189 students during the 2006-2007 academic school year as being English Language Learners. This funding is suppose to be used by Standing Rock/Fort Yates Community School, Solen-Cannon Ball Public School District, and Selfridge Public School District. We are suppose to hire a ELL Endorsed Teacher with our general funding. The school district is expected to provide more services being required by the North Dakota Department of Public Instruction and the North Dakota Legislature with no additional funding being provided.

Title I Funding

(Title I, II Part A, II Part D, IV, & V)	\$ 462,800.00
Program Improvement – School	\$ 64,852.92
Program Improvement – District	\$ 25,000.00

Funding Available:

State Foundation Payment	\$ 1,016,315.23
Impact Aid Funding Left	\$ 291,495.49
Title I Funding	\$ 462,800.00
Title III	\$ 27,513.00 - 3 schools
Program Improvement – School	\$ 64,852.92
Program Improvement – District	\$ 25,000.00
Total	\$ 1,887,976.64 (Did not include Special Ed.)

Total funding available to educate students \$ 1,887,976.64 - \$ 1,523,133.42 =
\$ 364,843.22 (Insurance – Vehicle/Building, textbooks, supplies, training, & etc.)

Names	Salaries	Benefits	Total
	\$29,395.56	\$9,406.58	\$38,802.14
	\$29,302.50	\$9,376.80	\$9,376.80
	\$29,302.50	\$9,376.80	\$48,178.94
	\$27,984.00	\$8,954.88	\$36,938.88
	\$28,137.00	\$9,003.84	\$37,140.84
	\$34,035.00	\$10,891.20	\$44,926.20
	\$29,187.00	\$9,339.84	\$38,526.84
	\$29,416.05	\$9,413.14	\$38,829.19
	\$34,696.00	\$11,102.72	\$45,798.72
	\$29,484.00	\$9,434.88	\$38,918.88
	\$35,467.00	\$11,349.44	\$46,816.44
	\$31,247.00	\$9,999.04	\$41,246.04
	\$36,899.00	\$11,807.68	\$48,706.68
	\$34,806.00	\$11,137.92	\$45,943.92
	\$26,999.95	\$8,639.98	\$35,639.93
	\$29,738.00	\$9,516.16	\$39,254.16
	\$26,984.00	\$8,634.88	\$35,618.88
	\$26,484.00	\$8,474.88	\$34,958.88
	\$26,984.00	\$8,474.88	\$35,458.88
	\$30,254.05	\$9,681.30	\$39,935.35
	\$29,925.00	\$9,576.00	\$39,501.00
	\$28,637.00	\$9,163.84	\$37,800.84
	\$28,131.64	\$9,002.12	\$37,133.76
	\$21,260.00	\$6,803.20	\$28,063.20
	\$34,944.00	\$11,182.08	\$46,126.08
	\$9,490.12	\$3,036.84	\$12,526.96
	\$10,683.89	\$3,418.84	\$14,102.73
	\$10,778.89	\$3,449.24	\$14,228.13
	\$40,000.00	\$12,800.00	\$52,800.00
	\$30,556.50	\$9,778.08	\$40,334.58
	\$35,051.00	\$11,216.32	\$46,267.32
Total Certified Staff	\$886,260.65	\$283,443.40	\$1,053,543.31
	\$43,460.00	\$13,907.20	\$57,367.20
	\$17,457.44	\$5,586.38	\$23,043.82
	\$36,441.60	\$11,661.31	\$48,102.91
	\$25,450.88	\$8,144.28	\$33,595.16
	\$20,870.40	\$6,678.53	\$27,548.93
	\$27,088.00	\$8,668.16	\$35,756.16
	\$30,284.80	\$9,691.14	\$39,975.94
	\$33,356.96	\$10,674.23	\$44,031.19
	\$49,600.00	\$15,872.00	\$65,472.00
	\$29,484.00	\$9,434.88	\$38,918.88
	\$24,200.00	\$7,744.00	\$31,944.00
	\$18,056.00	\$5,777.92	\$23,833.92
Total Non-Certified Staff	\$355,750.08	\$113,840.03	\$469,590.11
Total Salaries & Benefits of Certified & Non-Certified Staff			\$1,523,133.42

Standing Rock/Fort Yates Community School

9189 Hwy 24

Fort Yates, North Dakota 58538

Concerns:

1. Transportation Funding is not adequate
 - * Lack of funding – school's need to use funding from general budget
2. Special Education Funding is not adequate
 - * Lacking of funding considering the number of students & percentages
3. No Capital Outlay Funding for new buildings and repairs
4. Funding issues are addressed for large districts in the state
 - * These issues are not addressed in Indian Country
5. REA Concerns:
 - * Grants being awarded for the REA
 - * 21st CCLC
 - * ELL Grants
 - * Vocational & Technical Education Grants
 - * Grants awarded only to REA's not school districts
6. Title I Grants
 - * Reading First Grant awarded to school district's that are making Average Yearly Progress (AYP)
 - * No Homeless Grant funding awarded, but North Dakota Department of Public Instruction wants to use our numbers to secure funds
 - North Dakota Department of Public Instruction – Title I Office requires all types of reports with lack of funding – without the funding their will be no positive results happening
7. Title II Part D Grants
 - * There is only one non- Native American Indian School District that has not been awarded this grant.
 - There are thirteen school districts left and twelve are Native American Indian School Districts

Item 3

North Dakota State Funding that Standing Rock Community School is not getting per year

Program	Students	Formula	Amount
Pupil Payment	590	$590 \times \$3,250.00$	\$1,917,500.00
Special Ed.	163	$163 \times \$479.48$	\$78,155.24
Title I	590	$590 \times \$2,183.02$	\$1,287,981.80
School Improvement Building Additional Funds	590	$590 \times \$305.91$	\$180,486.90
School Improvement System Additional Funds	590	$590 \times \$117.92$	\$69,572.80
Title III	590	$590 \times \$145.57$	\$85,886.30
Transportation	9 Rural Routes	$182,412.0 \times 0.735$	\$134,072.82
	6 In-City Routes	$51,940.8 \times 0.515$	\$26,749.51
Grand Total			\$3,619,583.04

Approximate loss of revenue to the Standing Rock Community School over
the past twenty-nine (29) years:

$$29 \times \$3,600,000.00 = \$104,400,000.00$$



STANDING ROCK/FT YATES COMMUNITY SCHOOL

LEGAL IMPLICATIONS (3)

MEMORANDUM:

**POTENTIAL TO RECEIVE NORTH DAKOTA EDUCATION
FOUNDATION FUNDING THROUGH AMENDMENTS TO THE
NORTH DAKOTA CENTURY CODE**

RESUME

**STEVEN EMERY, ESQ
ATTORNEY-AT-LAW**

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ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL

MEMORANDUM

To: Standing Rock Community School Board of Directors
From: Steven C. Emery, School Attorney
Re: Potential to Receive ND Education Foundation Funding Through Amendments to the North Dakota Century Code
Date: 1/12/2007

The purpose of this memorandum is to discuss the possibility of the SRCS School receiving ND Education Foundation Funding through legislative amendments to the North Dakota Century Code.

