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# Indian Elementary-Secondary Education: Programs, Background, and Issues

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## Summary

The federal government provides elementary and secondary education and educational assistance to Indian children, either directly through federally funded schools or indirectly through educational assistance to public schools that predominantly receive state and local funding. Direct education is provided by the Bureau of Indian Education (BIE) in the U.S. Department of the Interior (DOI), through elementary and secondary schools funded by the BIE. Federal educational assistance to public schools is provided chiefly through programs of the U.S. Department of Education (ED). Federal Indian education programs are distinguished by their targeting of members (or descendants of members) of Indian tribes, which is distinct from targeting individuals who identify by race/ethnicity as American Indians/Alaska Natives (AI/ANs). Most of this Indian education population attends public schools. Most federal data are based on race/ethnicity, however, which complicates analysis of results for the population served by federal Indian education programs.

The Bureau of Indian Education-funded education system for Indian students includes 169 schools and 14 “peripheral dormitories” for students attending public schools nearby. Schools and dorms may be operated by the BIE itself or by tribes and tribal organizations. A number of BIE programs provide funding and services, supplemented primarily by set-asides for BIE schools from ED programs. Federal funding for Indian students in public schools flows to school districts chiefly through ED programs, with a small addition from a single BIE program. Most of the ED funds are authorized under the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities in Education Act (IDEA).

For decades, two perennial Indian elementary and secondary education issues—the poor condition of BIE facilities and poor academic outcomes from Indian children—have confronted Congress. Other issues related to Indian elementary and secondary education that Congress and Administrations have attempted to address are access to Native language instruction, the administration of BIE programs, and the adequacy of funding.

For at least 40 years, BIE school facilities have been characterized by a high rate of deficiencies and health and safety concerns. Reports from students and faculty suggest that conditions affect learning and enrollment. Weaknesses in the management of BIE school facilities and insufficient funding have contributed to the facilities’ conditions.

Students in BIE schools and AI/AN students in public schools have comparatively poor academic achievement. Since the 1970s, federal policies to address this issue include permitting greater tribal control and influence through tribally operated BIE schools and culturally relevant educational curriculum and Native language instruction, and encouraging collaboration between states, local educational agencies, and public schools and tribes and parents of Indian students. ESEA standards and accountability requirements also aim to promote the academic achievement of students. With respect to BIE schools, Congress has wrestled to find a BIE and/or tribal administrative structure that will support greater academic achievement of BIE students.

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## Introduction

The federal government provides child development, elementary and secondary education, and educational assistance to Indian<sup>1</sup> children, in a federal school system and in public school systems that predominantly receive state and local funding. The Bureau of Indian Education (BIE)<sup>2</sup> in the U.S. Department of the Interior (DOI) oversees the federally funded BIE system of elementary and secondary schools. The BIE system is funded primarily by the BIE but also receives considerable funding from the U.S. Department of Education (ED). The public school systems of the states receive federal funding from ED, the BIE, and other federal agencies.

Federal provision of educational services and assistance to Indian children is based not on race/ethnicity but primarily on their membership in, eligibility for membership in, or familial relationship to members of Indian tribes, which are political entities. Federal Indian education programs are intended to serve Indian children who are members of, or, depending on the program, are at least second-degree descendants of members of, one of the 574 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian tribes.<sup>3</sup> The federal government considers its Indian education programs to be based on its trust relationship with Indian tribes, a responsibility derived from federal statutes, treaties, court decisions, executive actions, and the Constitution (which assigns authority over federal-Indian relations to Congress).<sup>4</sup> Despite this trust relationship, most Indian education programs are discretionary and not an entitlement like Medicare.

Different federal Indian education programs serve different, though overlapping, sets of Indian students, and data on these programs' students also differ (and overlap). The eligibility criteria for these programs are not based on self-identified race/ethnicity categories. Rather, eligibility is based on the recognition of the political status of the groups from which the students are members or descendants of members. Not every school or school district that enrolls at least one Indian student receives funding from a federal program that is designed to serve Indian students or that allots funds based on numbers of Indian students.

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<sup>1</sup> In this report, the term *Indian* means members of federally recognized Indian entities, which include tribal entities within the contiguous 48 states and Native entities within the state of Alaska (the latter term includes, but is not limited to, Native Villages, Alaska Natives, Eskimos [Inuit and Yupik], and Aleuts of Alaska). The term *Indian* does not include Native Hawaiians or other Native Pacific Islanders or indigenous people of Puerto Rico.

<sup>2</sup> The BIE was formerly the Office of Indian Education Programs (OIEP) in the Bureau of Indian Affairs (BIA). In 2006, the Secretary of the Interior moved the OIEP out of the BIA and made it an agency equivalent to the BIA, renaming it the BIE. Both bureaus are under the Assistant Secretary–Indian Affairs. For education programs, this report uses “BIE” for current information and programs and “BIA” for historical periods.

<sup>3</sup> The list of federally recognized tribal entities is published in the *Federal Register*. The most recent list is U.S. Department of the Interior, Bureau of Indian Affairs, “Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs,” 88 *Federal Register* 54654, August 11, 2023.

<sup>4</sup> Decisions of the U.S. Supreme Court have characterized the role of the federal government with respect to Indian tribes as involving a trust relationship. Having identified the trust relationship, the Court has upheld congressional power to provide special treatment for Indians, declaring that “[a]s long as the special treatment can be tied rationally to the fulfillment of Congress’ unique obligation toward the Indians, such legislative judgments will not be disturbed” (Morton v. Mancari, 417 U.S. 535, 555 (1974)). However, the Court has never interpreted the trust relationship to require any definite action on the part of Congress. When called upon to decide whether an administrative agency has breached its trust obligation or when called upon to enforce the trust obligation against an agency of the Executive Branch, moreover, the Court confines its review to whether the agency has a trust obligation imposed upon it by statute. See, for example, *United States v. Mitchell*, 463 U.S. 206 (1983).

Indian children served by public elementary and secondary school systems are also eligible for the federal government’s general programs of educational assistance, but such programs are not Indian education programs and will not be discussed in this report.

This report provides a brief history of federal Indian education programs, a discussion of students served by these programs, an overview of programs and their funding, and brief discussions of selected issues in Indian education.

## **Brief History of Federal Indian Education Activities**

The following subsections provide a brief history of key periods in the development of federal Indian education policy.

### **Civilization and Assimilation**

U.S. government concern with the education of Indians began with the Continental Congress, which in 1775 appropriated funds to pay the expenses of 10 Indian students at Dartmouth College.<sup>5</sup> Through the rest of the 18<sup>th</sup> century, the 19<sup>th</sup> century, and much of the 20<sup>th</sup> century, Congress acted out of concern for what at the time was considered by some as the *civilization* of the Indians, meaning their instruction in Euro-American agricultural methods, vocational skills, and habits, as well as in literacy, mathematics, and Christianity. The aim of governmental efforts was to change Indians’ cultural patterns into Euro-American ones—in a word, to assimilate them.<sup>6</sup>

From the Revolutionary War until after the Civil War, the federal government provided for Indian education either by directly funding teachers or schools on a tribe-by-tribe basis pursuant to treaty provisions or by funding religious and other charitable groups to establish schools where they saw fit. The first Indian treaty providing for any form of education for a tribe—in this case, vocational—was in 1794.<sup>7</sup> The first treaty providing for academic instruction for a tribe was in 1803.<sup>8</sup> Altogether over 150 treaties with individual tribes provided for instructors, teachers, or schools—whether vocational, academic, or both—either permanently or for a limited period of time.<sup>9</sup> The first U.S. statute authorizing appropriations to “promote civilization” among Indian tribes was the Indian Trade and Intercourse Act of 1793,<sup>10</sup> but the Civilization Act of 1819 was the first authorization and appropriation specifically for instruction of Indian children near

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<sup>5</sup> Worthington Chauncey Ford, ed., *Journals of the Continental Congress, 1774-1789, Vol. II, 1775, May 10-September 20* (Washington: GPO, 1905), pp. 176-177. Congress’s stated intent was to keep the students from returning to their homes in British Canada.

<sup>6</sup> Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), pp. 135-136.

<sup>7</sup> Treaty with the Oneida, Etc., Art. III, December 2, 1794, 7 Stat. 47, 48. The United States agreed not only to construct gristmills and sawmills for the Oneida, Tuscarora, and Stockbridge tribes but also to send persons to instruct the tribes in their use. See also Alice C. Fletcher, *Indian Education and Civilization*, U.S. Bureau of Education Special Report, Sen. Ex. Doc. 95, 48<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1888), p. 162.

<sup>8</sup> Treaty with the Kaskaskia, Art. 3<sup>d</sup>, August 13, 1803, 7 Stat. 78, 79.

<sup>9</sup> Nell Jessup Newton, ed.-in-chief, *Cohen’s Handbook of Federal Indian Law 2005 Edition* (Newark, NJ: LexisNexis Matthew Bender, 2005), p. 1356. Congress ended treaty-making with Indian tribes in 1871.

<sup>10</sup> §9, Act of March 1, 1793, Chap. 19, 2<sup>nd</sup> Cong., 2<sup>nd</sup> sess., 1 Stat. 329, 331. As civilizing factors, the section specifically authorizes domestic animals, farming equipment, goods, money, and resident agents, but not teachers or schools.

frontier settlements in reading, writing, and arithmetic.<sup>11</sup> Civilization Act funds were expended through contracts with missionary and benevolent societies. Besides treaty schools and “mission” schools, some additional schools were initiated and funded directly by Indian tribes. The state of New York also operated schools for its Indian tribes. The total number of such treaty, mission, tribal, and New York schools reached into the hundreds by the Civil War.<sup>12</sup>

## Federal Indian School System

After the Civil War, the U.S. government began to create a federal Indian school system with central policies and oversight, and with schools funded, constructed, and operated by DOI’s Bureau of Indian Affairs (BIA).<sup>13</sup> In 1869, the Board of Indian Commissioners—a federally appointed board that jointly controlled with DOI the disbursement of certain funds for Indians<sup>14</sup>—recommended the establishment of government schools and teachers.<sup>15</sup> In 1870, Congress passed the first *general* appropriation for Indian schools not provided for under treaties.<sup>16</sup> The initial appropriation was \$100,000, but both the amount appropriated and the number of schools operated by the BIA rose swiftly thereafter.<sup>17</sup> The BIA created both boarding and day schools, including off-reservation industrial boarding schools on the model of the Carlisle Indian Industrial School (established in 1879).<sup>18</sup> Most BIA students attended on- or off-reservation boarding schools.<sup>19</sup> BIA schools were chiefly elementary and vocational schools.<sup>20</sup>

An organizational structure for BIA education began with a Medical and Education Division (1873-1881), the appointment of a superintendent of education in 1883, and creation of an education division in 1884.<sup>21</sup> The education of Alaska Native children, however, along with that of other Alaskan children, was assigned in 1885 to DOI’s Office of Education, not the BIA.<sup>22</sup>

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<sup>11</sup> Act of March 3, 1819, Chap. 85, 15<sup>th</sup> Cong., 2<sup>nd</sup> sess., 3 Stat. 516. Previous appropriations for Indian affairs would have funded education only for children of tribes that signed treaties providing for education.

<sup>12</sup> Fletcher, *Indian Education and Civilization*, p. 197.

<sup>13</sup> Szasz, Margaret Connell, and Ryan, Carmelita, “American Indian Education,” in Wilcomb E. Washburn, vol. ed., *Handbook of North American Indians, Vol. 4, Indian-White Relations* (Washington: Smithsonian, 1988), p. 290.

<sup>14</sup> The Board of Commissioners was created by the April 10, 1869, act (16 Stat. 40).

<sup>15</sup> Fletcher, *Indian Education and Civilization*, p. 167.

<sup>16</sup> An Act Making Appropriations for the Current and Contingent Expenses of the Indian Department ..., Act of July 15, 1870, Chap. 296, 41<sup>st</sup> Cong., 2<sup>nd</sup> sess., 16 Stat. 335, 359. See also U.S. American Indian Policy Review Commission, Task Force Five: Indian Education, *Report on Indian Education*, Committee Print (Washington: GPO, 1976), p. 69.

<sup>17</sup> Paul Stuart, *Nations Within a Nation: Historical Statistics of American Indians* (New York: Greenwood Press, 1987), pp. 135, 165.

<sup>18</sup> Founded by Army Captain Richard H. Pratt on an unused Army base in Carlisle, PA, the school’s model of educating Indian students in an off-reservation manual labor boarding school, away from students’ families and cultures, became well-known. Pratt, its first superintendent, publicized the school and its emphasis on assimilation. Carlisle was funded through Indian appropriations bills and private donations. It closed in 1918. See Szasz and Ryan, “American Indian Education,” pp. 290-291.

<sup>19</sup> Prucha, *Great Father*, pp. 815-816.

<sup>20</sup> Szasz and Ryan, “American Indian Education,” pp. 290-294.

<sup>21</sup> Edward E. Hill, comp., *Guide to Records in the National Archives of the United States Relating to American Indians* (Washington: National Archives and Records Service, 1981), p. 24. See also Szasz and Ryan, “American Indian Education,” pp. 290, 293.

<sup>22</sup> Hill, *Guide to Records*, p. 112; and Szasz and Ryan, “American Indian Education,” p. 297. Authorization for Alaska Native education was in §13, Act of May 17, 1884, Chap. 53, 48<sup>th</sup> Cong. 1<sup>st</sup> sess., 23 Stat. 24, 27-28.

Mission, tribal,<sup>23</sup> and New York state schools also continued to operate, and the proportion of school-age Indian children attending a BIA, mission, tribal, or New York school rose slowly.<sup>24</sup>

## Shift to Public Schools

A major long-term shift in federal Indian education policy, from federal schools to public schools, began in FY1890-FY1891 when the Commissioner of Indian Affairs, using his general authority in Indian affairs, contracted with a few local public school districts to educate nearby Indian children for whose schooling the BIA was responsible.<sup>25</sup> After 1910, the BIA pushed to move Indian children to nearby public schools and to close BIA schools.<sup>26</sup> Congress provided some appropriations to pay public schools for Indian students, although they were not always sufficient and moreover were not paid where state law entitled Indian students to public education.<sup>27</sup>

By 1920, more Indian students were in public schools than in BIA schools.<sup>28</sup> **Figure 1** displays the changing number of Indian students in BIA, public, and other schools from 1900 to 1975. The shift to public schools accompanied the increase in the percentage of Indian youths attending any school, which rose from 40% in 1900 to 60% in 1930.<sup>29</sup> Comparable data are no longer available.

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<sup>23</sup> After 1870, most tribal schools were in Oklahoma, operated by one of the “Five Civilized Tribes” (Cherokee, Chickasaw, Choctaw, Creek, and Seminole), as they were then called.

<sup>24</sup> Szasz and Ryan, “American Indian Education,” p. 291.