ISSUE PRESENTED:

Can the North Dakota Century Code be amended such that the SRCS School can receive ND Education Foundation Funding through legislative amendments to the North Dakota Century Code?

ANSWER IN BRIEF:

Yes, it appears the North Dakota Century Code be amended such that the SRCS School can receive ND Education Foundation Funding through legislative amendment to § 15.1-29-10 of the North Dakota Century Code. See discussion, *infra*.

ANALYSIS:

On December 6, 2006 Governor Hoeven made his Budget Address for the 2007-2009 Biennium. In discussing his administration's proposed education budget, in the section of his speech entitled "Building Our Future on Education," Governor Hoeven declared:

Education - both K-12 and higher education - is the bedrock on which we build our economy. For that reason, over the past three bienniums, we have increased funding for K-12 education by more than \$120.0 million.

We have also fostered new partnerships, like regional Joint Powers Agreements, and worked to increase teacher compensation.

A few weeks ago, after months of hard work, the Governor's Commission on Education Improvement released new recommendations to improve the way we fund education.

The Commission worked to develop a new education funding formula to achieve greater school funding equity, and recommended a baseline increase of \$60.0 million to support it.

They also made optional recommendations for another \$12.0 million, which includes additional funding for special education and all-day kindergarten for children at risk.

In our budget, we fully fund both their base and optional recommendations - in fact, we go further.

We recommend an increase of \$76.0 million in general fund monies. This \$76.0 million, together with a \$4.6 million increase from the common schools trust fund, will provide more than \$80.0 million in new funding for K-12 education.

This \$80.0 million, together with the Commission's sound recommendations, is a big step forward.

Adopting the work of the commission establishes a process that will not only dismiss the school funding lawsuit and truly reform funding equity and adequacy, but will also help to reduce the local share of the current cost of education.

That process will continue, focusing more closely on adequacy, throughout the new biennium in preparation for the 2009 legislative session.

Further, our financial reserves will make it possible for us to continue to do a good job for K-12 education funding going forward.

I want to thank and acknowledge Lt. Gov. Jack Dalrymple, Rep. RaeAnn Kelsch, Sen. Tim Flakoll, Sen. Dave O'Connell, Rep. Dave Monson, Superintendent Wayne Sanstead, the school officials, and the entire commission for the hard work and thoughtful recommendations you've put forward.

Thanks to your hard work, this \$80.0 million we have provided in response to the Commission's recommendations, combined with the \$116.7 million we've

committed for property tax relief, represents a commitment of nearly \$200.0 million to improve education funding, increase teacher pay, provide greater education equity, and at the same time, enable us to reduce the burden of property taxes on our citizens.

Reforming and improving the way we fund K-12 education is a very big task, and it is critically important, but we can do it.

Id. Surely, the governor recognizes that our children should be included the reform and improvement of how North Dakota funds K-12 education.

The XIVth Amendment of the United States Constitution, § 1, mandates that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Emphasis added. Article VIII, § 1 of the North Dakota Constitution provides in relevant part that:

the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Emphasis added. This part of the North Dakota Constitution read together with the XIVth Amendment of the U.S. Constitution makes clear that all citizens of the United States who reside in North Dakota are citizens of the state. Moreover, the state constitution mandates that “public schools [] shall be open to all children of the state of North Dakota.” Thus, reservation boundaries and the responsibility of the United States notwithstanding, the State of North Dakota has a moral and legal responsibility to all children within her borders to provide them with a free, non-sectarian public education designed to assist the children to “develop a high degree of intelligence, patriotism, integrity and morality on the part of every [potential] voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people.” ND. Constitution, Art. VIII, § 1.

Unhappily, the state's moral and legal responsibilities to provide such an education to children residing within the boundaries of Indian reservations within North Dakota have remained largely unmet from April 5, 1889, the date of North Dakota's entry into the union, to date.

Under 25 U.S.C.A. § 2501, the Congressional Declaration of Policy provides:

(a) RECOGNITION.--Congress recognizes that the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step toward tribal and community control and that the United States has an obligation to assure maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities.

(b) COMMITMENT.--Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.

(c) NATIONAL GOAL.--Congress declares that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children--

- (1) to compete and excel in areas of their choice; and
- (2) to achieve the measure of self-determination essential to their social and economic well-being.

(d) EDUCATIONAL NEEDS.--Congress affirms--

- (1) true self-determination in any society of people is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles;
- (2) that Indian people have special and unique educational needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and
- (3) that those needs may best be met through a grant process.

(e) FEDERAL RELATIONS.--**Congress declares a commitment to the policies described in this section and support, to the full extent of congressional responsibility, for Federal relations with the Indian nations.**

Emphasis added.

In 25 U.S.C.A. § 2502, entitled Grants Authorized, after defining how grants will be made to

eligible Indian tribes¹, Congress mandates that the Secretary of Interior provide grants to Indian tribes, and tribal organizations that operate contract schools under title XI of the Education Amendments of 1978 and notify the Secretary of their election to operate the schools with assistance under this part rather than continuing the schools as contract schools [under P.L. 93-638]. More importantly, 25 U.S.C.A. § 2502 (3)(d)(2)(e) entitled “No Effect On Federal Responsibility,” commands that grants under the Tribally Controlled Schools Act (P.L. 100-297 as amended by P.L. 107-110) “shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.” Thus, federal responsibility for the schools is ongoing² notwithstanding the operation of such schools by a federally recognized Indian tribe or its political subdivision. Indeed, under 25 U.S.C.A. § 2025 (12), there are important federal functions that cannot be contracted that are called:

¹ §§ (3)(i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes; and (ii) support services for the school, including transportation
² 25 C.F.R. § 36.51, subpart F entitled: Evaluation of Educational Standards mandates the Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

(a) The Office of Indian Education Programs shall monitor and evaluate the conformance of each Agency or Area, as appropriate, and its schools with the requirements of this part. In addition, it shall annually conduct onsite monitoring at one-third of the Agencies and Areas, thereby monitoring onsite each Agency and/or Area at least once every three (3) years. Within 45 days of the onsite visit, the Director shall issue to each Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, a written report summarizing the monitoring findings and ordering, as necessary, required actions to correct noted deficiencies.

(b) Each Agency or Area, as appropriate, in conjunction with its school board shall monitor and evaluate the conformance of its school with the requirements of this part through an annual onsite evaluation involving one-third of the schools annually, thereby monitoring onsite each school at least once every three (3) years. Within 30 days of the onsite visit, the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, shall issue to the local school supervisor and local school board a written report summarizing the findings and ordering, as necessary, required actions to correct noted deficiencies.

(c) Schools, Agencies, and Areas shall keep such records and submit to the responsible official or designee accurate reports at such times, in such form, and containing such information as determined by that official to be necessary to ascertain conformance with the requirements of this part.

(d) Schools, Agencies, and Areas shall permit access for examination purposes by the responsible official, or any duly authorized designee, to any school records and other sources of information which are related or pertinent to the requirements of this part.

(e) The Office of Indian Education Programs, Agency Superintendent for Education, or Area Education Programs Administrator, as appropriate, shall annually conduct a summative evaluation to assess the degree to which each Bureau educational policy and administrative procedure assists or hinders schools in complying with the requirements of this part. This will include, but not be limited to, the following actions:

- (1) Evaluate current policies and practices not related to this part and the effects thereof on the amount of time and resources required which otherwise would be available for these standards;
- (2) Modify any policies and practices which interfere with or compromise a school's capability to achieve and maintain these standards;
- (3) Invite non-Federal agencies to evaluate the effects current policies and procedures have had on complying with the requirements of this part; and
- (4) Submit annually to the Director a copy of the summative evaluation.

Inherently Federal Functions.--The term 'inherently Federal functions' means functions and responsibilities which, under section 1126(c) [of the 1978 Indian Education Act Amendments], are noncontractable, including--

- (A) the allocation and obligation of Federal funds and determinations as to the amounts of expenditures;
- (B) the administration of Federal personnel laws for Federal employees;
- (C) the administration of Federal contracting and grant laws, including the monitoring and auditing of contracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;
- (D) the conducting of administrative hearings and deciding of administrative appeals;
- (E) the determination of the Secretary's views and recommendations concerning administrative appeals or litigation and the representation of the Secretary in administrative appeals and litigation;
- (F) the issuance of Federal regulations and policies as well as any documents published in the Federal Register;
- (G) reporting to Congress and the President;
- (H) the formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and
- (I) the nondelegable statutory duties of the Secretary relating to trust resources.

The foregoing statute, an amendment contained in the No Child Left Behind Act, P.L. 107-110, together with the regulation set forth in footnote 2, above, 25 C.F.R. § 36.51, subpart F, make clear that although Congress has seen fit to include Indian tribes who wish to participate in the operation of their federally funded schools, the ongoing oversight of those institutions is clearly committed by statute and regulation to the federal government.

The federal government continues to include Tribal Grant Schools within the coverage of the Federal Tort Claims Act. This act is essentially the United States' insurance statute. In *Mentz v. U.S.A.*, 359 F.Supp.2d 856, 859 (D. ND 2003), the District Court noted that Mentz's claim arose under the Federal Tort Claims Act ("FTCA"). 28 U.S.C. §§ 1346(b), 2671-2680. Under the FTCA, the United States has waived its sovereign immunity to the following extent:

for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b)(1). At the time of the incident, Gustavson was employed by the Standing

Rock Community Grant School which is operated by Standing Rock Community School Board, through an agreement entered into between the Bureau of Indian Affairs and the Standing Rock Sioux Tribe under the Tribally Controlled Schools Act of 1988 ("TCSA"), Public Law 100-297, codified at 25 U.S.C. § 2501-2511. The term "tribally controlled school" is defined by 25 U.S.C. § 2511 as follows:

The term "tribally controlled school" means a school that--

- (A) is operated by an Indian tribe or a tribal organization, enrolling students in kindergarten through grade 12, including a preschool;
- (B) is not a local educational agency; and
- (C) is not directly administered by the Bureau of Indian Affairs.

As noted, Congress has extended the United States' liability under the FTCA, by way of Public Law 101-512, which "imposes liability upon the United States for the acts of tribal organizations and their employees administering a grant agreement pursuant to the TSCA." *Big Owl v. United States*, 961 F.Supp. 1304, 1307 (D.S.D.1997); see P.L. 101-512, Title II, § 314, Nov. 5, 1990, 104 Stat.1959, as amended by P.L. No. 103-138, Tit. III § 308, Nov. 11, 1993, 107 Stat. 1416 (codified at 25 U.S.C. § 450f, Historical and Statutory Notes). Specifically, Public Law 101-512 provides:

With respect to claims resulting from the performance of functions ... under a contract, grant agreement or cooperative agreement authorized by the ... [TCSA] ... an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior ... while carrying out any such agreement and its employees are deemed part of the Bureau ... while acting in the scope of their employment in carrying out the contract or agreement: Provided, That ... any civil action or proceeding involving such claim brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and afforded the full protection and coverage of the [FTCA].

Mentz, *supra*, 359 F.Supp.2d 859-860. In short, Grant School employees, such as Gustavson, are considered employees of the BIA and can be sued under the FTCA subject to the protections and immunities afforded government employees under the Act. Indian Self-Determination and Education Assistance Act of 1975, § 314, 25 U.S.C.A. § 450f note; Tribally Controlled Schools Act of 1988, §§ 5202- 5212, 25 U.S.C.A. §§ 2501-2511; 28 U.S.C.A. § 1346(b)(1).

It is clear that the under the Federal Tort Claims Act, the United States recognizes that by contracting with the Standing Rock Sioux Tribe under P.L. 100-297, 25 U.S.C. § 2501, et seq., the Tribal School merely stepped into the shoes of the United States Bureau of Indian Affairs. *Given the level of federal oversight, supervision, policymaking and insuring that the United States does for the school pursuant to federal statute and regulation, it is clear that the Standing Rock Community School should be included in the North Dakota Century Code § 15.1-29-10 which authorizes tuition contracts with federal officials.*

CONCLUSION:

Legislation should be introduced to amend NDCC § 15.1-29-10 by adding the words “and tribal” after the first occurrence of the word “federal” and adding the words “or tribal” after the second occurrence of the word “federal.” The amended statute would read:

15.1-29-10. Tuition contracts - Agreement with federal officials. A school board may contract with federal *and tribal* officials for the education of students in a federal *or tribal* school.

Id.

In the event the foregoing amendments are made to NDCC § 15.1-29-10, it seems clear that ongoing statutory authorization would exist for contracting with local school boards to fund the tuition of students at the SRCS and Tate Topa Tribal Schools from North Dakota Foundation Aid. The foregoing amendments are consistent with the moral and legal obligations of the State of North Dakota under the XIVth Amendment of the United States Constitution, § 1 and Article VIII, § 1 of the North Dakota Constitution.

SRCS and Tate Topa Schools would likely be required to meet or exceed the other relevant criteria set forth in Title 15.1 of the North Dakota Century Code governing Elementary and Secondary Education in order to obtain the said funding.

Morally and legally the provision of state funding to Tribal schools is the duty of the State of North Dakota. Our children are the future of North Dakota. North Dakota recognizes this when it counts our children in determining the number of school age children in the state. It is ironic that many areas of rural North Dakota would be moribund absent the high birth rate among Tribal members.

The dollars required to fund the education of Native American children living on the reservation are already allocated. In terms of the effect that parity in educational funding by

North Dakota for reservation resident Tribal member children will have on the future, it is clear that the better educated our children are, the better North Dakota will do in the future. This is because we teach our children throughout their lives that they must return home – to our ancestral homelands – and help their relatives by utilizing their talents, skills and educations. In short, the legislative amendment we seek here is exactly what North Dakota should have done long ago. Unfortunately, non-Indians do not understand, as we do, that our duty to make appropriate decisions and protection of Tribal resources extends for the next seven generations. Counting from our children's generation, that is our great-great grandchildren's great grandchildren. Mad Bear, Sitting Bull and the long line of Hunkake before them would instruct us to help our children help themselves so that may later help each other!