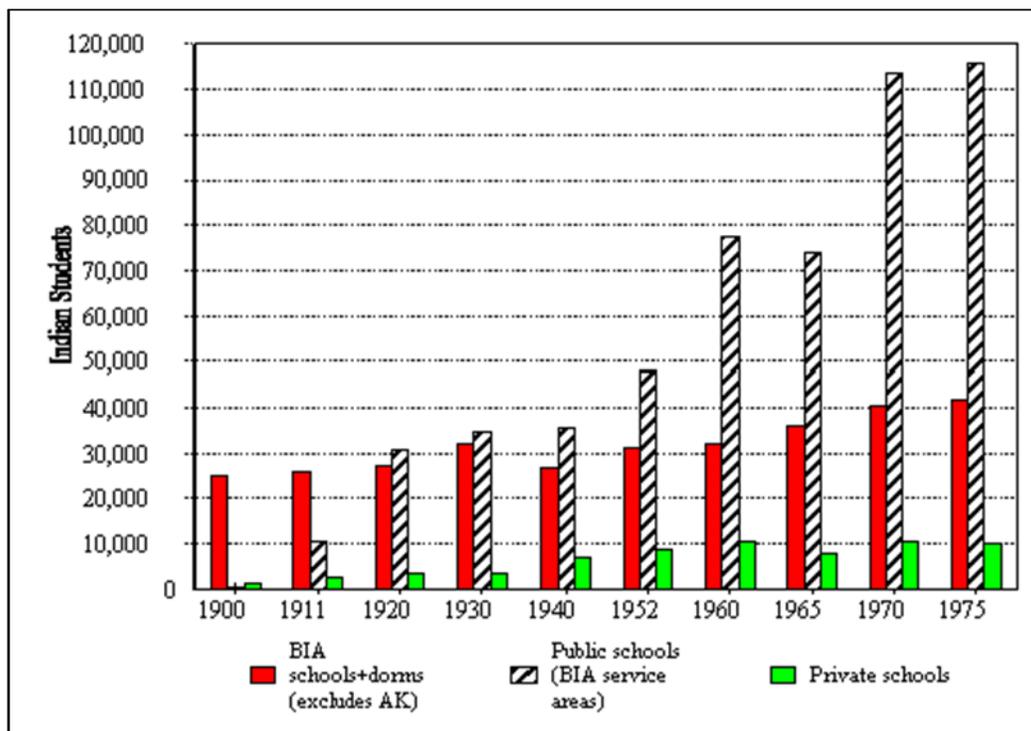
<sup>25</sup> U.S. Department of the Interior, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs [Fiscal Year 1890-1891]* (Washington: GPO, 1891), p. 71.

<sup>26</sup> Prucha, *Great Father*, pp. 823-825.

<sup>27</sup> Prucha, *Great Father*, pp. 824-825.

<sup>28</sup> U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, *Report on BIA Education: Excellence in Indian Education Through the Effective Schools Process*, Final Review Draft, March 1988, p. 15 (Table 1).

<sup>29</sup> Marlita A. Reddy, ed., *Statistical Record of Native North Americans* (Detroit: Gale Research, 1993), p. 141. The percentages are of Indians aged 5 to 20 and are based on Census data. Szasz and Ryan state, “In 1928 almost 90 percent of all Indian children were enrolled in some school.” (“American Indian Education,” p. 294). The discrepancy in percentages may be related to differing age ranges and differing definitions of the Indian population.

**Figure I. Number of Indian Students Enrolled in BIA, Public, and Private Schools 1900-1975**

**Source:** U.S. Department of the Interior, Bureau of Indian Affairs, *Report on BIA Education*. Final Review Draft (Washington: Bureau of Indian Affairs, 1988), Tables I and 8, pp. 15, 27.

**Notes:** BIA data include students in peripheral dormitories but exclude students in Alaska BIA schools. Public school data are for Indian students living in BIA administrative or service areas.

## Snyder Act of 1921<sup>30</sup>

In 1921, Congress passed the Snyder Act<sup>31</sup> in order to authorize all programs the BIA was then carrying out. Most BIA programs at the time, including education, lacked authorizing legislation. The Snyder Act continues to provide broad and permanent authorization for federal Indian programs.

This act provides a broad and permanent authorization for federal Indian programs, including for “[g]eneral support and civilization, including education.” Congress had never enacted specific statutory authorizations for most BIA activities, including BIA schools. It had instead made detailed annual appropriations for BIA activities. Authority for Indian appropriations in the House had been assigned to the Indian Affairs Committee after 1885 (and in the Senate to its Indian Affairs Committee after 1899). Rules changes in the House in 1920, however, moved Indian appropriations authority to the Appropriations Committee, making Indian appropriations vulnerable to procedural objections because they lacked authorizing acts. The Snyder Act was passed to authorize all the activities the BIA was then carrying out. The act’s broad language, however, may be read as authorizing—though not requiring—nearly any Indian program, including education, for which Congress enacts appropriations.

<sup>30</sup> Act of November 2, 1921, 42 Stat. 208, as amended; 25 U.S.C. §13.

<sup>31</sup> Act of November 2, 1921, 42 Stat. 208, as amended; 25 U.S.C. §13.

## BIA Operations in the 1920s and 1930s

In the 1920s and 1930s, the BIA began expanding some of its own schools' grade levels to secondary education. Under the impetus of the Meriam Report and New Deal leadership, the BIA also began to shift its students toward its local day schools instead of its boarding schools, and, to some extent, to move its curriculum from solely Euro-American subjects to include Indian culture and vocational education.<sup>32</sup> The Meriam Report of 1928, an influential study of the condition of American Indians and federal Indian administration, made several recommendations to promote the advancement and civilization of Indians.<sup>33</sup> In addition, in 1931, responsibility for Alaska Native education was transferred to the BIA.<sup>34</sup> In 1934, to simplify the reimbursement of public schools for educating Indian students, Congress passed the Johnson-O'Malley (JOM) Act,<sup>35</sup> authorizing the BIA to contract with the states, except Oklahoma, and the territories for the education of Indians (and other services to Indians).<sup>36</sup>

## ED Indian Education Programs

The first major non-DOI federal funding for Indian education in the 20<sup>th</sup> century began in 1953, when the Federal Assistance for Local Educational Agencies Affected by Federal Activities program,<sup>37</sup> now known as Impact Aid, was amended to cover Indian children eligible for BIA schools.<sup>38</sup> Impact Aid pays public school districts to help fund the education of children in "federally impacted areas." Further changes to the Impact Aid law in 1958 and the 1970s increased the funding that was allocated according to the number of children on Indian lands.<sup>39</sup> Congressional appropriations for Impact Aid have increased, while the JOM funding decreased through FY2013.

In 1966 Congress added further non-DOI funding for Indian education by amending the Elementary and Secondary Education Act (ESEA) of 1965,<sup>40</sup> the major act authorizing federal education aid to public school districts. The amendments set aside funds for BIA schools from the program authorizing assistance to educational agencies for the education of children of low-income families (now referred to as ESEA Title I-A); School Library Resources, Textbook, and Instructional Materials (Title II); and Supplementary Educational Centers and Services (Title III).<sup>41</sup>

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<sup>32</sup> Szasz and Ryan, "American Indian Education," pp. 294-295; Prucha, *Great Father*, pp. 836-839, 977-983; and Margaret Connell Szasz, "W. Carson Ryan: From the Meriam Report to the Indian New Deal," in *Education and the American Indian: The Road to Self-Determination Since 1928*, 2<sup>nd</sup> ed. (Albuquerque: University of New Mexico Press, 1977), pp. 16-36.

<sup>33</sup> Lewis Meriam, *The Problem of Indian Administration*, Institute for Government Research, Report of a Survey made at the request of Honorable Hubert Work, Secretary of the Interior, and submitted to him, Baltimore, MD, February 21, 1928.

<sup>34</sup> Szasz and Ryan, "American Indian Education," p. 297.

<sup>35</sup> P.L. 73-167, Act of April 16, 1934, 48 Stat. 596, as amended; 25 U.S.C. §5342 *et seq.*

<sup>36</sup> Szasz and Ryan, "American Indian Education," p. 295.

<sup>37</sup> P.L. 81-874, Act of September 30, 1950, 64 Stat. 1100, as amended; currently codified as Title VII of the Elementary and Secondary Education Act (ESEA).

<sup>38</sup> P.L. 83-248, Act of August 8, 1953, 67 Stat. 530.

<sup>39</sup> Larry LaCounte, *Tribal Perspective of the Impact Aid Program* (Washington: National Indian Policy Center, 1993), pp. 3-5.

<sup>40</sup> P.L. 89-10, Act of April 11, 1965, 79 Stat. 27, as amended.

<sup>41</sup> §102, Elementary and Secondary Education Amendments of 1966, P.L. 89-750, Act of Nov 3, 1966, 80 Stat 1191.

A congressional study of Indian education in 1969<sup>42</sup> that was highly critical of federal Indian education programs led to further expansion of federal non-DOI assistance for Indian education, embodied in the Indian Education Act of 1972, now known as ESEA Title VI.<sup>43</sup> The Indian Education Act established the Office of Indian Education (OIE) within the U.S. Department of Health, Education and Welfare (later ED and the U.S. Department of Health and Human Services) and authorized OIE to make grants to local educational agencies (LEAs) with Indian children.<sup>44</sup> The OIE was the first organization outside of DOI (since DOI's birth in 1849) that was created expressly to oversee a federal Indian education program.

Impact Aid and ESEA Title VI also promote Indian control in public schools. The 1972 Indian Education Act amended the Impact Aid program to mandate Indian parents' consultation in school programs funded by Impact Aid.<sup>45</sup> ESEA Title VI requires that public school districts applying for its grants prove adequate participation by Indian parents and tribal communities in program development, operation, and evaluation.<sup>46</sup> The Improving America's Schools Act of 1994 (P.L. 103-382, §9112(b)) and the Every Student Succeeds Act (ESSA; P.L. 114-95) have expanded eligibility under the current ESEA Title VI formula grant program to Indian tribes, Indian organizations, and Indian community-based organizations.<sup>47</sup>

## **Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA)<sup>48</sup>**

Following the termination period of the 1950s and 1960s intended to end the trust relationship between the federal government and Indian tribes, federal Indian education policy began to move toward greater Indian control of federal Indian education programs, in both BIA and public schools. In 1966, the BIA signed its first contract with an Indian group to operate a BIA school (the Rough Rock Demonstration School on the Navajo Reservation).<sup>49</sup>

The Indian Self-Determination and Education Assistance Act (ISDEAA; P.L. 93-638),<sup>50</sup> signed into law in 1975, authorized tribal administration of certain federal Indian programs, including

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<sup>42</sup> U.S. Congress, Senate Labor and Public Welfare Committee, Special Subcommittee on Indian Education, *Indian Education: A National Tragedy, A National Challenge* (Washington: GPO, 1969).

<sup>43</sup> Title IV of the Education Amendments Act of 1972, P.L. 92-318, Act of June 23, 1972, 86 Stat. 235, 334, as amended; currently codified as ESEA Title VI-A.

<sup>44</sup> The OIE was transferred to the new U.S. Department of Education in 1980.

<sup>45</sup> P.L. 92-318, §411(a),(c)(2), 86 Stat. 334-339; currently codified, as amended, at ESEA §7004. See also Szasz and Ryan, "American Indian Education," p. 298.

<sup>46</sup> §421(a) of the 1972 act; currently codified at ESEA §6114(c)(4).

<sup>47</sup> *Indian organizations* are defined in 25 C.F.R. §263.20 as organizations that "(1) are legally established—(i) by tribal or inter-tribal charter or in accordance with state or tribal law; and (ii) with appropriate constitution, by-laws, or articles of incorporation; (2) include in its purposes the promotion of the education of Indians; (3) are controlled by a governing board, the majority of which is Indian; (4) if located on an Indian reservation, operate with the sanction or by charter of the governing body of that reservation; (5) are neither organizations or subdivisions of, nor under the direct control of, any institution of higher education; and (6) are not agencies of state or local government." *Indian community-based organizations* are defined in ESEA Section 6112(d)(2) as organizations that "(A) are composed primarily of Indian parents, family members, and community members, tribal government education officials, and tribal members, from a specific community; (B) assist in the social, cultural, and educational development of Indians in such community; (C) meet the unique cultural, language, and academic needs of Indian students; and (D) demonstrate organizational and administrative capacity to manage the grant."

<sup>48</sup> P.L. 93-638, act of January 4, 1975, 88 Stat. 2203, as amended; 25 U.S.C. §5301 et seq.

<sup>49</sup> Prucha, *Great Father*, p. 1102.

<sup>50</sup> P.L. 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended; 25 U.S.C. §5301 et seq.

BIA and BIE programs. ISDEAA, as amended, allows Indian tribes and tribal organizations, such as tribal school boards, to assume some control over the management of BIE-funded education programs by negotiating “self-determination contracts” or Title IV “self-governance compacts” with BIE. Under a self-determination contract, BIE transfers to tribal control the funds it would have spent for the contracted school or dorm, so the tribe may operate it. Tribes or tribal organizations may contract to operate one or more schools.<sup>51</sup>

In 1975, the ISDEAA added to the JOM program a requirement that public school districts with JOM contracts have either a majority-Indian school board or an Indian parent committee that has approved the JOM program.<sup>52</sup>

## **Education Amendments Act of 1978<sup>53</sup>**

Three years after ISDEAA’s enactment, in Title XI, Part B, of the Education Amendments of 1978 (P.L. 95-561), Congress required the BIA “to facilitate Indian control of Indian affairs in all matters relating to education.”<sup>54</sup> This act created statutory standards and administrative and funding requirements for the BIA school system and separated control of BIA schools from BIA area and agency officers by creating a BIA Office of Indian Education Programs (OIEP) and assigning it supervision of all BIA education personnel.<sup>55</sup>

Title XI of this act establishes requirements and guidelines for the BIE-funded elementary and secondary school system. As amended, the act covers academic accreditation and standards, a funding allocation formula, BIE powers and functions, criteria for boarding and peripheral dorms, personnel hiring and firing, the role of school boards, facilities standards, a facilities construction priority system, and school closure rules, among other topics. It also authorizes several BIE grant programs, including administrative cost grants for tribally operated schools (described below), early childhood development program grants (described below), and grants and technical assistance for tribal departments of education.

## **Tribally Controlled Schools Act (TCSA) of 1988<sup>56</sup>**

The Tribally Controlled Schools Act (TCSA; P.L. 100-297) of 1988<sup>57</sup> authorized grants as another means, besides ISDEAA contracts, by which Indian tribes and tribal organizations may operate BIE-funded schools. The act requires that each grant include all requested funds that BIE would have allocated to the school for operation, administrative cost grants, transportation, maintenance, and ED programs. Because ISDEAA contracts were found to be a more cumbersome means of Indian control of schools, most tribally operated schools are grant-supported schools.<sup>58</sup>

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<sup>51</sup> BIE’s formula funding for schools is excluded from “self-governance compacts” (25 U.S.C. §5363(b)(4)(B)).

<sup>52</sup> 25 U.S.C. §5346.

<sup>53</sup> P.L. 95-561, Title XI, Part B, Act of November 1, 1978, 92 Stat. 2143, 2316, as amended; 25 U.S.C., Chap. 22 (25 U.S.C. §2000 et seq.).

<sup>54</sup> P.L. 95-561, Title XI, Part B, Act of November 1, 1978, 92 Stat. 2143, 2316, as amended. The quote is from §1130 of the original act (now §1131 of the amended act).

<sup>55</sup> Prucha, *Great Father*, p. 1146.

<sup>56</sup> P.L. 100-297, Title V, Act of April 28, 1988, 102 Stat. 130, 385, as amended; 25 U.S.C., Chap. 27.

<sup>57</sup> P.L. 100-297, Title V, Act of April 28, 1988, 102 Stat. 130, 385, as amended; 25 U.S.C., Chap. 27.