* * * * *

In the event that you have questions, comment or concerns regarding this memorandum, please contact me at your earliest convenience.

SCE/sce
cc: File

STEVEN CHARLES EMERY, ESQ.

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EMPLOYMENT HISTORY:

STANDING ROCK SIOUX TRIBE, Tribal Attorney, January 2006 - Present. Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, ND 58538.

Responsibilities include: Negotiation; complex litigation in federal, tribal and state courts; lobbying for tribal interests before Congress and executive agencies; negotiations with federal and state agencies; advising the Standing Rock Sioux Tribal Council and Tribal Chairman, Tribal Administration and Tribal Programs; special tribal projects, e.g., drafting, codification and amendment of tribal laws, ordinances and resolutions; program oversight; and personnel supervision.

ROSEBUD SIOUX TRIBE, Cabinet Member, President's Office; Tribal Attorney, November 2004 – January 2006. Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570-0430.

Responsibilities included: Negotiation; complex litigation in federal, tribal and state courts; lobbying for tribal interests before Congress and executive agencies; negotiations with federal and state agencies; advising the Rosebud Sioux Tribal Council and Tribal President; special tribal projects, e.g., wind energy and solid waste issues.

SINTE GLESKA UNIVERSITY, Vice President for Business, Community Affairs and Policy Development; General Counsel to the University; Director of the Sicangu Policy Institute. January 2001 – November 2003. Sinte Gleska University, P.O. Box 105, Mission, SD 57555.

Responsibilities included: Management and administration of the SGU Sicangu Policy Institute, legal and historical research, developing a curriculum for teaching Lakota to children from birth through age 6, planning, promoting and implementing a long distance learning section of the University; legal research and writing, tribal code development, representation of SGU in all forums as directed by the President and Board of Directors, development of long range strategies for legal issues potentially affecting SGU; advice to SGU Investment Committee; legal analyses as assigned by the SGU Board of Directors and President; and supervision of Policy Institute Staff.

STEVEN C. EMERY, ESQ.
ATTORNEY-at-LAW

OGLALA SIOUX TRIBE, OGLALA LAKOTA NATION SUPREME COURT,
Chief Justice. July 1996 – April 2001. Supreme Court, OLN, P.O. Box 127, Pine Ridge,
SD 57770

Responsibilities include: Scheduling and hearing cases and motions in Lakota and English; legal research; writing opinions; suggesting revisions concerning tribal statutes and the Oglala Constitution and By-Laws; and supervision of Supreme Court staff.

CHEYENNE RIVER SIOUX TRIBE, Attorney General. July 1989 – Dec. 2000. Post Office Box 590, Eagle Butte, SD 57625

Responsibilities included: Complex litigation in federal, tribal and state courts; lobbying for tribal interests before Congress; negotiations with federal and state agencies; advising tribal council; special tribal projects, e.g., codification and re-codification of tribal laws; and supervision of office staff.

EMERY LAW FIRM, Attorney. July, 1989 -- Present.
P.O. Box 757, McLaughlin, SD 57642-0757

Responsibilities include: Special projects for law firm concentrating in the field of Indian law, including: self-determination contracting; hunting and fishing; tribal civil and criminal jurisdiction; education; economic development; gaming; child welfare; housing; and water law.

CHEYENNE RIVER COMMUNITY COLLEGE, Adjunct Faculty. Sept., 1989 – Dec. 2000.
P.O. Box 220, Eagle Butte, SD 57625

Responsibilities included: Curriculum development; teaching Lakota Language, traditional Lakota Music, federal Indian Law, assorted history, criminal justice and political science courses; and advising students. Teaching credentials certified through Northern State University and the University of South Dakota.

EDUCATION:

HARVARD LAW SCHOOL, Juris Doctor, 1989
Harvard University, Cambridge, MA 02138

Honors and Activities: Massachusetts Indian Association Fellow; Presbyterian Native American Education Fellow; U.S. Dept. of Education Indian Fellow; President, American Indian Law Students Association; Student Recruiter for the HLS Admissions Office; Music Director and Songwriter for the HLS Drama Society's 1988 Spring Musical, Malice in Wonderland.

STEVEN C. EMERY, ESQ.
ATTORNEY-at-LAW

UNIVERSITY OF SOUTH DAKOTA, B.A., 1986
Vermillion, SD 57069

Honors and Activities: Phi Beta Kappa; Dean's Honor List; McGovern-Abourezk Human Rights Award; Faculty Appreciation Award; 1986 Who's Who in American Colleges and Universities; 1986 Outstanding Young Men of America Award; 1st Place in USD's Talent Contest (Guitar); Secretary of the Tiyospaye Council; Organizer of Indian Awareness Week, April, 1985; USD Guitar Ensemble; and USD Men's Chorus.

HONORS: Eagle Tail Feathers awarded by the Cheyenne River Sioux Tribe (3), the Rosebud Sioux Tribe (2), and the Denver Indian Center (1). Selected for **WHO'S WHO IN AMERICAN LAW**, 1998, 1999; selected for **OUTSTANDING AMERICANS**, 1998 – 2001. Emery was made a *WicasItancan/Naca* or **Chief** of the *Oceti Sakowin* or **Seven Council Fires** of the *Titonwan* or **Prairie Dwelling Lakota** at Crow Dog's Sun Dance, August 4, 2007 by Chief Oliver Red Cloud, Chief Arvol Looking Horse and Medicine Men and Chiefs Sam Moves Camp, Rick Two Dogs and Leonard Crow Dog.

ADMITTED TO PRACTICE: **South Dakota.** Also admitted to: U.S. Eighth Circuit Court of Appeals, United States Supreme Court; South Dakota Supreme Court; Cheyenne River Sioux Tribal Courts; Rosebud Sioux Tribal Courts; Yankton Sioux Tribal Courts; Santee Sioux Tribal Courts and Oglala Sioux Tribal Courts.

Publications: *South Dakota Governance Since 1945*, 31 pages, Hoover and Emery (1994) in *Recent Western Politics in the United States*, Richard Lowitt, ed. (Univ. Okla. Press 1995).

"Good Faith" Under the Indian Gaming Regulatory Act, Joranko, Van Norman and Emery in *Speaking The Truth About Indian Gaming*, National Indian Gaming Association (Washington, D.C. 1994).

Review, *Black Elk, Holy Man of the Oglalas*, by M. Steltenkamp (Univ. Okla. Press 1993). *Indiana University Journal of American History*, March, 1995.

Review, *Cheyennes at Dark Water Creek*, by W. Chalfant (Univ. Okla. Press 1997). *Indiana University Journal of American History*, Spring, 1998.