<sup>58</sup> *Cohen’s Handbook of Federal Indian Law 2005 Edition*, p. 1361.

## Reduction of and Limitations on BIE School System

Starting in the 1960s, the number of schools in the BIA school system began to shrink through administrative consolidation, limitations, and congressional closures. For example, all BIA-funded schools in Alaska were transferred to the state of Alaska between 1966 and 1985, removing an estimated 120 schools from BIA responsibility.<sup>59</sup> The number of BIA-funded schools and dormitories stood at 233 in 1930<sup>60</sup> and 277 in 1965,<sup>61</sup> but fell to 227 in 1982 and to 180 in 1986 before rising to 185 by 1994;<sup>62</sup> it currently stands at 183.<sup>63</sup> Since the 1990s, Congress has limited both the number of BIA schools and the grade structure of the schools.<sup>64</sup> In 2006, the Secretary of the Interior separated the BIA education programs in the Office of Indian Education Programs from the rest of the BIA and placed them in a new Bureau of Indian Education (BIE) under the Assistant Secretary–Indian Affairs.<sup>65</sup> The number of Indian students educated at BIE schools has ranged between 41,000 and 48,000 since FY2006.<sup>66</sup>

## Status of Indian and American Indian/Alaska Native Elementary and Secondary Education

Although there is no source for the status of Indian student educational achievement nationally, the educational environment and achievements of BIE students and American Indian/Alaska Native (AI/AN) students are reported. Students who identify their race/ethnicity as AI/AN may not be members or descendants of members of federally recognized Indian tribes, and not all members of such tribes may identify as AI/AN. For example, ED’s National Center for Education Statistics (NCES), which collects and analyzes student and school data and produces the National Assessment of Educational Progress (NAEP),<sup>67</sup> publishes reports on AI/AN students’ characteristics and academic achievements. NCES data are based on race/ethnicity (except most data on BIE students), so the data will include students who identify as AI/AN even though they are not members of tribes and do not fall into the eligibility categories of federal Indian education programs. NCES’s race/ethnicity-based AI/AN student population is not the same as the student population served by federal Indian education programs. The two populations overlap, but the degree of overlap has not been determined. NCES data based on race/ethnicity, then, cannot be assumed to accurately represent the Indian student population intended to be served by federal Indian education programs.

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<sup>59</sup> U.S. Congress, House Committee on Appropriations, *Department of the Interior and Related Agencies Appropriations for 1994*, hearings, part 8, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1993), p. 168.

<sup>60</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Report on BIA Education: Excellence in Indian Education Through the Effective Schools Process*. Final Review Draft (Washington: The Department, 1988), p. 17.

<sup>61</sup> U.S. Department of the Interior, Bureau of Indian Affairs, Branch of Education, *Fiscal Year 1965 Statistics Concerning Indian Education* (Haskell, Kansas: Haskell Institute Publications Service, 1966), p. 15.

<sup>62</sup> U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, *Fiscal Year 1995 Annual Education Report* (Washington, DC: The Bureau of Indian Affairs, no date), p. vi.

<sup>63</sup> U.S. Department of the Interior, Indian Education, *Budget Justifications Fiscal Year 2024* (hereinafter referred to as the *FY2024 Budget*), p. BIE-GS-1.

<sup>64</sup> The limitations are in the annual BIE appropriations acts.

<sup>65</sup> U.S. Department of the Interior, Indian Affairs, *Budget Justifications Fiscal Year 2008*, pp. IA-EDUC-5 to -6.

<sup>66</sup> *Budget Justifications FY2006–FY2024*.

<sup>67</sup> NAEP is often known as *the nation’s report card*.

## BIE Schools and Students

The BIE funds a system consisting of elementary and secondary schools, which provide free education to eligible Indian students, and “peripheral dormitories” (discussed below).<sup>68</sup> The BIE is led by a director in Washington, DC, who reports to the Assistant Secretary-Indian Affairs. In addition to positions that manage finance, acquisition, accountability, facilities, and other support activities, three Associate Deputy Directors (ADDs) provide oversight, guidance, and technical assistance to the BIE schools. One ADD serves schools serving the Navajo nation, one serves the remaining BIE operated schools, and one serves the remaining tribally operated schools. Each ADD works through multiple, field-located Education Resource Centers (ERC) that provide direct and customized technical assistance to the schools.<sup>69</sup>

The BIE school system serves students who are members of federally recognized Indian tribes or are at least one-fourth degree Indian blood descendants of members of such tribes, and who reside on or near a federal Indian reservation or are eligible to attend a BIE off-reservation boarding school.<sup>70</sup> Indian tribes commonly require members to be lineal descendants or related to lineal descendants of individuals on the original list of members, so BIE Indian students may have less than one-fourth Indian blood. It is commonly estimated that BIE schools serve less than 10% of Indian students.

The BIE-funded school system includes day and boarding schools and peripheral dormitories. The majority of BIE-funded schools are day schools, which offer elementary or secondary classes or combinations thereof, and are located on Indian reservations. BIE boarding schools house students in dorms on campus and also offer elementary or secondary classes, or combinations of both levels, and are located both on and off reservations. Peripheral dormitories house students who attend nearby public or BIE schools; these dorms are also located both on and off reservations. Approximately one-third of BIE schools are K-8, one-fifth are K-12, and another one-seventh are K-6.<sup>71</sup>

Elementary and secondary schools funded by the BIE may be operated directly by the BIE, by tribes and tribal organizations through grants authorized under the Tribally Controlled Schools Act (TCSA) of 1988, or by tribes and tribal organizations through contracts authorized under the Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975. In addition, some schools receive financial assistance from a state or public school district. A few are operated through a cooperative agreement with a public school district.<sup>72</sup> In accordance with state law, the

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<sup>68</sup> BIE also funds postsecondary institutions and programs not discussed in this report. A small number of BIE-funded elementary and secondary schools also receive funding as public schools from their states.

<sup>69</sup> *FY2024 Budget*.

<sup>70</sup> 25 U.S.C. §2007(f). *One-fourth degree* is the equivalent of one *full-blood* grandparent out of four. In certain circumstances, non-Indian students may attend BIE schools (25 C.F.R. §31.3).

<sup>71</sup> The remainder of schools serve grades PK-8, PK-12, K-2, K-3, K-4, K-5, K-7, K-9, K-11, 1-8, 1-12, 4-12, 5-8, 6-8, 6-12, 7-8, 7-12, and 9-12. U.S. Department of the Interior, Bureau of Indian Education, <https://www.bie.edu/schools/directory>, as of November 21, 2023.

<sup>72</sup> The Turtle Mountain Elementary and Middle schools in North Dakota are operated by a cooperative agreement between a public school district and the BIE. The Standing Rock Community School is operated through a Joint Powers Agreement between the Standing Rock Tribal Grant School and the Fort Yates Public School District (See U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *American Indian and Alaska Native Public Witness Hearing*, Testimony of The Standing Rock Sioux Tribe, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., May 17, 2017).

three BIE schools in Maine receive state funding.<sup>73</sup> In addition, some states provide varying levels of support to BIE schools.<sup>74</sup> There are eight charter schools co-located at BIE schools.<sup>75</sup>

BIE funds 169 schools and 14 peripheral dorms. **Table 1** shows the number of BIE-funded schools and peripheral dorms, by type of operator. The majority of BIE-funded schools are tribally operated.<sup>76</sup>

**Table 1. Number of BIE-Funded Schools and Peripheral Dormitories: FY2022**

Schools and Peripheral Dormitories	Tribally Operated	BIE-Operated	Total
Total	128	55	183
Elementary/secondary schools	115	54	169
Day schools	90	28	118
Boarding schools	25	26	51
Peripheral dormitories	13	1	14

**Source:** U.S. Department of the Interior, Bureau of Indian Education, *Budget Justifications Fiscal Year 2024*.

In the mid-1990s, Congress became concerned that adding new BIE schools or expanding existing schools would, in circumstances of limited financial resources, “diminish funding for schools currently in the system.”<sup>77</sup> As a consequence, the total number of BIE schools and peripheral dorms, the class structure of each school, and co-located charter schools has been limited by Congress. Through annual appropriation acts from FY1994 through FY2011, Congress prohibited BIE from funding schools that were not in the BIE system as of September 1, 1996, and from FY1996 through FY2011 prohibited the use of BIE funds to expand a school’s grade structure beyond the grades in place as of October 1, 1995. Appropriations acts since FY2000 have prohibited the establishment of co-located charter schools.

Beginning in FY2012, Congress has begun to loosen restrictions on the size and scope of the BIE school system. A provision enacted in the FY2012 appropriations act provided an exception for schools and school programs that were closed and removed from the BIE school system between 1951 and 1972 and whose respective tribe’s relationship with the federal government was terminated.<sup>78</sup> As a result of the FY2012 exception in July 2012, BIE began funding grades 1-6 of

<sup>73</sup> Lawrence O. Picus, Allan Odden, and Michael Goetz, et al., *An Independent Review of Maine’s Essential Programs and Services Funding Act: Part 1*, Lawrence O. Picus and Associates, Presented to the Maine Legislature’s Joint Standing Committee on Education and Cultural Affairs, North Hollywood, CA, April 1, 2013.

<sup>74</sup> North Dakota provides state funding to several BIE schools: Mandaree Day School, Turtle Mountain Elementary School, Turtle Mountain High School, Turtle Mountain Middle School, Twin Buttes Day School, and White Shield School (North Dakota Department of Public Instruction, Office of Indian/Multicultural Education, *BIE/Tribal Schools (2019-2020)*, June 15, 2020, [https://www.ndlegis.gov/assembly/67-2021/testimony/HAPPEDU-1013-20210114-1134-F-BAESLER\\_KIRSTEN.pdf](https://www.ndlegis.gov/assembly/67-2021/testimony/HAPPEDU-1013-20210114-1134-F-BAESLER_KIRSTEN.pdf)). BIE schools in Washington may become state-tribal education compact schools, receiving some state funds in exchange for meeting specified requirements (Washington State Legislature, Final Bill Report E2SHB 1134, 2013-14).

<sup>75</sup> The schools are Blackwater Community School in Coolidge, AZ; Kin Dah Lichi’i Olta’ (Kinlichee) in Ganado, AZ; Little Singer Community School in Winslow, AZ; Nazlini Community School in Ganado, AZ; Seba Dalkai Boarding School in Winslow, AZ; Shonto Preparatory School in Shonto, AZ; Hannahville Indian School in Wilson, MI; and Joseph K. Lumsden Bahweting Anishnabe Academy in Sault Ste. Marie, MI.

<sup>76</sup> *FY2024 Budget*.

<sup>77</sup> U.S. Congress, Senate Appropriations Committee, *Department of the Interior and Related Agencies Appropriations Bill, 1995*, report to accompany H.R. 4602, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 103-294 (Washington: GPO, 1994), p. 58.

<sup>78</sup> The Consolidated Appropriations Act, 2012 (P.L. 112-74).

Jones Academy in Hartshorne, OK. Jones Academy was previously funded by BIE as a peripheral dormitory for students attending schools in grades 1-12, and by the local public school district as a grades 1-6 elementary school. The appropriations acts since FY2014 have authorized the Secretary to support the expansion of one additional grade to better accomplish the BIE’s mission, and appropriations acts since FY2018 have authorized the expansion of more than one elementary grade in schools with a K–2 grade structure on October 1, 1996. As a result, in 2014 the BIE approved funding for the tribally funded 6<sup>th</sup> grade of the otherwise BIE-funded Shoshone-Bannock Junior High.<sup>79</sup> In addition, BIE approved the K-2 Blackwater Community School to offer a 3<sup>rd</sup> grade in July of 2016 and 4<sup>th</sup>-5<sup>th</sup> grades in July of 2018.<sup>80</sup> Successively, appropriations acts since FY2015 have authorized the BIE to approve satellite locations of BIE schools at which an Indian tribe may provide language and cultural immersion educational programs as long as the BIE is not responsible for the facilities-related costs. Accordingly, in AY2015-2016 the Nay-Ah-Shing School in Minnesota opened the Pine Grove Satellite Learning Center using broadband and reducing transportation times and costs.<sup>81</sup>

Only Indian students attend the BIE school system, with few exceptions. In SY2023-2024, BIE-funded schools and peripheral dorms are estimated to serve approximately 47,000 Indian students in 23 states.<sup>82</sup> From SY2018-2019 to SY2021-2022, approximately 49% of BIE schools and dormitories had an average attendance of fewer than 200 students.<sup>83</sup>

BIE schools and dormitories are not evenly distributed across the country. From SY2018-2019 to SY2021-2022, approximately 66% of BIE schools and dormitories and, on average, approximately 63% of BIE students were located in 3 of the 23 states with schools: Arizona (27% of students), New Mexico (20%), and South Dakota (17%).<sup>84</sup> **Table 2** shows the distribution of BIE schools and students across the 23 states. There are no BIE schools or students in Alaska, a circumstance directed by Congress (see “Brief History of Federal Indian Education Activities,” above).<sup>85</sup>

**Table 2. BIE Schools and Peripheral Dormitories and Students: Number and Percent, by State, Average: SY2018-2019 to SY2021-2022**

(in descending order by number of students)

State	Schools and Dorms		Students	
	Number	Percentage	Number	Percentage
Arizona	54	30%	14,051	27%

<sup>79</sup> U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *American Indian and Alaska Native Public and Outside Witness Hearing*, Mr. Nathan Small, Chairman, Shoshone-Bannock Tribes of the Ft. Hall Reservation Testimony, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., March 24, 2015.

<sup>80</sup> Blackwater Community School-Akimel O’Otham Pee Posh Charter School Inc., <https://bwcs.k12.az.us/> (accessed May 29, 2020).

<sup>81</sup> Holland & Knight, “Launching a Tribal Satellite School Expansion Plan.”

<sup>82</sup> *FY2024 Budget*, p. BIE-OIEP-15.

<sup>83</sup> Percentage calculated by CRS based on *FY2024 Budget*, Appendix 1. The three-year averages for student counts are based on the average daily attendance counts that are calculated for each year.

<sup>84</sup> *FY2024 Budget*, Appendix 1. The three-year averages for student counts are based on the average daily attendance counts that are calculated for each year.

<sup>85</sup> Annual appropriation acts for the Department of the Interior regularly include an administrative provision prohibiting BIA expenditures to support operation of elementary and secondary schools in Alaska (except through the Johnson-O’Malley program); see, for example, P.L. 110-161 (121 Stat. 2113).

State	Schools and Dorms		Students	
	Number	Percentage	Number	Percentage
New Mexico	44	24%	10,595	20%
South Dakota	22	12%	8,788	17%
North Dakota	11	6%	4,763	9%
Mississippi	8	4%	2,843	5%
Washington	8	4%	2,352	4%
North Carolina	1	1%	1,474	3%
Oklahoma	5	3%	1,425	3%
Wisconsin	3	2%	1,155	2%
Minnesota	4	2%	731	1%
California	2	1%	683	1%
Michigan	2	1%	641	1%
Montana	3	2%	492	1%
Oregon	1	1%	478	1%
Florida	2	1%	388	1%
Iowa	1	1%	354	1%
Maine	3	2%	347	1%
Wyoming	1	1%	329	1%
Idaho	2	1%	282	1%
Utah	2	1%	254	<1%
Nevada	2	1%	154	<1%
Louisiana	1	1%	133	<1%
Kansas	1	1%	50	<1%
Grand Total <sup>a</sup>	183	100%	52,761	100%

**Source:** U.S. Department of the Interior, Indian Education, *Budget Justifications Fiscal Year 2024*, Appendix I.

**Notes:** Student counts are based on the three-year average daily membership, which counts students attendance during the entire year.

a. Totals may not add due to rounding.

One measure of a school system’s quality and the academic achievement of students is the average score of students on the National Assessment of Educational Progress (NAEP) reading and mathematics assessments.<sup>86</sup> **Table 3** indicates that average scores on the NAEP assessments for students in BIE schools were below those of students in public schools. For example, on the 8<sup>th</sup> grade 2015 NAEP reading assessment the average score for BIE school students was 236 while the average for public school students was 264. Data on BIE schools after 2019 are not available.

<sup>86</sup> The NAEP, directed by the U.S. Department of Education, is the largest nationally representative and continuing assessment of what America’s students know and can do in various subject areas. Since NAEP assessments are administered uniformly across the nation, NAEP results serve as a common metric.

**Table 3. Average Scores in NAEP Reading and Math, by Assessment, and Type of School: 2011, 2015, and 2019**

Type of School	Average NAEP Score			
	Grade 4 Reading	Grade 8 Reading	Grade 4 Math	Grade 8 Math
2019				
BIE schools	186	233	215	251
Public schools	204	249	228	263
2015				
BIE schools	NR <sup>a</sup>	236	NR <sup>a</sup>	252
Public schools	221	264	240	281
2011				
BIE schools	182	234	213	250
Public schools	220	264	240	283

**Source:** B.D. Rampey, S.C. Faircloth, R.P. Whorton, and J. Deaton, *National Indian Education Study 2019* (NCES 2021-018) U.S. Department of Education (Washington, DC: Institute of Education Sciences, National Center for Education Statistics, 2021).

**Notes:** NAEP assessment results for reading and mathematics are reported as average scores on a 0-500 scale.

a. NR means reporting standards not met.

## Public Schools and AI/AN Students

There were approximately 49 million public school students enrolled in elementary and secondary schools in fall 2020, and approximately 461,000 (0.9%) were AI/ANs. A greater than average proportion of AI/AN students live in poverty and require services for students with disabilities. The percentage of children under age 18 in families living in poverty was 30% for AI/AN children and 16% for all children in 2021. In SY2021–2022, the percentage of children ages 3–21 who were served under the Individuals with Disabilities Education Act (IDEA) as a percentage of total enrollment in public schools was 19% for AI/AN students, the highest among all racial/ethnic groups. The percentage of 16- through 24-year-old AI/AN youth who were not enrolled in school and had not earned a high school credential was 10% in 2021, compared to 5% for all 16- through 24-year-olds.<sup>87</sup>

The educational achievement of AI/AN students in public schools can be deduced from the average scores of AI/AN and non-AI/AN students on the NAEP. **Table 4** presents results of the 2022 NAEP reading and mathematics assessments for AI/AN and non-AI/AN students in grades 4 and 8. The average NAEP score for AI/AN students is consistently lower than that for white, Hispanic, and Asian students.

<sup>87</sup> U.S. Department of Education, *Digest of Education Statistics* (hereinafter, *Digest of Education Statistics*), Tables 102.62, 203.50, 204.40, and 219.85a (accessed February 23, 2024).

**Table 4. Average Public School Scores in NAEP Reading and Math, by Assessment and Student Race/Ethnicity: 2022**

Student Race/Ethnicity	Average NAEP Score			
	Grade 4 Reading	Grade 8 Reading	Grade 4 Math	Grade 8 Math
AI/AN <sup>a</sup>	197	246	221	258
White	227	268	246	285
Black	199	244	217	253
Hispanic	205	251	224	261
Asian	241	283	259	306
Native Hawaiian/Other Pacific Islander	207	254	224	264
Two or more races	223	265	239	276

**Source:** U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), available at <https://www.nationsreportcard.gov/highlights/reading/2022/> and <https://www.nationsreportcard.gov/highlights/mathematics/2022/> (February 23, 2024).

a. AI/AN means American Indian/Alaska Native.

## Federal Indian Elementary and Secondary Education Programs and Services

Federal Indian elementary and secondary education programs serve Indian elementary and secondary students in public schools, private schools, and the BIE system. Except for one BIE program, public schools do not generally receive BIE funding. Public schools instead receive most of their federal assistance for Indian education through the U.S. Department of Education (ED). BIE-funded schools, on the other hand, receive funding both from the BIE and from ED. The BIE estimates that it provides about 79% of BIE-funded schools' overall federal funding for operations (excluding renovation and construction), and ED provides 20%.<sup>88</sup> This section of the report profiles first the BIE programs and second those ED programs that provide significant funding for Indian education.

### BIE Elementary and Secondary Education Programs

Funding for and operation of BIE-funded schools are carried out through a number of different programs. The major BIE funding programs for operations are *forward-funded*—that is, the BIE programs' appropriations for a *fiscal* year are used to fund the *school* year that begins during that fiscal year.<sup>89</sup> Forward funding in the case of elementary and secondary education programs was designed to allow additional time for school officials to develop budgets in advance of the

<sup>88</sup> *FY2024 Budget*, p. BIE-OIEP-11. The remainder is provided by other federal agencies.

<sup>89</sup> Federal fiscal years begin on October 1 and end on the following September 30. School years (SY) begin on July 1 (three-quarters of the way through the fiscal year) and end the following June 30. Hence, BIE appropriations for FY2023 (October 1, 2022–September 30, 2023) are used to fund SY2023–2024 (July 1, 2023–June 30, 2024).

beginning of the school year. These forward-funded appropriations are specified through provisions in the annual appropriations bill and other statutory provisions.<sup>90</sup>

### **Indian School Equalization Program (ISEP)<sup>91</sup>**

The Indian School Equalization Program (ISEP) is the formula-based grant program through which congressional appropriations for BIE-funded schools' academic (and, if applicable, residential) operating costs are allocated among the schools. ISEP grant funds are the primary funding for basic and supplemental educational programs for Indian students attending BIE-funded schools. In addition, ISEP grant funds pay tuition to Sevier Public Schools in Utah for out-of-state Indian students living in the nearby BIE Richfield peripheral dormitory. The ISEP allocation formula, although authorized under the Education Amendments of 1978, is specified not in statute but in federal regulations. The formula is based on a count of student "average daily membership" (ADM) that is weighted to take into account schools' grade levels and students' residential-living status (e.g., in boarding schools or peripheral dorms) and is then supplemented with weights or adjustments for gifted and talented students, language development needs, supplemental education programs, and a school's size. The final weighted figure is called the "weighted student unit" (WSU). A three-year WSU average is calculated for each school and nationally. Each school receives a portion of the ISEP appropriation that is the same proportion that the school's three-year WSU average is to the national three-year average WSU.<sup>92</sup>

Before allocation under the funding formula, part of ISEP funds is set aside for program adjustments, contingencies, and appeals. In recent years, program adjustments have funded safety and security projects, behavior intervention programs, targeted education projects to increase academic achievement, police services, parental participation projects, technical assistance on effective teaching practices for at-risk students, behavioral health counselors, and school staff capacity with respect to budget and programming.

### **Student Transportation**

Student transportation funds provide for buses, fuel, maintenance, and bus driver salaries and training, as well as certain commercial transportation costs for some dormitory and boarding school students. Because of largely rural and often remote school locations, many unimproved and dirt roads, and the long distances from children's homes to schools, transportation of BIE students can be expensive. Student transportation funds are distributed on a formula basis, using commercial transportation costs and the number of bus miles driven (with an additional weight for unimproved roads).<sup>93</sup>

### **Early Child and Family Development (FACE)**

BIE's early childhood development program provides grants to tribes and tribal organizations for services for pre-school Indian students and their parents.<sup>94</sup> The program includes early childhood education for children under six years old, and parenting skills and adult education for their parents to improve their employment opportunities. The grants are distributed by formula among applicant tribes and organizations who meet the minimum tribal size of 500 members. In

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<sup>90</sup> For example, see 25 U.S.C. §2010(a) and §2506(a).

<sup>91</sup> 25 U.S.C. §2007.

<sup>92</sup> 25 C.F.R. Part 39, Subparts A-C.

<sup>93</sup> 25 C.F.R. Part 39, Subpart G.

<sup>94</sup> 25 U.S.C. §2019.

SY2018-2019 before COVID-19 pandemic-related enrollment reductions, the program served over 2,000 adults and 2,000 children.<sup>95</sup>

### **Tribal Grant Support Costs (Administrative Cost Grants)**

Tribal grant support costs,<sup>96</sup> formerly known as administrative cost grants, pay administrative and indirect costs for tribally operated TCSA-grant schools. Administrative costs for BIE-operated schools are funded through BIE program management appropriations. By providing assistance for direct and indirect administrative costs that may not be covered by ISEP or other BIE funds, administrative cost grants are intended to encourage tribes to take control of their schools. These are formula grants based on an “administrative cost percentage rate” for each school, with a minimum grant of \$200,000. For the first time in FY2016, appropriations fully funded the statutorily determined grant amounts without the need for a ratable reduction.

### **Education Program Enhancements**

Education Program Enhancements allow the BIE discretion to provide targeted improvements and interventions. Examples of activities funded in recent years include supporting BIE reorganization efforts, providing leadership training and professional development, funding the Sovereignty in Indian Education (SIE) Enhancement program, and developing partnerships with tribally controlled colleges. In addition, funding has been used to develop tribal education departments.

### **Juvenile Detention Education**

The Juvenile Detention Education program supports educational services for children in BIA-funded detention facilities. This is not a forward-funded program. The program was funded in FY2007-FY2011 and has now been funded since FY2016.

### **Tribal Education Department Grants<sup>97</sup>**

The Secretary is authorized to make grants and provide technical assistance to tribes for the development and operation of tribal departments of education (TEDs) for the purpose of planning and coordinating all educational programs of the tribe. Beginning in FY2015, funds have been awarded to promote tribal control and operation of BIE-funded schools on reservations. Funds have also been awarded to begin restructuring school governance, build capacity for academic success, and develop academically rigorous and culturally relevant curricula.

### **Johnson O’Malley Program (BIE Assistance to Public Schools)<sup>98</sup>**

Under the Johnson O’Malley (JOM) program, BIE contracts with tribal organizations, states, LEAs, and Indian corporations to meet the unique and specialized educational needs of eligible Indian students in public schools, private nonsectarian schools, and previously private schools controlled by a tribe or tribal organization. Eligible Indian students, according to BIE regulations,

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<sup>95</sup> *FY2024 Budget*, pp. BIE-OIEP-19.

<sup>96</sup> 25 U.S.C. §2008.

<sup>97</sup> 25 U.S.C. §2020. P.L. 95-561, as added by P.L. 107-110.

<sup>98</sup> 25 U.S.C. §§5342, 5348.

are members of federally recognized tribes or students who have at least one-fourth degree blood from a member of a federally recognized tribe.<sup>99</sup>

Most JOM funds are distributed through tribal contractors—88% as of FY2012.<sup>100</sup> Prospective contractors must have education plans that have been approved by an Indian education committee made up of a majority of Indians or the parents of Indian students. Funds are to be used for supplemental programs, such as tutoring, other academic support, books, supplies, Native language classes, cultural activities, summer education programs, after-school activities, or a variety of other education-related needs. JOM funds may be used for general school operations only when a public school district cannot meet state educational standards or requirements without them, and enrollment in the district is at least 50% eligible Indian students.<sup>101</sup> This is not a forward-funded program.

### **Facilities Operations**

This program funds the operation of educational facilities at all BIE-funded schools, including the two BIE postsecondary schools, and dorms. Operating expenses may include utilities, supplies, equipment, custodians, trash removal, maintenance of school grounds, minor repairs, and other services, as well as monitoring for fires and intrusions. This is not a forward-funded program. These funds are available at the beginning of the fiscal year for a period of 24 months.

### **Facilities Maintenance**

This program funds preventive, routine cyclical, and unscheduled maintenance for all school buildings, equipment, utility systems, and ground structures, including those at the two BIE postsecondary schools. Like facilities operations funds, the funds are available at the beginning of the fiscal year for a period of 24 months. Appropriations for facilities maintenance were transferred from the BIA Construction account to the BIE account in FY2012.

### **National Parks and Public Land Legacy Restoration Fund**

The Great American Outdoors Act (P.L. 116-152) established the National Parks and Public Land Legacy Restoration Fund (LRF) with mandatory appropriations to address deferred maintenance for five agencies—Bureau of Land Management (BLM), Forest Service (FS), U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), and BIE. From FY2021-FY2025, LRF receives annual deposits from federal energy development revenues, up to a cap of \$1.9 billion annually. Deposits to the fund are available as mandatory spending to address “priority deferred maintenance projects.” The BIE receives 5% of annual deposits.

### **School Facilities Repair and Construction and Faculty Housing**

Funds for repair, improvement, and construction activities for BIE schools, school facilities, and employee housing are administered by Indian Affairs. Funds are distributed through the following programs:

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<sup>99</sup> 25 C.F.R. §273.112. In 1990, the United States District Court for the District of Nevada stated that a prior rule requiring both at least one-fourth degree Indian blood descendance and tribal membership was too restrictive.

<sup>100</sup> *FY2013 Budget*, p. IA-BIE-31; and U.S. Government Accountability Office, *Bureau of Indian Education: Actions Needed to Improve Management of a Supplemental Education Program*, GAO-20-308, April 2020, p. 6.

<sup>101</sup> 25 C.F.R. Part 273.126.

- The Replacement School Construction program replaces entire school campuses based on a priority list of schools in need of construction.
- The Replacement Facility Construction program replaces single academic related buildings.
- The Facilities Improvement and Repair program funds major and minor facilities improvement, facility condition assessments, targeted projects, and compliance projects.
- The Employee Housing Repair program funds major repairs of employee housing located near some BIE schools.
- The Replacement/New Employee Housing program funds new or replacement teacher housing at remote locations where alternative housing is limited or current facilities are in critical need of replacement.

Construction and repair may be implemented either by Indian Affairs or by tribes under the ISDEAA or the TCSA. In order to prioritize projects and guide expenditures, the BIA maintains a comprehensive condition assessment within its Facilities Management System.

### **ISDEAA Section 105(l) Facilities Leasing**

ISDEAA Section 105(l) requires DOI to lease facilities from tribes and tribal organizations upon their request if such facilities are used by the tribe or tribal organization in support of their ISDEAA contract or compact or TCSA grant.<sup>102</sup> Indian Affairs administers the lease program.<sup>103</sup> The lease covers facility operating costs such as rent, depreciation, reserve funds principal and interest, and operation and maintenance expenses, repairs, and alterations. In FY2019, the BIE began its first leasing agreement for school facilities with the Gila River Indian Community for the Gila Crossing Community School. The BIE has since entered into another leasing agreement with the Gila River Indian Community for the Casa Blanca Community School. In FY2019 and FY2020, ISDEAA Section 105(l) education facilities lease costs were funded through facilities operations.<sup>104</sup>

### **BIE and BIA Elementary and Secondary Education Appropriations**

As illustrated in **Figure 2**, total BIA and BIE spending on elementary-secondary education and construction has increased 95% over the 10-year period of FY2014-FY2023, from \$712 million to \$1.386 billion. Appropriations for ISEP formula funds have risen 25% over the same period, from \$384 million in FY2014 to \$482 million in FY2023. Appropriations over the same period for education construction and facilities, excluding ISDEAA Section 105(l) education facilities lease costs, have risen 527%, from \$55 million in FY2014 to \$396 million in FY2023. For background on the increase in education construction funding, see the “BIE School Construction and Repair” section.