STANDING ROCK/FT YATES COMMUNITY SCHOOL

CONCLUSION (4)

MATTERS OF CONCERN:

**“WHAT WE DON’T KNOW CAN HURT THEM:
WHITE TEACHERS, INDIAN CHILDREN”**

**Bobby Ann Starnes
Phi Delta Kappan Magazine
January 2006**



STANDING ROCK/FT YATES COMMUNITY SCHOOL

MATTERS OF CONCERN

January 31, 2008

Sky Dancer Hotel and Casino
Highway 5 West, Belcourt, ND

TO: Tribal and State Relations Committee Members

There is a tangible sense of urgency regarding the education systems and what is coming at all schools in North Dakota over the next 3-5 years. There is a tidal wave of teacher retirements coming at us and very little is being done to prepare our K-12 systems for that reality.

It behooves the North Dakota Legislature and the North Dakota Department of Public Instruction along with the North Dakota Education Standards and Practices Board to make that a priority. We as a school system on Standing Rock are struggling now as we try to employ teachers, counselors and special education staff members to serve the special and unique needs of our children. This is a pending crisis for all schools in North Dakota. It requires your immediate attention.

I have been working as the Superintendent of Schools of the Standing Rock/Ft Yates Community School for the past 1-½ years and in that short time have personally experienced the racism, lack of understanding, insensitivity, and ignorance of the majority population of North Dakota. Those issues have come to the surface again around the mascot issue at the University of North Dakota. What is the North Dakota Legislature doing to create among that population more understanding and knowledge of the rich history, culture, and language of the Tribes of North Dakota?

I have seen little being done by the State of North Dakota. It is time to make this issue a priority in K-12 education. It is time to offer and require Native American Studies (Tribal History, Language, Culture). It is time to require the citizens of North Dakota to "see" the issues confronting our Tribes and the need for education. It is time to begin a journey toward understanding, sensitivity, and respect for the Native American Tribes of North Dakota. The North Dakota Legislature must become willing partners with the sovereign nations within its borders to make this happen.

I have included for your reading pleasure an article from January 2006 – Phi Delta Kappan magazine for the purpose of awareness of the issues we confront in Indian Education. The article focuses on "No Child Left Alive /No Child Left Behind" and its negative impact on the education of our Indian children in North Dakota. The best news I received recently is that Congress refused to reauthorize NCLB, so we have to "live" with that for one more year in the schools across America before it is "fixed".

Finally, it is imperative that we look to the short-term future and build more flexibility into our licensure and qualifications of our teachers if we are going to maintain K-12 education in North Dakota. That conversation must begin now and decisions need to be made to assure our kids have teachers in the classrooms across the Standing Rock Reservation and across rural North Dakota.

Harold K. Larson, Superintendent

What We Don't Know *Can* Hurt Them: White Teachers, Indian Children

White teachers in Indian schools often find themselves unprepared for their task — they don't understand the history, culture, communities, and learning needs of their students. Ms. Starnes challenges these educators to become better teachers of Indian children and gives them some sage advice.

BY BOBBY ANN STARNES

UNTIL a few months ago, I lived in Loachapoka, Alabama, a small rural community laced with cotton fields and long dirt lanes. More like a wide place in the road than a town, Loachapoka has one through street lined with a hardware store, a post office, a town hall, and several big, old homes. Long ago Loachapoka, or "land of the turtles," was a vibrant Creek farming town. The 1832 census reported a population of 564 Creeks. Also in 1832, Loachapoka was the site of the Creeks' last council fire before they were forcibly removed to Oklahoma. My house sat across the railroad tracks from a national historic site marking the event.

The Creeks lived in and around Loachapoka and most of southern Alabama and Georgia for hundreds of years. They were skilled farmers long before Columbus got lost in the Atlantic and found his way to "the new world." When, not long after Columbus, invading Europeans demanded that they assimilate, the Creeks,

BOBBY ANN STARNES, who writes the bimonthly Thoughts on Teaching column for the Kappan, is an education writer and the executive director of Full Circle Curriculum and Materials, Helena, Mont., a nonprofit organization that supports teachers' implementation of Montana's Indian Education for All Act (bobbyannstarnes@bresnan.net). Her website is www.bobbyannstarnes.net.

Cherokee, and other southeastern tribes assimilated so well that by 1830 many had adopted European dress, religion, and language. Some owned productive plantations and had been educated in the best white schools in the East. By 1828, the Cherokee had developed a written language; had begun publishing a newspaper, *The Cherokee Phoenix*; and had a 90% literacy rate — much higher than the whites squatting on Cherokee lands. But successful assimilation was not enough to save them. In the end, the invaders wanted Indian land. And years before John O'Sullivan first declared that the United States had a "manifest destiny to over-spread the continent,"¹ Europeans would do anything to get it, be it treachery, betrayal, or worse.

Nestled between cotton fields, Loachapoka's elementary school sits off a paved side road about a mile from the historic site. Outside the building, a large banner calls for Indian Pride — Indians being the school's mascot. In the entryway, a brightly painted mural, apparently designed to reflect Loachapoka's strong Native American influence, welcomes visitors. Unfortunately, the mural includes a tipi and the faces of alarmingly happy children wearing feathered headbands. Honoring the Creek — if depicting a people as mascots can be an honor — seems appropriate in this community. Unfortunately, since the Creek did not live in tipis or wear such headdresses, the mural actually depicts the stereotypical Plains Indian.

Does it matter that, in a community where a rich history is so well documented and so close to the surface, the school mural "honors" the wrong Indians? I think it does. I think it symbolizes a deep issue that we, either as citizens or as educators, seldom consider or, worse yet, fail to even recognize.

THE EDUCATION OF NATIVE AMERICAN CHILDREN: WHAT WE DON'T KNOW

In 2001, I began to work at Rocky Boy Elementary School on the Chippewa-Cree reservation in northern Montana, first as a volunteer and later as a classroom teacher in grades 5 and 3. I was not a novice. To the contrary, I was an award-winning teacher with 18 years of classroom experience in public elementary and middle schools and in an independent school I founded. I'd taught teachers and preservice teachers and earned graduate degrees in education. I was also a history lover who had always been interested in learning as much as possible about Indian and American history. I'd read *Black Elk Speaks* and knew about smallpox blankets and

the dreadful conditions at Indian boarding schools. I'd rejected the ways Columbus and the first Thanksgiving are depicted in history and in our cultural celebrations. I'd walked the Trail of Tears. I'd stood almost paralyzed by Wounded Knee photographs and artifacts displayed at the Red Cloud School Museum. And I was seriously committed to culturally appropriate and community-focused curriculum and teaching practices.

I thought I knew enough to teach Indian children. I was wrong, and I learned new lessons every day, most of them hard, ego-wounding lessons. Of all I learned in those years, perhaps two facts are most important. The first is how very little we know about the ways Native American children learn. We don't recognize the chasm that exists between their needs and our traditionally accepted curricula and methods. The second is how difficult it is for even the most skilled and dedicated white teachers to teach well when we know so little about the history, culture, and communities in which we teach — and when what we do know has been derived from a white education. In such cases, solid teaching skills, good intentions, hard work, and loving the kids just aren't enough. There is too much we don't know about teaching Native American children, and what we don't know definitely hurts them.

We ask a lot of our teacher education programs. The credit hours available for faculty members to prepare prospective teachers are extremely limited. At the same time, teaching even the most "typical" child requires the acquisition of a broad array of skills and knowledge. As a result, most teachers, whether white, Native, or from other cultural and ethnic groups, would say they were ill prepared for their first teaching experiences. Therefore, it is not surprising that most teachers working in reservation schools are poorly equipped to meet the challenges.² It is usually necessary for teachers to become prepared on the job.

THE EDUCATION OF NATIVE AMERICAN CHILDREN: WHAT WE DO KNOW

We know a lot about how, why, what, and under which conditions Native American children learn. In spite of poor funding and lack of coordination, a research base has emerged over the last 20 years. William Demmert's comprehensive research review identified more than 100 studies that "provide evidence of what works or does not work to improve academic performance of Native students."³

Because the Native American nations represent dra-

matically different histories and cultures, we must be careful to avoid overgeneralizing or stereotyping when we study this research. We can, however, use it to inform our thinking about what works most often for Native children. Regardless of the research methods, the instruments used, or the nations studied, three powerful strands of findings have emerged. *First, most Native children learn best when hands-on, experiential teaching and learning approaches are used.*⁴ *Second, there is a positive relationship between students' academic learning and their strong sense of cultural identity.*⁵ *And third, informal and flexible learning environments enhance Native students' learning.*⁶

An informal, "culturally friendly" classroom⁷ in which "teachers act as facilitators"⁸ is conducive to Native students' learning. Moreover, findings support the use of democratic principles and "democratic consequences" as effective classroom management styles in Native American classrooms. *Research on interventions in Native American classrooms found that children achieved and retained at higher levels and developed more positive attitudes when they learned through collaborative processes.*⁹ Learning is also enhanced when dialogue, open-ended questioning, and inductive reasoning are common classroom practices.¹⁰

Research also supports the use of methods and materials geared to certain dominant learning preferences.¹¹ Native American students tend to be holistic, or "whole-to-part," learners. Therefore, they learn best when presented with the whole concept before focusing on segments and details.¹² And, more than any other group, Native American students tend to prefer the use of visual learning strategies. This is a significant finding since Richard Riding and Steven Rayner discovered that students with a visual preference almost double their learning if they are presented with information that includes text and illustration, as opposed to text alone.¹³

Reflective processing of information allows students to integrate new knowledge into old and to build new learning out of prior knowledge.¹⁴ Such an approach requires a relaxed atmosphere and ample time. This is true for decision-making processes as well.

THE CENTRAL ROLE OF CULTURE

Perhaps the most crucial point for us to understand as we try to help Native American students achieve academic success is the importance of culture and community.¹⁵ This realization is not new, nor is it controversial, at least in theory. In 1928 the Institute for Govern-

ment Research (now known as the Brookings Institution) issued a report titled *The Problem of Indian Administration*, commonly known as the Meriam Report. Seen by many as the most complete analysis ever done of federal policies' impact on Native Americans, the report highlighted, among other things, the need for bicultural education that is less formal and avoids highly mechanical content handled in a highly mechanical way. It also calls for teachers to develop reading materials out of the

While the links between American Indian education and community and culture are widely acknowledged and accepted, the gap between these theoretical statements and actual policy and practice is as evident today as it was at the time of the Meriam Report.

life around them. The importance of an education that emphasizes community, culture, and tradition continues to be recognized by the federal government. For example, President Bush's 2004 Executive Order on No Child Left Behind (NCLB) and Indian education acknowledged the need for teaching and learning in a manner that is consistent with tribal traditions, languages, and cultures.¹⁶ Unfortunately, while the links between American Indian education and community and culture are widely acknowledged and accepted, the gap between these theoretical statements and actual policy and practice is as evident today as it was at the time of the Meriam Report.

Whether the approach is referred to as culturally responsive, "nativized,"¹⁷ place-based, culturally infused, or "bottom-up,"¹⁸ an astonishing amount of data illustrate that when students' culture is "tapped" in the classroom, it "build[s] a bridge to school success."¹⁹ *There are three primary areas that must be addressed in a culturally based program. The first has to do with values and beliefs.*²⁰ Linda Cleary and Thomas Peacock propose that the key to improving Native students' success, and the first step that must be taken in that direction, is "grounding . . . students in their American Indian belief and value systems."²¹

The second involves the adoption of a "both/and approach"²² that values both Native and Western knowledge.²³ Greg Cajete advocates constructing a contemporary, culturally based educational process that blends

traditional values and principles with current and appropriate educational concepts, technologies, and content.²⁴ Perhaps Lisa Delpit's classic discussion of "other people's children" makes the point most effectively. Delpit sees the need for minority children to develop the skills necessary to communicate in the language of power while, at the same time, valuing their own differences from members of the dominant culture.²⁵

The third emphasizes learning that begins but *does not end* in the students' home communities. The community served by the school is an important source of knowledge and expertise.²⁶ A culturally based program will respect students' cultural knowledge and ways of knowing and will allow them to connect the Native perspective to issues beyond their own communities and, at the same time, to see how larger issues affect their daily lives.

Over the last several years, studies of culturally linked school programs have provided ample evidence that such approaches result in increased student learning, higher test performance, and improvements in related indicators. For example, a study of the Navajo immersion students at Fort Defiance, Arizona, demonstrated that they significantly outperformed their non-immersion counterparts on standardized math and English tests.²⁷ And for more than 30 years, research conducted on the Kamehameha Schools, as well as more recent research on the Native Alaskan Curriculum Immersion Program,²⁸ among other programs, has provided sustained evidence of academic growth when culturally based programs that emphasize appropriate teaching, learning, and content are used with Native populations.

FIXATING ON THE POSITIVE

... through it all we never stopped praying ... never stopped beating our drums, dancing and singing songs to the Creator. ... Somehow you couldn't silence us. ... — *Sionis Elder*²⁹

Something about Native American peoples made it possible for them to survive serious efforts to eliminate them. Reaching down within themselves, they found the courage and strength to endure disease, starvation, forced religious conversion, mass murder, and more. Alan Siebert's description of resilient people sounds as though it could have been written about Native Americans:

Some of life's best survivors grew up in horrible situations. ... They have been strengthened in the school of life. They have been abused, lied to, de-

ceived, robbed, raped, mistreated, and hit by the worst life can throw at them. Their reaction is to pick themselves up, learn important lessons, set positive goals, and rebuild their lives.³⁰

Considering Siebert's description alongside Native American history provides insight into a remarkably strong trait that is seldom considered when we think about educating Native American children. Discussions about their needs, education, and futures tend to focus only on the serious challenges they face. Certainly suicide; substance abuse; and high rates of dropping out, teen pregnancy, unemployment, and poverty do create hardships and cannot be ignored. But all too often, the discussion begins and ends with deficit thinking. Two Native American researchers, Steven Wolin and Sybil Wolin, propose a different approach. "We need to hear less about our susceptibility to harm," they say, "and more about our ability to rebound."³¹ Recent research identifying resiliency as a factor in the school success of Native American children reinforces their point.³²

Research indicates that resiliency may be a genetic trait. And more than 30 years of research into the nature of highly resilient people has created an understanding of human resiliency and how it develops.³³ This research has demonstrated that even children who are not genetically predisposed to resiliency can learn it. However, it can't be taught as a series of skills using some prescriptive program. Instead, it must be constructed by individual people in individual ways. And schools, more than any other public institution, can provide the environment and conditions that help build and strengthen resiliency.