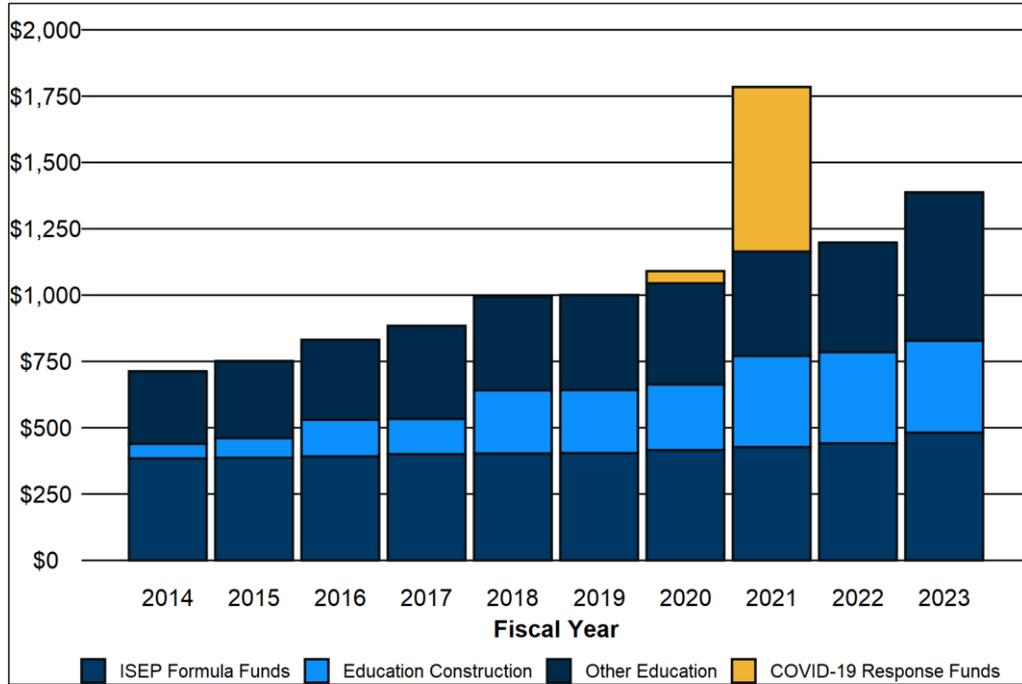
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<sup>102</sup> 25 C.F.R. §900.69-900.74.

<sup>103</sup> In FY2019 and FY2020, the lease costs were supported through the BIE Facilities Operations budget line item.

<sup>104</sup> *FY2021 Budget*, p. BIE-OIEP-16.

**Figure 2. Appropriations for BIE Operations and Facilities, FY2014-FY2023**  
(dollars in millions)



**Source:** Figure prepared by CRS based on U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Years 2015-2019*; and U.S. Department of the Interior, Bureau of Indian Education, *Budget Justifications and Performance Information, Fiscal Years 2020-2024*.

**Notes:** Education Construction includes a small amount of funds for BIE postsecondary institutions.

BIE appropriations for elementary and secondary education are divided between program funds, expended through the BIE, and construction and related spending carried out through the BIA.

**Table 5** shows detailed appropriations for BIE programs and BIA education construction for FY2014-FY2023.

**Table 5. Appropriations for BIE Elementary-Secondary Education Programs and BIA Education Construction:  
FY2014-FY2023**

(current dollars in thousands)

	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
<b>BIE Elementary-Secondary Education</b>	<b>636,720</b>	<b>656,092</b>	<b>667,721</b>	<b>715,695</b>	<b>720,805</b>	<b>726,552</b>	<b>753,531</b>	<b>771,378</b>	<b>793,227</b>	<b>882,742</b>
Elementary/Secondary (forward-funded)	518,318	536,897	533,458	575,155	579,242	582,580	596,893	617,901	638,865	706,185
ISEP Formula Funds	384,404	386,565	391,837	400,223	402,906	404,165	415,351	426,838	440,784	481,636
ISEP Program Adjustments	5,324	5,353	5,401	5,412	5,457	5,479	5,489	5,585	5,844	6,539
Tribal Education Departments (TEDs)	—	2,000	2,000	2,500	2,500	2,500	2,500	5,000	5,003	5,889
Student Transportation	52,796	52,945	53,142	55,995	56,285	56,413	56,991	58,143	59,616	70,007
Early Childhood Development	15,451	15,520	15,620	18,659	18,810	18,810	18,852	21,000	21,655	25,267
Tribal Grant Support Costs <sup>a</sup>	48,253	62,395	73,276	80,165	81,036	82,935	83,407	86,884	89,450	95,822
Education Program Enhancements	12,090	12,119	12,182	12,201	12,248	12,278	14,303	14,451	16,513	21,025
Elementary/Secondary Programs	118,402	119,195	134,263	140,540	141,563	143,972	156,638	153,477	154,362	176,557
Facilities Operations <sup>b</sup>	55,668	55,865	63,098	66,219	66,608	68,795	74,897	69,785	70,189	80,888
Facilities Maintenance <sup>b</sup>	48,396	48,591	55,887	59,043	59,552	59,774	60,906	61,999	62,421	73,544
Juvenile Detention Education	—	—	500	500	500	500	500	553	554	555
Johnson-O'Malley Program	14,338	14,739	14,778	14,778	14,903	14,903	20,335	21,140	21,198	21,570
<b>Education Management<sup>c</sup></b>	<b>20,354</b>	<b>20,464</b>	<b>25,151</b>	<b>35,050</b>	<b>35,254</b>	<b>35,355</b>	<b>42,607</b>	<b>48,300</b>	<b>59,888</b>	<b>67,192</b>
<b>BIA Education Construction<sup>b,d</sup></b>	<b>55,285</b>	<b>74,501</b>	<b>138,245</b>	<b>133,257</b>	<b>238,245</b>	<b>238,250</b>	<b>248,257</b>	<b>344,277</b>	<b>344,330</b>	<b>346,887</b>
Replacement School Construction	954	20,165	45,504	45,504	105,504	105,504	115,504	115,504	115,504	116,504

	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Replacement Facility Construction	—	—	11,935	11,935	23,935	23,935	23,935	23,935	23,935	23,935
Replacement/New Employee Housing	—	—	—	—	—	—	—	1,000	1,000	1,500
Employee Housing Repair	11,935	3,823	7,565	7,567	13,574	13,576	13,578	13,581	13,589	13,595
Education Facilities Improvement and Repair	50,513	50,513	73,241	68,251	95,232	95,235	95,240	95,257	95,302	96,353
Legacy Restoration Fund	—	—	—	—	—	—	—	95,000	95,000	95,000
<b>Funds Appropriated in Response to the COVID-19 Pandemic<sup>e</sup></b>	—	—	—	—	—	—	<b>46,089</b>	<b>620,500</b>	—	—
<b>Disaster Relief<sup>f</sup></b>	—	—	—	—	—	—	—	—	—	<b>90,465</b>
<b>Total: BIE Elementary-Secondary Education and Education Construction</b>	<b>712,359</b>	<b>751,057</b>	<b>831,117</b>	<b>884,002</b>	<b>994,304</b>	<b>1,000,157</b>	<b>1,090,484</b>	<b>1,784,455</b>	<b>1,197,445</b>	<b>1,387,286</b>

**Source:** U.S. Department of the Interior, Bureau of Indian Affairs, *Budget Justifications and Performance Information, Fiscal Years 2015-2019*; and U.S. Department of the Interior, Bureau of Indian Education, *Budget Justifications and Performance Information, Fiscal Years 2020-2024*.

**Notes:**

Abbreviations: BIA—Bureau of Indian Affairs, BIE—Bureau of Indian Education, ISEP—Indian School Equalization Program

- a. Tribal grant support costs were previously entitled Administrative Cost Grants.
- b. Appropriation includes funds for BIE postsecondary education institutions.
- c. A portion of Education Management supports the BIE postsecondary schools and postsecondary programs.
- d. BIA Education Construction excludes Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) Section 105(l) Facilities Leasing expenses for BIE schools.
- e. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) appropriated \$69 million to the BIE for Indian education programs to prevent, prepare for, and respond to COVID-19. The BIE allocated \$46.1 million to elementary and secondary schools (Bureau of Indian Education, BIE Listening Session presentation, July 2, 2020). The American Rescue Plan Act of 2021 (P.L. 117-2) appropriated \$850 million to the BIE for programs and activities funded by the BIE. The BIE allocated \$620.5 million for elementary and secondary education (U.S. Department of the Interior, Indian Affairs, BIE Implementation of American Rescue Plan (ARP) Funding, <https://www.bia.gov/service/american-rescue-plan-act/bie-implementation-arp-funding>).
- f. The Disaster Relief Supplemental Appropriations Act, 2023 (Division N of P.L. 117-328) provided \$90,465,000, to remain available until expended, for necessary expenses related to the consequences of flooding at the To'Hajiilee Community School.

## **U.S. Department of Education Indian Elementary and Secondary Education Programs**

ED provides funding specifically for the elementary and secondary education of Indian children to both public and BIE schools. ED's assistance specifically for Indian education is not to be confused with its general assistance for elementary and secondary education nationwide. Indian students benefit from ED's *general* assistance as they attend public schools. This section covers ED Indian assistance—that is, assistance statutorily specified for Indians or allotted according to the number of students who reside on Indian lands, many of whom are Indian—not general ED assistance that may also benefit Indian students.

ED Indian education funding to public and BIE schools flows through a number of programs, most authorized under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA; P.L. 114-95),<sup>105</sup> or the Individuals with Disabilities Education Act, although other acts also authorize Indian education assistance. Major ED Indian programs are profiled below. Some general ED programs have set-asides for BIE schools, while other programs either may be intended solely for Indian students, may specifically include Indian and non-Indian students, or may mention Indian students as a target of the assistance. In most instances, BIE schools are included in the definition of local educational agency (LEA) in the ESEA<sup>106</sup> and IDEA,<sup>107</sup> so many ED programs may provide funding to BIE schools even when the programs have no BIE set-aside or other specific provision for BIE schools, but these programs are not discussed here. Tribes, tribal organizations, the BIE, and BIE schools are also specifically eligible to apply for certain programs, which are not described here.

### **ESEA Title I-A Grants to Local Educational Agencies**

Title I, Part A, of the ESEA authorizes formula grants to LEAs for the education of disadvantaged children. ESEA Title I-A grants provide supplementary educational and related services to low-achieving and other students attending pre-kindergarten through grade 12 schools with relatively high concentrations of students from low-income families. ESEA reserves 0.4% for the outlying areas and 0.7% for DOI unless the set-asides result in the states receiving less than their aggregate FY2016 amount, in which case the provisions under ESEA prior to the enactment of ESSA are in effect.<sup>108</sup> DOI funds are for BIE schools and for out-of-state Indian students being educated in public schools under BIE contracts (e.g., students in peripheral dorms).

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<sup>105</sup> For more information about ESEA programs, see CRS Report R45977, *The Elementary and Secondary Education Act (ESEA), as Amended by the Every Student Succeeds Act (ESSA): A Primer*.

<sup>106</sup> ESEA, §8101(30)(C).

<sup>107</sup> IDEA, §602(19)(C).

<sup>108</sup> ESEA Title I-A, as in effect prior to the enactment of the ESSA, provided a set-aside of 1% of Title I-A appropriations for DOI and the outlying areas. The portion of the 1% provided to DOI was the amount determined by the Secretary of Education to be needed to meet the special educational needs of the Indian students. Prior to FY2017, the DOI share had been approximately 70% of the total set-aside, as calculated by CRS from “Fiscal Year 2001-2016 State Tables for the U.S. Department of Education: State Tables by Program,” U.S. Department of Education, Budget Service, <http://www.ed.gov/about/overview/budget/statetables/index.html>.

### **ESEA Title I-B State Assessment Grants**

The ESEA authorizes formula grants to states to support the development and implementation of state assessments and standards as required under ESEA Title I-A. ESEA Title I-B, as amended by ESSA, provides a set-aside of 0.5% for BIE.

### **ESEA Title II-A Supporting Effective Instruction**

The ESEA authorizes formula grants to states that may be used for a variety of purposes related to the recruitment, retention, and professional development of K-12 teachers and school leaders. The ESEA Title II-A program, as amended by ESSA, provides a 0.5% set-aside of appropriations for programs in BIE schools.

### **ESEA Title III-A English Language Acquisition**

Title III, Part A of the ESEA authorizes formula grants to states to provide programs for and services to English learners (ELs), also known as limited English proficient (LEP) students, and immigrant students. The program is designed to help ensure that ELs and immigrant students attain English proficiency, develop high levels of academic achievement in English, and meet the same state academic standards that all students are expected to meet. The program provides a set-aside equal to the greater of 0.5% of appropriations or \$5 million for the Native American and Alaska Native Children in School program. The set-aside is available to eligible Indian tribes, tribally sanctioned educational authorities, Native Hawaiian or Native American Pacific Islander Native language educational organizations, BIE elementary and secondary schools, and consortia of BIE elementary and secondary schools.

### **ESEA Title IV-B 21<sup>st</sup> Century Community Learning Centers**

Title IV, Part B, of the ESEA authorizes formula grants to states for activities that provide learning opportunities for school-aged children during non-school hours. States award competitive subgrants to LEAs and community organizations for before- and after-school activities that will advance student academic achievement. The program provides a set-aside of no more than 1% of Title IV-B appropriations for the BIE and the outlying areas. The portion of the 1% that goes to the BIE is determined by the Secretary of Education.

### **ESEA Title VI-A Indian Education Programs**

ESEA Title VI-A authorizes several programs for the education of Indian children. The programs serve Indian students, the children and grandchildren of members of federally recognized tribes, members of state recognized tribes and their children and grandchildren, and additional individuals considered to be Indian.<sup>109</sup>

Title VI, Part A, Subpart 1 of the ESEA, as amended by ESSA, authorizes formula grants for supplementary education programs to meet the educational and cultural needs of Indian students. LEAs, Indian tribes, Indian organizations, Indian community-based organizations, consortia of the aforementioned entities, and BIE schools are eligible for grants. For an LEA to be eligible, at least 10 Indian students must be enrolled or at least 25% of its total enrollment must be Indians

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<sup>109</sup> ESEA, §6151(3). Additional individuals considered to be Indian are (1) members of tribes whose federal recognition was terminated after 1940, and their first and second degree descendants; (2) members of an organized Indian group that received a grant under the program as it was in effect before the passage of the Improving America's Schools Act of 1994 (P.L. 103-382); and (3) individuals considered to be Indian by the Secretary of the Interior, for any purpose.

(exempted from these requirements are LEAs in Alaska, California, and Oklahoma and LEAs located on or near an Indian reservation). An LEA's application must be approved by a local committee of family members of Indian students and other stakeholders.

The Indian Education programs also authorize special competitive grant programs. One provides demonstration grants to develop innovative services and programs to improve Indian students' educational opportunities and achievement. Another competitive program provides for professional development grants to colleges, or tribes or LEAs in consortium with colleges, to train Indian individuals as teachers or other professionals.