Bonnie Bernard reports that resilient children have certain common attributes. These include social competence (responsiveness, flexibility, empathy, a sense of humor); problem-solving skills (reflection, abstract thinking, ability to find alternative solutions to challenges); autonomy (a sense of one's own identity and an ability to act independently); and a sense of purpose or future (healthy expectations, achievement motivation, hopefulness).³⁴

Interestingly, the conditions that allow resiliency attributes to thrive are the same as those conditions shown to be the most appropriate fit for the ways Native American children learn. For example, in a learning environment where teachers act as facilitators, where democratic principles drive classroom management, and where students are encouraged to engage in

reflective processing of information — all best practices for Indian education — students are also more apt to find conditions that promote flexibility, problem solving, and autonomy — all factors in resiliency development.

NCLB: THE BOARDING SCHOOL SOLUTION OF THE 21ST CENTURY

There are no necessary evils in government. Its evils exist only in its abuses. — *Andrew Jackson*

For generations, education has been the primary tool of both religious and governmental efforts to assimilate Native peoples into the mainstream. In the past, the most effective manifestation of these efforts was Indian boarding schools. Children were forcibly taken from their families, sometimes under the threat of physical harm and other times under the threat of starvation, as rations were withheld until children were given over. At the schools, the children were stripped of their identities, forbidden to wear their hair long or to dress in traditional clothing, and punished severely for speaking their native language or practicing their traditional religion. Much has been written about the effects these schools had on Native American attitudes toward teachers, schools, and schooling and about their impact on Native culture, language, and religion.³⁵

Today, NCLB has a similar effect on Indian children, and its implementation is not only ineffective, it is detrimental to them. It threatens academic achievement, guts effective culturally based programs, and further alienates children and communities. To the extent that it is “fully implemented,” it will leave these children further behind. In part, this is the result of the incredible mismatch between the programs NCLB supports and what we know works with Native American children. This mismatch is justified and sustained by faulty reasoning about research.

NCLB claims to fund programs that provide “scientific research” demonstrating their success in raising student achievement. One of the most basic principles of any real research is that findings are valid only for those groups represented in the study's population. However, none of the programs currently funded has conducted research with a significant Native American population. The lack of research specifically aimed at understanding the effects of various programs on Native American children means that findings cannot be generalized to this population and invalidates any assertions

about a positive relationship between the programs being promoted and the achievement of Native students. In other words, there is no “scientific research” to support the use of these programs on reservations or in schools that serve predominately Native populations. To claim otherwise is a dishonest representation of research; to require the use of such programs is an evasion of ethical responsibility.

While one could, perhaps, make an argument that the learning environments and methods associated with NCLB are effective for some students, the research on Native American learning, coupled with the lack of studies showing gains through the implementation of these programs, makes it clear that these approaches are not desirable for generalized use with Native students. By their very nature, these programs create learning environments and require the use of teaching and learning techniques that have been demonstrated to be generally ineffective with Native American children. (See Table 1.) Furthermore, these programs are not related to the culture, history, or communities in which Native American children live.

WHAT WE DON'T KNOW: NATIVE AMERICAN HISTORY AND CULTURE

A quick study of current textbooks as well as those used during our own elementary, secondary, and college educational programs will illustrate the dearth of American Indian history typically presented. Native peoples are woven into American history as required to tell the white story — the Pilgrims' survival, Andrew Jackson's victory over the British, and Manifest Destiny. As a result, we learn that the buffalo disappeared but do not learn how successfully the calculated outcomes rendered Native Americans dependent on the U.S. government for their very survival.

Moreover, our cultural fables stand steadfast in the face of their obvious historical inaccuracy. Take for example, the Thanksgiving myth or the Columbus saga. Each is easily shown to be historically inaccurate. Yet each continues to be presented in schools in virtually the same ways they have been for generations. And efforts to present them in historically accurate or even complex ways can raise the cry of “revisionist history” or be labeled as simply “politically correct.” As a result, we are ill prepared to teach or understand the impact of the history lived by the generations of Native peoples. Nor can we understand that historical experiences form a legitimate basis for many Native Amer-

icans' attitudes toward schools and schooling, curriculum and materials, white teachers, and white control over their schools.³⁶

When we white teachers accept positions on reservations, the job comes — or should come — with a commitment to gaining an understanding of the history and culture of the specific nations represented in the school population. There is not *an Indian history*; there are Indian histories. And the difference is important. For example, although their Montana reservations place them in close proximity, the Crow and the Northern Cheyenne have quite different perspectives on the Battle of Little Big Horn. The Crow were mortal enemies of the Sioux and fought with Custer against them. On the other hand, having suffered horrific massacres at the hands of the U.S. Cavalry, the Northern Cheyenne were strong allies of the Sioux and fought with them at Little Big Horn. That means, in part, that teaching that the Battle of Little Big Horn was a great victory

for Indians is historically inaccurate.

Beyond the history and culture, we white teachers often live outside the community. We may have taught on a reservation for many years but still remain unable to locate the different communities in which our students live or to identify reservation landmarks. We may not know the tribal leaders or the major socioeconomic issues they face. And too many of us do not attend community events. As a result, we remain strangers without any understanding of the everyday lives, hopes, and challenges that affect our work with children every day.

WHAT WHITE TEACHERS CAN DO

I recall nothing in my teaching career that was harder or felt more perilous than trying to integrate into my teaching practice a culture, history, and community that I did not understand. And my feelings are widely shared. We know that white settlers and the United

TABLE 1.

The Mismatch Between NCLB Programs and the Research Base on Native American Learning

Best Practices	No Child Left Behind Programs
Hands-on, experience-based Use of culturally appropriate materials Informal, flexible learning environment Collaborative, teamwork Teacher as facilitator or coach High levels of dialogue	Abstract, "drill and kill" Culturally bland/generic Highly structured, extreme inflexibility Highly individualistic, isolating Teacher-centered, top-down Scripted, unnatural interactions
Learning Styles (Preferences)	No Child Left Behind Programs
Holistic approach, whole-to-part Reflective meaning-making Visual learning mode, including pictures and illustrations	Fragmented learning, part-to-whole Rote learning, memorizing Heavy print emphasis
Culturally Appropriate Programs	No Child Left Behind Programs
Based in culture's values and beliefs Both/and approach (local and global) Begins but does not end with community	Dominant culture's values and beliefs Dominant culture only Content irrelevant to community
Environmental Conditions That Support Resiliency	No Child Left Behind Programs
Promotes close bonds Uses high-warmth, low-criticism style of interaction Sets and enforces clear boundaries using democratic principles Encourages sharing of responsibilities, service to others, expectation of helpfulness Supports development of autonomy/independence Expresses high and realistic expectations Encourages personal goal setting and future focus Encourages development of values and life skills Encourages development of leadership, allows for decision making and other opportunities for meaningful participation Appreciates unique talents of each individual Emphasizes creativity Encourages development of sense of humor	Not addressed Failure-focused Uses top-down imposed rules Not addressed Teacher-controlled Expectations are low Not addressed Not addressed Scripted participation and decision making Group-focused Emphasizes conformity Absent

States government did horrible and unforgivable things to Native peoples. White teachers are not well prepared to teach our Native American students. And we remain isolated from our students' daily lives. As grim as those facts are, I am not calling for white guilt. To the contrary, I hope to inspire white action. There are steps we can take on our own and steps we can take to influence others. Following are some of the lessons I learned about becoming a better teacher of Indian children.