In addition, the Indian Education programs authorize national programs. For example, grants to tribes for education administrative planning and development are authorized. Funds are also authorized for the National Advisory Council on Indian Education (NACIE), which advises the Secretary of Education and Congress on ED programs that benefit Indian children.

### **ESEA Title VI-C Alaska Native Education Equity**

Title VI, Part C, of the ESEA authorizes competitive grants to Alaska Native organizations, educational entities with Native experience, and cultural and community organizations for supplemental education programs that address the educational needs of Alaska Native students, parents, and teachers. Grants may be used for development of curricula and educational materials, student enrichment in science and math, professional development, family literacy, home preschool instruction, cultural exchange, dropout prevention, and other programs.

### **ESEA Title VII Impact Aid**

Title VII of the ESEA, as amended by ESSA, authorizes Impact Aid Basic Support Payments. Impact Aid provides financial assistance to school districts whose tax revenues are significantly reduced, or whose student enrollments are significantly increased, because of the impacts of federal property ownership or federal activities. Among such impacts are having a significant number of children enrolled who reside on *Indian lands*,<sup>110</sup> which are defined as Indian trust and restricted lands,<sup>111</sup> lands conveyed to Alaska Native entities under the Alaska Native Claims Settlement Act of 1971,<sup>112</sup> public lands designated for Indian use, and certain lands used for low-rent housing. However, the students residing on Indian lands need not be Indian. Impact Aid funds are distributed by formula directly to LEAs and are used for basic operating costs, special education, and facilities construction and maintenance.

There is no requirement that the funds be used specifically or preferentially for the education of Indian students. There is, however, a requirement that Indian children participate on an equal basis with non-Indian children in all of the educational programs and activities provided by the LEA, including but not limited to those funded by Impact Aid. There is also a requirement that the LEA consult with the parents and tribes of children who reside on "Indian lands" concerning their education and to ensure that these children receive equal educational opportunities. A few BIE schools receive Impact Aid funding. ED indicates that about 105,000 students residing on Indian lands were used to determine formula allocations under Impact Aid for FY2022.<sup>113</sup> The

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<sup>110</sup> ESEA, §7013(7).

<sup>111</sup> Trust lands and restricted lands are not taxable by states or local governments, including LEAs. Trust lands are lands held by the federal government in trust for an Indian tribe or individual; restricted lands are lands held by an Indian tribe or individual subject to federal restrictions on alienation.

<sup>112</sup> P.L. 92-203, Act of December 18, 1971, 85 Stat. 688; 43 U.S.C. §1601 *et seq.*

<sup>113</sup> U.S. Department of Education, Fiscal Year 2024 Budget Request, *Impact Aid*, p. 13.

amount of Impact Aid funding going to LEAs based on the number of children residing on Indian lands makes it the largest ED Indian education program.

### **IDEA Part B Special Education Grants to States**

Part B of the IDEA authorizes formula grants to states to help them provide a free appropriate public education to children with disabilities.<sup>114</sup> States make subgrants to LEAs. Funds may be used for salaries of teachers or other special education personnel, education materials, transportation, special education services, and occupational therapy or other related services. Section 611(b)(2) of the IDEA reserves 1.226% of state-grant appropriations for DOI. Each appropriations act since the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006 (P.L. 109-149) has limited the DOI set-aside to the prior-year set-aside amount increased for inflation.<sup>115</sup> As a consequence, in FY2022 the DOI set-aside was 0.75%.<sup>116</sup> Section 611(h) of the IDEA directs the Secretary of the Interior to allocate 80% of the set-aside funds to BIE schools for special education for children aged 5-21 and 20% to tribes and tribal organizations on reservations with BIE schools for early identification of children with disabilities aged 3-5, parent training, and provision of direct services.

### **IDEA Part C Early Intervention for Infants and Toddlers with Disabilities**

Part C of the IDEA authorizes a grant program to aid each state in implementing a system of early intervention services for infants and toddlers with disabilities and their families.<sup>117</sup> Section 643(b) of the IDEA reserves 1.25% of state-grant appropriations for DOI to distribute to tribes and tribal organizations for the coordination of assistance in the provision of early intervention services by the states to infants and toddlers with disabilities and their families on reservations served by BIE schools.

### **MVHAA Education for Homeless Children and Youths**

Title VII, Part B, of the McKinney-Vento Homeless Assistance Act (MVHAA; 42 U.S.C. §§11431-11435) authorizes the Education for Homeless Children and Youths (EHCY) program. The program provides assistance to state educational agencies (SEAs) to ensure that all homeless children and youths have equal access to the same free appropriate public education, including public preschool education that is provided to other children and youths. The program provides a 1.0% set-aside of the appropriation to DOI for services provided by BIE to homeless children and youths.

### **Perkins Native American Career and Technical Education Program (NACTEP)**

Title I of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV; P.L. 109-270), as amended by the Strengthening Career and Technical Education for the 21<sup>st</sup> Century Act (Perkins V; P.L. 115-224), authorizes formula grants to states to support the development of

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<sup>114</sup> For more information on IDEA Part B, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*.

<sup>115</sup> The inflation index has been either as specified in Section 619(d)(2)(B) of the IDEA or the percent change in the IDEA appropriations from the prior year.

<sup>116</sup> U.S. Department of Education, Fiscal Year 2021 Budget Request, *Special Education*, p. 28.

<sup>117</sup> For more information on IDEA Part C, see CRS Report R43631, *The Individuals with Disabilities Education Act (IDEA), Part C: Early Intervention for Infants and Toddlers with Disabilities*.

career and technical skills among students in secondary and postsecondary education.<sup>118</sup> The program provides a 1.25% set-aside for the Native American Career and Technical Education Program (NACTEP). Eligible entities for NACTEP funds include federally organized Indian tribes, tribal organizations, Alaska Native entities, and consortia of such, as well as BIE schools.<sup>119</sup>

## **ED Elementary and Secondary Indian Education Funding**

ED Indian education funding primarily supports public schools. Less than a quarter of ED Indian education funds are set aside for BIE schools (see **Figure 3**); however, this constitutes a significant source of BIE school funding.

The overall ED Indian education program funding during the FY2014-FY2023 period increased from FY2014 (\$1.050 billion) to FY2023 (\$1.452 billion) (see **Table 6**). Funds appropriated in response to the COVID-19 pandemic provided an additional \$0.123 billion in FY2020 and \$0.354 billion in FY2021.

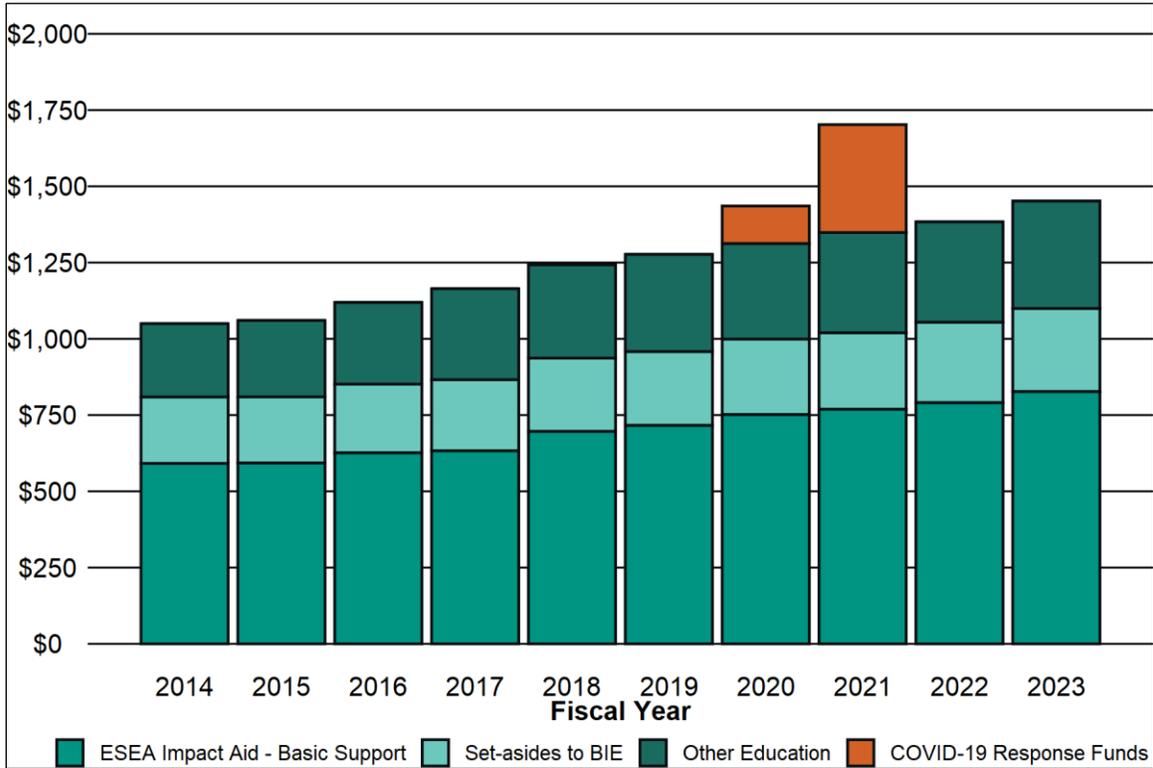
Impact Aid is the largest single ED elementary and secondary Indian education program, as **Figure 3** illustrates. The second-largest funding stream comprises the various BIE set-asides from several ESEA formula grant programs, especially IDEA Part B and ESEA Title I-A. The ESEA Indian Education programs provide approximately 13% of the total funding.

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<sup>118</sup> For more information on Perkins V, see CRS Report R47071, *Strengthening Career and Technical Education for the 21st Century Act (Perkins V): A Primer*.

<sup>119</sup> BIE schools may not carry out secondary-level CTE programs with NACTEP funds, because they are eligible to receive money through the states.

**Figure 3. Distribution of ED Funding for Indian Education Programs: FY2014-FY2023**  
(dollars in millions)



**Source:** Figure prepared by CRS based on U.S. Department of Education, Budget Service, unpublished tables, transmitted on various dates, 2015-2023; and U.S. Department of Education, FY2024 Budget Justification, pp. C-14.

**Table 6. Estimated Funding for Department of Education’s Indian Elementary-Secondary Education Programs:  
FY2014-FY2023**

(current dollars in thousands)

<b>Education Department (ED) Programs</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
<b>Total ED Indian Elementary- Secondary Education Programs</b>	1,049,657	1,060,280	1,119,481	1,164,397	1,243,064	1,276,957	1,435,424	1,471,414	1,383,579	1,451,980
<b>Subtotal of ED Funds Set- Aside for the BIE</b>	217,872	216,883	225,198	233,190	240,458	242,337	247,873	250,851	264,007	272,625
<i>Percentage of Total</i>	21%	20%	20%	20%	19%	19%	17%	17%	19%	19%
ESEA Title I-A Grants to Local Educational Agencies	92,597	93,711	99,640	108,184	110,284	110,984	114,134	115,723	122,723	128,673
IDEA Part B Special Education Grants to States	93,805	94,009	94,170	94,881	96,818	97,500	99,028	100,006	100,006	106,376
ESEA Title II-A Improving Teacher Quality State Grants	11,690	11,690	11,690	10,228	10,228	10,228	10,606	10,662	10,796	10,895
ESEA Title IV-B 21st Century Community Learning Centers	8,055	7,892	8,244	8,231	7,756	7,819	7,998	8,061	8,572	8,506

<b>Education Department (ED) Programs</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
ESEA Title IV-A School Support and Academic Enrichment State Grants	—	—	—	2,000	5,473	5,821	6,020	6,070	11,351	6,866
IDEA Part C Grants for Infants and Families with Disabilities	5,414	5,414	5,661	5,661	5,802	5,802	5,802	5,990	6,127	6,667
ESEA State Assessment Grants	1,845	—	1,845	1,846	1,846	1,846	1,846	1,846	1,846	1,846
MVHAA Title VII- B Homeless Children and Youth	650	650	700	770	850	935	1,015	1,065	1,140	1,290
ESEA Title II-B-2, Sec. 2222 Comprehensive Literacy Development Grants	—	—	—	950	950	950	960	960	960	970
ESEA Title VI-B Rural Education	425	425	440	440	452	452	465	470	488	538
ESEA Title I, Section 1003 School Improvement Grants	3,091	3,091	2,808	—	—	—	—	—	—	—
ESEA Title IV-A Safe and Drug- Free Schools	300	—	—	—	—	—	—	—	—	—

<b>Education Department (ED) Programs</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
<b>Subtotal of Other ED Funds for Indian Education</b>	831,785	843,396	894,282	931,208	1,002,606	1,034,620	1,064,551	1,097,563	1,119,572	1,179,355
<i>Percentage of Total</i>	79%	80%	80%	80%	81%	81%	74%	75%	81%	81%
ESEA Impact Aid—Basic Support	591,392	592,642	626,138	632,779	696,285	715,909	751,344	769,049	790,482	826,874
ESEA Indian Education—LEA Grants	100,381	100,381	100,381	100,381	105,381	105,381	105,381	105,381	109,881	110,381
ESEA Indian Education— Special Programs	17,993	17,993	37,993	57,993	67,993	67,993	67,993	67,993	70,000	72,000
Voc. Rehab. For Als with Disabilities	37,201	39,160	43,000	43,000	40,189	43,000	45,250	50,650	50,650	50,650
ESEA Alaska Native Education Equity	31,453	31,453	32,453	32,453	35,453	35,453	35,953	36,453	37,953	44,953
ESEA Impact Aid—Disabilities	19,827	19,827	20,688	21,360	21,830	21,830	21,530	21,081	20,853	20,853
ESEA Impact Aid— Construction “Discretionary”	—	17,406	—	17,406	—	17,406	—	17,406	—	18,406
Perkins Native American Career and Technical	13,970	13,970	13,970	13,970	14,907	15,782	16,032	16,685	16,686	17,873

<b>Education Department (ED) Programs</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
Education Program										
ESEA Indian Education—National Programs	5,565	5,565	5,656	6,565	6,865	6,865	7,365	7,865	9,365	12,365
ESEA Title III-A English Language Acquisition	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
ESEA Impact Aid—Construction “Formula”	8,703	—	8,703	—	8,703	—	8,703	—	8,703	—
Special Ed. Parent Info. Centers	300	—	300	300	—	—	—	—	—	—
<b>Subtotal of Funds Appropriated in Response to the COVID-19 Pandemic</b>	—	—	—	—	—	—	123,000	353,685	—	—
<i>Percentage of Total</i>	0%	0%	0%	0%	0%	0%	9%	24%	0%	0%
Education Stabilization Fund <sup>a</sup>	—	—	—	—	—	—	123,000	245,640	—	—
ESEA Alaska Native Education Equity <sup>b</sup>	—	—	—	—	—	—	—	85,000	—	—
ESEA Indian Education – Special Programs <sup>c</sup>	—	—	—	—	—	—	—	20,000	—	—

Education Department (ED) Programs	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
IDEA Part C <sup>d</sup>	—	—	—	—	—	—	—	3,045	—	—

**Source:** U.S. Department of Education, Budget Service, unpublished tables, transmitted on various dates, 2015-2023; U.S. Department of Education, FY2024 Budget Justification, pp. C-14; [https://www.bie.edu/sites/default/files/documents/BIE%20FY%202024\\_0.pdf](https://www.bie.edu/sites/default/files/documents/BIE%20FY%202024_0.pdf) (accessed on June 4, 2020); Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136); Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA; Division M of the Consolidated Appropriations Act, 2021 [P.L. 116-260]); and American Rescue Plan Act of 2021 (ARPA; P.L. 117-2).