Find mentors. There are people in every school who want to help us find our way through the cultural and historical fog. We cannot wait for them to approach us; we must find them. We can begin by asking Native faculty, staff, and community members factual questions about social expectations, community life, and traditions. If we are using Native American language or traditions in the classroom, it is important to work closely with a mentor to ensure that what we do is both correct and appropriate. And the cultural differences between our mentors and ourselves will not disappear because we come to know one another. The greater the distance between our own cultural understandings and those of the children we teach, the more difficult it will be to bridge. In all cases, building effective mentoring relationships across cultural lines requires a serious commitment of time, energy, and patience on both sides.

Get educated. We do not know, nor are we expected to learn, Native American history and culture — not in general and certainly not specific to the tribal groups we teach. Written histories and biographies may exist, but finding them may require an extended search. Some tribal colleges offer classes that focus on reservation or tribal history. There are hundreds of websites and books designed to provide historically accurate and culturally specific information. As with all such materials, it is important to use them with caution since sources can perpetuate stereotypes and pass along erroneous information. (My website includes references and links to many sites that I found helpful.) It is always good to share any information with a mentor before using it with children.

Know and participate in the community. Since most of us do not live in the Native American communities in which we teach, a concerted effort is required to connect to them. Attend appropriate cultural events (and not all are appropriate for non-Natives), meetings, and sporting and social events. Learn who the community leaders are and how the reservation is governed. Become informed about current and historical legal and social issues.

Question personal knowledge of historical "facts." Even when we think we know history and even after we've studied it, discerning the intricacies required to understand history from a Native perspective remains challenging. What seem like small matters of word choice are important (e.g., did Indians wage war or resist aggression?). The facts we uncover may be unsettling. The emotions that can be aroused by finding out about an injustice committed against people, or by people, with whom we identify can lead us into uncomfortable waters. But it is a place we must go in order to work through the difficult realities of our shared history.

Create materials. Unless we are very fortunate, we will find that there are few, if any, materials that relate to the reservations on which we teach or to our students' daily lives. Yet we know that children learn best when the content is connected to their communities and cultures. Such teaching requires the development of materials that relate to the specific children and communities in which we teach. With all there is to do, finding time to develop materials is a challenge, but it is possible to start by simply altering existing materials to include local landmarks, locations, and people. And the students' excited responses, academic gains, and increased motivation can help us find the energy to continue.

Expect measured success. Success will not be immediate or consistent. The more our awareness is raised, the more we realize we need to do. We have to find a pace that is comfortable, a direction that feels right, and give ourselves time — think years instead of months and months rather than weeks. We need to remind ourselves to focus on how far we have come rather than on how far we still have to go. We can expect certain difficult cultural issues to emerge over and over again. We are, after all, trying to change generations of cultural interactions and mistrust. That is slow work.

Push for training. We need to encourage school leaders to use those dreaded professional development days in ways that will better prepare us to work with our students, to understand their history and culture, and to develop materials and methods that will increase their motivation and accomplishment.

WHAT INDIAN SCHOOLS AND SCHOOLPEOPLE CAN DO

Nobody has ever yelled at me for doing nothing [in terms of integrating history and culture into the cur-

riculum]. But I know if I do *something* and get it wrong, I'll just be seen as a stupid white teacher. And even if they don't yell at me, I'll be at the center of a controversy. — Janice, grade-7 reservation teacher

Janice has been teaching on the reservation for more than 20 years. Recently she began to use Montana Indian history and culture to teach her middle school students. Fear that she would do something to offend or disrespect the community had kept her from trying culturally appropriate teaching practices for years. This year she is taking the risk, slowly and very cautiously. Several factors have made the difference for her: she has strong support from her principal, she has been working with others to develop culturally appropriate materials, and she has made links to community elders. Even with all of this help and support, Janice continues to experience almost constant anxiety that she will do something to offend the community — or even individual members of it.

Many teachers like Janice want to take the risks, and there are ways that reservation school boards and Native schoolpeople can help. It will take a concentrated and purposeful approach that helps teachers feel safe enough to take risks, gives them historically and culturally appropriate knowledge, and provides a strong mentoring program.

Educate teachers. Teachers will not take the risks necessary to implement culturally appropriate teaching practices and history unless they *know* the history and culture. I believe schools should *require* teachers to participate in serious courses that teach them the necessary history. The Cherokee Nation has developed an excellent course that is required of all employees.

Those long meetings that open each school year can be altered to make time to take teachers on organized reservation tours. More time can be set aside to teach them to participate in appropriate cultural events — to round dance and understand the workings of a powwow. School leaders can keep teachers informed about reservation issues, the impact of federal and state laws, and the decisions made by the tribal council. And professional development days can be used to study, research, and develop materials and experiences that bridge the school and community.

Ensure ongoing support. We should not expect that classes or other one-time educational experiences will be sufficient to ensure that white teachers avoid the cultural minefield. The support needs to be ongoing

and personal. The school should provide a mentoring program by *carefully matching* white teachers with supportive and knowledgeable tribal members. In order for such programs to be successful, mentoring processes should be thoughtfully developed, written down in detail, and rigorously implemented.

Create a culture of safety. Perhaps most important in encouraging white teachers to reach out to the community, the school must support cultural risk-taking. Cultural rules that are so clear to community members are opaque to those of us on the outside. So when white teachers make mistakes — and we will — emphasize the positive as you explain what went wrong. And remember that the reservation is not a monolithic community. There are cultural differences determined by spiritual, historical, and tribal backgrounds. It is important for mentors to recognize the controversial issues *within* the community in order to protect teachers from controversy. Setting up a school cultural council that includes teachers, elders, and parents could help to develop and screen activities and content.

TOO MANY things have been done that cannot be undone. Too many dreams have been dashed and too much promise has been lost. To build bridges that will allow us to rise above a difficult history and a cultural clash, we must open our eyes wide and seek the connections between the past and the present. None of us can do it alone, so we will have to find ways to do it together.

The Founders did not promise us *a perfect union*. Rather they called for us to work to build a *more perfect union*. Building a more perfect land requires us to work together, to reach across divides, and to rise above what separates us. As teachers, we have given ourselves the responsibility of educating our students using methods and materials that place the American Dream within their grasp. And when we do, we will have done our part to build a more perfect union.

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