**Notes:** Columns may not sum to totals due to rounding. Abbreviations: ED—U.S. Department of Education. ESEA—Elementary and Secondary Education Act. IDEA—Individuals with Disabilities Education Act. LEA—Local educational agency (school district). MVHAA—McKinney-Vento Homeless Assistance Act. Perkins—Carl D. Perkins Career and Technical Education Act of 2006.

- a. The CARES Act established the Education Stabilization Fund (ESF) "to prevent, prepare for, and respond to coronavirus, domestically or internationally," and the CRRSAA reauthorized the ESF. Under the CARES Act, ED was required to reserve 0.5% of the total appropriation of \$30.75 billion for the BIE. The BIE allotment was disbursed as follows: 70% to BIE elementary and secondary schools, 20% to tribal colleges and universities (TCUs), and 10% for emergency needs determined by the BIE (U.S. Department of Education and U.S. Department of the Interior, Agreement Between the U.S. Department of Education (DOE) and the U.S. Department of the Interior (DOI) – Bureau of Indian Education (BIE), June 11-12, 2020). Under the CRRSAA, ED also was required to reserve 0.5% of the total ESF appropriation of \$81.88 billion for the BIE. The statutory language further specified that 60% of the funds be allocated for BIE-funded elementary and secondary schools and the remaining 40% of funds be distributed to TCUs. For more information regarding ESF, see CRS Report R47027, *Education Stabilization Fund Programs Funded by the CARES Act, CRRSAA, and ARPA: Background and Analysis*.
- b. Section 11006(3) of the ARPA provided \$85.0 million for awards to entities eligible to receive grants under the ESEA Alaska Native Education program for activities authorized under the ESEA Alaska Native Education program.
- c. Section 11006(1) of the ARPA provided \$20.0 million for awards to tribal education agencies for activities authorized under the ESEA Title VI-A-2 Indian Education program that provides demonstration grants to develop innovative services and programs to improve Indian students' educational opportunities and achievement.
- d. Section 2014 of the ARPA provided \$3.0 billion for awards under the IDEA. Of the funds, DOI received \$3,045,220 for IDEA Part C (U.S. Department of Education, IDEA American Rescue Plan Funds, <https://www2.ed.gov/policy/speced/leg/arp/index.html>).

## Issues in Indian Education

Some of the issues of concern with regard to Indian education pertain to the comparatively poor academic outcomes of Indian students, the effect of the Elementary and Secondary Education Act on Bureau of Indian Education schools, the poor condition of BIE school facilities, and the allocation of Johnson O'Malley funds. The federal government has been actively engaged in addressing these issues in a holistic manner in hopes of ultimately increasing the academic achievement of Indian students.

In 2021, President Biden signed Executive Order 14049, *White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities*. Among its purposes, the order is intended to foster a federal response that tackles the legacy of federally supported Indian boarding schools, promotes Native languages, addresses the educational inequities evidenced by the COVID-19 pandemic, and improves the educational outcomes of Indian children. The order tasks each federal agency represented on the White House Council on Native American Affairs with developing a plan to advance the order's purpose and monitoring its progress.

In recent years, Congress has also supported efforts to address these issues. Beginning in 2012, Congress appropriated funds specifically to promote tribal self-determination with respect to public schools. Several ESEA provisions adopted through ESSA are designed to increase Indian and tribal influence in public schools. In recent years, authorizing and appropriating committees have held hearings on the condition of BIE school facilities, the effect of the COVID-19 pandemic on BIE schools, ways to promote Native languages, strategies to improve educational outcomes of Indian students, and Indian boarding schools. In addition, Congress has enacted legislation to address several of the issues.

### Poor Academic Achievement and Outcomes

There are significant gaps in educational outcomes for Indian students in BIE schools and American Indian/Alaska Native (AI/AN) students in public schools compared to other students. For more information on educational outcomes, see the earlier section entitled "Status of Indian and American Indian/Alaska Native Elementary and Secondary Education." As specified in the ESEA, "it is the policy of the United States to fulfill the federal government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children."<sup>120</sup> Title 25 of the U.S. Code also refers to "the federal responsibility for and assistance to education of Indian children."<sup>121</sup>

### Native Language Instruction and Revitalization

Many federal policies during the civilization and assimilation era and before the current era of self-determination contributed to Native language loss.<sup>122</sup> In recent decades, there have been consistent calls to increase the use of Native language instruction to increase cultural relevance and improve overall academic performance. One argument contends that language, culture, and

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<sup>120</sup> ESEA, §6101.

<sup>121</sup> 25 U.S.C. §5301(b)(2).

<sup>122</sup> Kauffman and Associates, Inc., *Bureau of Indian Affairs Native Language Revitalization*, White House Council for Native American Affairs, Department of Interior Bureau of Indian Affairs, White House Initiative for Native Americans Tribal Colleges and Universities, Health and Human Services Administration for Children and Families, Literature Review Draft, August 2023.

identity are intertwined and thus are important to the tribal identity. A counter argument is that Native language instruction detracts from the core curriculum. The Native American Languages Act (P.L. 101-477), as amended, established federal policy to encourage and support Native languages through instruction, exceptions to teacher certification requirements, and comparability with foreign languages. Several administrations have issued executive orders intended to assess the role of Native language and culture on educational strategies and academic achievement and/or expand opportunities for AI/AN students to learn their Native language.<sup>123</sup> Congress has expanded program authorities and appropriated funds to permit Native language instruction, preservation, and revitalization.

There is not consensus in the research literature regarding the relative effectiveness of Native language instruction. One commonly cited review of research studies with control groups, for instance, suggests that bilingual instruction in some instances was found to improve English reading proficiency in comparison to English immersion, but in other instances it had no impact. This review focused principally on studies conducted prior to 1996 and that examined instruction for Spanish-speaking elementary school children, and many of the studies have limitations. The one study of Indian Native language students included in the review found no significant difference in English reading outcomes between bilingual and English-immersion instruction.<sup>124</sup> Some longitudinal studies prior to 2007 indicated that Native language immersion students achieved higher scores on assessments of English and math than Native students who did not receive Native language immersion.<sup>125</sup> However, a more recent review of the literature suggests that rigorous Native language and culture programs sustain non-English academic achievement, build English proficiency, and enhance student motivation.<sup>126</sup>

**Table 7** lists federal programs that support Native language instruction in the context of formal elementary and secondary education. For most programs, Native language instruction or the development of Native language instructors is one of many allowable activities. Several of the programs are competitively awarded, which may disadvantage tribes with fewer resources to develop applications. The programs that primarily support Native language instruction received approximately \$45 million of funding in FY2023.<sup>127</sup>

**Table 7. Selected Federal Programs that Support Native Language Instruction**

Federal Agency	Program	Authority
Programs that Primarily Support Native Language Instruction		
Department of Education	Native American Language (NAL@ED) Program	ESEA, Title VI-A-3

<sup>123</sup> See, for example, Executive Order 13336, “American Indian and Alaska Native Education,” 69 *Federal Register* 25296, May 4, 2004; and Executive Order 14049, “White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities,” 86 *Federal Register* 57317, October 4, 2021.

<sup>124</sup> Robert E. Slavin and Alan Cheung, “A Synthesis of Research on Language of Reading Instruction for English Language Learners,” *Review of Educational Research*, vol. 75, no. 2 (Summer 2005), pp. 247-284.

<sup>125</sup> Mary Eunice Romero-Little, Teresa L. McCarty, and Larisa Warhol, et al., “Language Policies in Practice: Preliminary Findings from a Large-Scale National Study of Native American Language Shift,” *TESOL Quarterly*, vol. 41, no. 3 (September 2007), pp. 607-618.

<sup>126</sup> Teresa L. McCarty, and Alica Wiley Snell, *The Role of Native Languages and Cultures in American Indian, Alaska Native, and Native Hawaiian Student Achievement*, Arizona State University, under a contract from the U.S. Department of Education, July 2011.

<sup>127</sup> U.S. Department of Education FY2024 Budget Justification, Indian Education; American Rescue Plan Act of 2021 (P.L. 117-2); U.S. Department of Health and Human Services FY2024 Budget Justification, Administration for Children and Families; and Explanatory Statement to Consolidated Appropriations Act, 2023 (P.L. 117-328).

Federal Agency	Program	Authority
Department of Education	Native American Language Resource Centers Program	Native American Language Resource Center Act of 2021 (P.L. 117-335)
Department of Health and Human Services	Emergency Grants for Native American Language Preservation and Maintenance	Esther Martinez Native American Languages Preservation Act of 2006
Department of Health and Human Services	Esther Martinez Immersion	Esther Martinez Native American Languages Preservation Act of 2006
Department of Health and Human Services	Native American Language Preservation and Maintenance Programs	Esther Martinez Native American Languages Preservation Act of 2006
Department of the Interior	Living Languages Grant Program (LLGP)	Snyder Act; FY2020–FY2023 Interior Appropriations Bills
Department of the Interior	BIE Native Language Immersion Grants at BIE schools	FY2020–FY2023 Interior Appropriations Bills
Programs that May be Used to Support Native Language Instruction		
Department of Education	English Language Acquisition	ESEA, Title III-A
Department of Education	Indian Education Formula Grant Program	ESEA, Title VI-A-1
Department of Education	Demonstration Grants for Indian Children	ESEA, Title VI-A-2
Department of Education	Indian Education Professional Development	ESEA, Title VI-A-2
Department of Education	Alaska Native Education Equity Program	ESEA, Title VI-C
Department of the Interior	Indian School Equalization Program (ISEP)	Education Amendments of 1978, §1127
Department of the Interior	Education Program Enhancements	Snyder Act; Education Amendments of 1978, §1127
Department of the Interior	Johnson O'Malley (JOM)	Johnson-O'Malley Act
Department of the Interior	Early Child and Family Development (FACE)	Education Amendments of 1978, §1139

**Source:** CRS compilation of statutory provisions, *Federal Register* Notices, and budget documents.

**Notes:** ESEA—Elementary and Secondary Education Act.

- a. U.S. Department of the Interior, Bureau of Indian Affairs, “Living Languages Grant Program (LLGP); Solicitation of Proposals,” 85 *Federal Register* 31544-31548, May 26, 2020.

Of the various opportunities for Native language learning, some schools offer classes taught in Native languages. Approximately one-quarter of BIE schools were Native language immersion schools in 2019. Also in 2019, 42% of BIE 4<sup>th</sup> graders and 64% of BIE 8<sup>th</sup> graders reported attending classes taught in an AI/AN language at least once per week. This exposure is significantly higher than that of AI/AN students in public schools. Of those in public schools with at least 25% AI/AN enrollment in 2019, 26% of 4<sup>th</sup> graders and 25% of 8<sup>th</sup> graders reported attending classes taught in an AI/AN language at least once per week.<sup>128</sup>

<sup>128</sup> B.D. Rampey, S.C. Faircloth, R.P. Whorton, and J. Deaton, *National Indian Education Study 2019* (NCES 2021-018), U.S. Department of Education (Washington, DC: Institute of Education Sciences, National Center for Education Statistics, 2021).

In 2015, the BIE introduced a Native language policy framework for BIE-operated schools, including college and preschool programs. The policy is intended to require the integration of Native language instruction to the extent that Native language standards exist. Consistent with this set of aims, DOI, ED, and the Department of Health and Human Services (HHS) signed a memorandum of understanding to work together to encourage instruction in and preservation of Native languages.<sup>129</sup> BIE regulations updated in 2020 describe the ability of tribal governing bodies and school boards to create Native language academic standards and assessments.<sup>130</sup> In March 2020, the BIE announced that it intends to provide guidance on the use of content assessments in a Native language for ESEA Title I-A compliance purposes that would increase flexibility in the use of Native languages for instruction in all subjects.<sup>131</sup>

Despite the number of programs that may be used to support Native language learning, the extent to which these programs have resulted in access to Native language instruction and Native language fluency has not been documented.

## **Discipline, Violence, Crime, and Alcohol and Drug Use**

Tribal representatives have indicated that violence and alcohol and drug use are serious community issues that affect students and their ability to learn. A high incidence of substance use, depression, interpersonal violence, and suicide are not conducive to learning.<sup>132</sup> This environment affects Indian students enrolled in BIE and public schools.

ED and the General Accountability Office (GAO) have indicated that AI/AN students enrolled in public schools are overrepresented among out-of-school suspensions and expulsions and other disciplinary actions.<sup>133</sup> Such actions may be related to poverty and mental health issues in addition to potential discrimination. Suspensions and expulsions can have negative educational consequences.

A February 2010 evaluation of violence prevention policies and measures at BIE schools by DOI's Office of Inspector General (OIG) found areas of concern for potential violence and deficiencies in the policies and procedures for preventing and managing incidents.<sup>134</sup> According to the OIG evaluation, in recent years 6% of public high school students carried a weapon on campus, whereas 37% of BIE middle school students reported the same. The OIG evaluation found that many BIE schools had open campuses—little or no fencing, inadequate security access

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<sup>129</sup> Brian Drapeaux, Director, Bureau of Indian Education, Lillian Sparks, Commissioner, Administration for Native Americans, and William Mendoza, Executive Director, White House Initiative on American Indian and Alaska Native Education, *Memorandum of Agreement between the U.S. Department of the Interior, U.S. Department of Health and Human Services, and the U.S. Department of Education On Native Languages*, November 30, 2012.

<sup>130</sup> Department of the Interior, Bureau of Indian Affairs, "Standards, Assessments, and Accountability System," 85 *Federal Register* 17030, March 26, 2020.

<sup>131</sup> *Ibid.*

<sup>132</sup> U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration and the Indian Health Service, *The National Tribal Behavioral Health Agenda*, December 2016.

<sup>133</sup> U.S. Department of Education, Office for Civil Rights, *Protecting Civil Rights, Advancing Equity: Report to the President and Secretary of Education, Under Section 203(b)(1) of the Department of Education Organization Act, FY 13–14*, Washington, DC, 2015; and U.S. Government Accountability Office, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, GAO-18-258, March 2018.

<sup>134</sup> The committee report accompanying the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) directed DOI to provide such grants. For more information, see U.S. Department of the Interior, Office of Inspector General, *Evaluation Report—School Violence Prevention*, Report No. NM-EV-BIE-0003-2008, Washington, DC, February 2010.

procedures, and flawed camera surveillance systems. The OIG recommended that the BIA and BIE

- establish safety policies and accurate incident tracking systems,<sup>135</sup>
- evaluate campus safety and security,
- correct weaknesses or require tribal operators to correct weaknesses,
- address safety as a criterion for tribes to maintain operating grants and contracts, and
- implement staff training to prevent and manage incidents.

Follow-up inspections in 2014 indicated the need for improvement in several areas. Emergency preparedness and security plans failed to cover all applicable topics. Violence prevention training for staff and students also failed to cover all applicable topics. BIE schools need to evaluate and implement necessary safety measures.<sup>136</sup>

The BIE collaborates with HHS to provide behavioral health services and assistance. In 2016, the BIE and Indian Health Service (IHS) entered into an agreement to establish local partnerships for IHS-operated mental health programs to provide mental health counseling to students attending BIE-operated schools. The agreement encourages tribes and tribally controlled BIE schools to also participate in local partnerships.<sup>137</sup> Also in 2016, HHS, DOI, and the U.S. Department of Justice entered into an agreement to coordinate efforts in the prevention, intervention, and/or treatment of alcohol and substance use disorders.<sup>138</sup> As a result, the HHS Substance Abuse and Mental Health Services Administration maintains BIE Tribal Action Plan regional points of contact to support coordination and technical assistance.

During the COVID-19 pandemic, the BIE initiated its Behavioral Health and Wellness Program in an effort to provide culturally relevant and evidence-based virtual counseling and onsite crisis services at all BIE schools for staff and students. In 2023, the BIE extended its contract for the services an additional five years.<sup>139</sup>

## **Broadband and Computer Access**

Access to high-speed internet (broadband) and computers is of increasing importance in elementary and secondary education. The internet may be used for online standardized assessments (some BIE students must be bussed offsite for assessments),<sup>140</sup> in-home instructional access, and access to various educational resources and content. To this end, schools need broadband access for multiple students concurrently, and students need access at home. Calendar

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<sup>135</sup> The evaluation indicated that reporting of incidents in the Native American Student Information System (NASIS) is inconsistent and inaccurate.

<sup>136</sup> Kimberly Elmore, *Management Advisory - Summary of Bureau of Indian Education Violence Prevention Inspections*, Office of Inspector General, U.S. Department of the Interior, Report No. 2015-CR-074, June 15, 2016.

<sup>137</sup> Interagency Agreement Between the U.S. Department of Health and Human Services, Indian Health Service and the U.S. Department of the Interior, Bureau of Indian Education and Bureau of Indian Affairs-Office of Justice Services, December 2016.

<sup>138</sup> *Indian Alcohol and Substance Abuse: Memorandum of Agreement (MOA) between U.S. Department of Health and Human Services (HHS), U.S. Department of the Interior (DOI), and U.S. Department of Justice (DOJ)*, December 6, 2016.

<sup>139</sup> Bureau of Indian Education, "Interior Department Announces Behavioral Health and Wellness Program for Tribal Schools," press release, June 29, 2023, <https://www.bie.edu/news-article/interior-department-announces-behavioral-health-and-wellness-program-tribal-schools>.

<sup>140</sup> *FY2021 Budget*, p. BIE-OIEP-23.

year 2022 Census data indicate that, on average, 93% of the population are in a household that has a computer and a broadband internet subscription, but American Indians and Alaska Natives have the lowest rate of access at 88%.<sup>141</sup> Census defines a computer to include desktop computers and smartphones. Smartphones may not be adequate for completing remote learning lessons, which means the data may overestimate access to remote learning. In addition, 28% of persons on tribal lands lack broadband access compared to 2% of Americans in urban areas.<sup>142</sup>

There are three primary sources of funding to improve broadband access on tribal lands.<sup>143</sup> The Federal Communications Commission (FCC) Universal Service Fund (USF) and the U.S. Department of Agriculture (USDA) Rural Utilities Service (RUS) provide significant funding for broadband deployment; however, tribal entities and BIE schools may receive limited funding in proportion to their need. The BIE Education IT appropriations program element provides internet connectivity for BIE-operated schools and some tribally operated BIE schools. In addition, in FY2020 BIA set aside funds from the Further Consolidated Appropriations Act 2020 (P.L. 116-94) for grants to tribes to perform feasibility studies for the deployment or expansion of broadband.<sup>144</sup> In response to the COVID-19 pandemic, the federal government appropriated \$78 billion to address the digital divide and broadband availability, a portion of which was available to Indian tribes, tribal colleges and universities, BIA, BIE, and/or the IHS.<sup>145</sup>

## **BIE School Issues**

BIE school-specific issues include how to define an effective academic accountability system for BIE schools, construction and repair of BIE schools, and BIE management and administration.

## **Federal Administration and Organization**

The structure and administration of the BIE school system has long been considered a contributor to poor educational outcomes. A landmark 1928 report, known as the Meriam Report, found that underfunding and paternal federal policy contributed to deficient boarding school student diets, low qualification standards and salaries for teaching staff, student labor to maintain schools, and a prescriptive and unresponsive curriculum. Another milestone report in 1969, known as the Kennedy report, recommended a promotion of the status of BIA within DOI but declined to make a recommendation regarding what it characterized as the long-standing and most serious issue of the ineffective internal organization of the BIA.<sup>146</sup> The 1969 report highlighted that education was not the BIA's highest priority and called attention to a lack of centralized authority, data, and

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<sup>141</sup> U.S. Census Bureau, American Community Survey, 2022: ACS 1-Year Estimates Subject Table S2802, available at <https://data.census.gov/table/ACSST1Y2022.S2802?d=ACS+1-Year+Estimates+Subject+Tables&vintage=2022&hidePreview=true>.

<sup>142</sup> Federal Communications Commission, 2020 Broadband Deployment Report, FCC 20-50, April 24, 2020, p. 18.

<sup>143</sup> See also CRS Report R44416, *Tribal Broadband: Status of Deployment and Federal Funding Programs*.

<sup>144</sup> Department of the Interior, Bureau of Indian Affairs, "National Tribal Broadband Grant; Solicitation of Proposals," 85 *Federal Register* 7580-7584, February 10, 2020.

<sup>145</sup> The Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) provided \$100 million for broadband programs at the U.S. Department of Agriculture (USDA); the Consolidated Appropriations Act, 2021 (P.L. 116-260) provided \$6.2 billion for broadband programs at the Federal Communications Commission (FCC), National Telecommunications and Information Administration (NTIA), and USDA; the American Rescue Plan Act of 2021 (P.L. 117-2) provided \$7.2 billion for broadband programs at the FCC; and the Infrastructure Investment and Jobs Act (P.L. 117-58) provided \$64.4 billion for broadband programs at the FCC, NTIA, and USDA.

<sup>146</sup> U.S. Congress, Senate Committee on Labor and Public Welfare, Special Subcommittee on Indian Education, *Indian Education: A National Tragedy - A National Challenge*, Pursuant to S. Res. 80, 91<sup>st</sup> Cong., 1<sup>st</sup> sess., November 3, 1969, S.Rept. 91-501 (Washington: GPO, 1969).

information; a clear chain of command; educational expertise among administrators; and a high quality, motivated, and stable teaching staff. Additional organizational assessments were conducted in 1992,<sup>147</sup> 1999,<sup>148</sup> and 2012.<sup>149</sup>

Since 2013, GAO has published several reports on DOI management of BIE schools. GAO has maintained DOI management of Indian education programs on its high-risk list of government programs since 2017.<sup>150</sup> It found fragmented administrative structures, a lack of clear roles and poor coordination between responsible offices, frequent turnovers in leadership, and inadequate procedures and internal controls.<sup>151</sup> In addition, GAO indicated that the small enrollment of many BIE schools makes it more difficult for them to acquire all of the necessary educational and personnel resources.<sup>152</sup> The BIE has an inadequate number of staff to oversee school expenditures, and staff have inadequate training and written procedures with which to fulfill their administrative obligations.<sup>153</sup> For example, insufficient BIE staff expertise and oversight have resulted in special education services required under the Individuals with Disabilities Education Act either not being provided or not being appropriately documented.<sup>154</sup> As of April 2023, the BIE has made progress in addressing several weaknesses but still needs to ensure schools consistently make up missed special education and related services, reduce staff vacancies, provide adequate capacity to oversee schools, and establish sufficient monitoring to ensure schools provide students needed services.<sup>155</sup>

Federal administration of BIE schools is complicated by statutory provisions. While the Indian Self-Determination and Education Assistance Act of 1975 and Tribally Controlled Schools Act support the federal policy of tribal control, DOI management of tribally operated schools is necessarily limited by the two laws. In contrast, state educational agencies may establish standards, processes, and programs for public schools to implement. BIE administers TCSA grants, which are limited to schools, but BIA administers ISDEAA contracts, which may include other funding streams such as funds for roads and economic development. Also, the requirement

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<sup>147</sup> Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, *1992 Report to the Secretary of the Interior and the Appropriations Committees*, December 1992.

<sup>148</sup> National Academy of Public Administration, *A Study of Management and Administration: The Bureau of Indian Affairs*, August 1999.

<sup>149</sup> Bronner, *Final Report: Examination, Evaluation, and Recommendations for Support Functions*, March 2012.

<sup>150</sup> U.S. Government Accountability Office, *High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas*, GAO-23-106203, April 2023.

<sup>151</sup> U.S. Government Accountability Office, *Indian Affairs: Management Challenges Continue to Hinder Efforts to Improve Indian Education*, GAO-13-342T, February 27, 2013; and U.S. Government Accountability Office, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, GAO-13-774, September 24, 2013; and U.S. Government Accountability Office, *Further Actions on GAO Recommendations Needed to Address Systemic Management Challenges with Indian Education*, GAO-15-539T, April 22, 2015.

<sup>152</sup> U.S. Government Accountability Office, *Indian Affairs: Management Challenges Continue to Hinder Efforts to Improve Indian Education*, GAO-13-342T, February 27, 2013; and U.S. Government Accountability Office, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, GAO-13-774, September 24, 2013.

<sup>153</sup> U.S. Government Accountability Office, *Bureau of Indian Education Needs to Improve Oversight of School Spending*, GAO-15-121, November 13, 2014; and U.S. Government Accountability Office, *Further Actions on GAO Recommendations Needed to Address Systemic Management Challenges with Indian Education*, GAO-15-539T, April 22, 2015.

<sup>154</sup> U.S. Government Accountability Office, *Indian Education: Actions Needed to Ensure Students with Disabilities Receive Special Education Services*, GAO-20-358, May 22, 2020.

<sup>155</sup> U.S. Government Accountability Office, *High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas*, GAO-23-106203, April 2023; and Letter from U.S. Government Accountability Office, Priority Open Recommendations: Department of the Interior, to The Honorable Deb Haaland, Secretary of the Department of the Interior, May 11, 2023.

for tribal consultations supports self-determination and may improve results and acceptance, but it slows change, implementation, and innovation.

Several options have been considered to address these long-standing administrative, organizational, and ultimately student achievement issues.

- Similar to the transfer of BIA-funded schools in Alaska to the state of Alaska, the remaining BIE schools or students could be transferred to the states, which have established and known governance systems. AI/AN students in public schools demonstrate higher academic achievement than BIE students, which lends some support for this option. However, AI/AN students in public schools on average score lower than white and Asian/Pacific Islander students in public schools (**Table 3** and **Table 4**). In addition, AI/AN students in public schools and BIE students may not be comparable populations.
- Some stakeholders have suggested colocating or transitioning BIE schools to tribally operated charter schools. As charter schools are public-state schools, this option is similar to the aforementioned option of transferring BIE schools to the states except that charter schools provide greater autonomy to the operator than is available to traditional public schools.
- Some stakeholders have suggested transferring the BIE school system to ED because ED is the federal agency whose mission is educational excellence and equal access. Transferring BIE to ED may be difficult as some tribal stakeholders advocate for DOI-Indian Affairs maintaining responsibility for Indian affairs and the fact that ED does not have experience operating a school system.
- The Administration and Congress have initiated DOI reorganizations and restructurings to address the issue directly. The proposals have variously tried to centralize or decentralize authority and responsibility, improve options for high-quality personnel recruitment and retention, delineate all of the education functions into a separate or independent organization, share support functions between BIE and BIA to leverage expertise, publish policy/procedures manuals, and improve tribal participation.

In 2014 following results of the American Indian Education Study Group, DOI ordered a restructuring of BIE in order to address many outstanding issues, in particular encouraging greater tribal control, improving student achievement, and increasing communication within the BIE and with its stakeholders. The reorganization is designed to provide greater support and technical assistance to tribally operated BIE schools in order to promote more effective teachers and principals, better respond to resource needs, and foster family and community support for students. The reorganization is also designed to ensure the budget is aligned with expected outcomes and processes.<sup>156</sup>

During the 114<sup>th</sup> Congress, the Senate Committee on Indian Affairs approved the Reforming American Indian Standards of Education Act of 2016 (S. 2580), which proposed to create an independent Indian education agency that would be within DOI and that would be directed by a presidential appointee. The explanatory statements to accompany the FY2014, FY2016, FY2017, and FY2018 appropriations acts instructed DOI to present a plan to reorganize Indian Affairs such

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<sup>156</sup> Secretary's Order 3334, "Restructuring the Bureau of Indian Education," Sally Jewell, Secretary of the Interior, June 12, 2014.

that all Indian education functions are administered by and accountable to an independent BIE.<sup>157</sup> The explanatory statement to accompany the FY2020 appropriations act accepted the proposal for an independent BIE with a separate budget. The FY2021-FY2023 explanatory statements have required quarterly reports from the BIE on the reorganization's progress and BIE's capacity.

### Academic Accountability Under ESEA

The ESEA, as amended by ESSA in 2015, requires DOI to develop regulations for defining BIE school standards, assessments, and an educational accountability system under ESEA Title I-A, and it permits BIE schools to waive such regulatory requirements if the tribal governing body or school board of a BIE school determines the regulations to be inappropriate. From AY2016-2017 through AY2019-2020, the BIE received waivers from implementing an accountability system that met ESSA requirements.

The final BIE regulations were published in March 2020 and were to go into effect for AY2020-2021.<sup>158</sup> The rules call for unified BIE assessments for English language arts, math, science, and tribal civics, and the option for tribal-level Native American language academic standards and assessments. The BIE is to use commercially available English language arts, math, and science standards until they can be modified to meet unique BIE needs. Tribal governing bodies and school boards can waive in part or whole any part of the academic accountability system. The Miccosukee Tribe has had an alternative system since AY2014-2015, while the Navajo Nation has since AY2015-2016.

In part because of the COVID-19 pandemic, BIE's implementation of the new off-the-shelf assessments was delayed to AY2020-2021 and AY2021-2022. As of August 2023, the BIE has not fully implemented its new accountability system consistent with its plan and regulations.<sup>159</sup>

### BIE School Construction and Repair

For over 40 years, BIE school facilities have been characterized by a large number of old facilities with a high rate of deficiencies.<sup>160</sup> Some facilities are in poor condition and do not meet health and safety standards.<sup>161</sup> Reports from students and faculty suggest that conditions affect learning and enrollment. GAO and DOI have reported several weaknesses in the management of BIE school facilities.<sup>162</sup> Construction activities have historically been managed by either the BIA

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<sup>157</sup> See, for example, U.S. Congress, House Committee on Rules, *Explanatory Statement*, To accompany House Amendment to Senate Amendments to H.R. 244 (Rules Committee Print 115-16, showing the text of the Consolidated Appropriations Act, 2017.), 115<sup>th</sup> Cong., 1<sup>st</sup> sess.

<sup>158</sup> Department of the Interior, Bureau of Indian Affairs, "Standards, Assessments, and Accountability System," 85 *Federal Register* 17009-17030, March 26, 2020.

<sup>159</sup> Bureau of Indian Education, *Agency Plan: Bureau of Indian Education: The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act*, 2023 Amended Agency Plan; and Letter from U.S. Department of Education, Office of Elementary and Secondary Education to Tony Dearman, Director, Bureau of Indian Education, August 25, 2023.

<sup>160</sup> U.S. Government Accountability Office, *Should the Bureau of Indian Affairs Continue to Provide Educational Services to Indian Children?*, CED-80-72, April 23, 1980, pp. 24-25; and U.S. General Accounting Office, *School Facilities: Reported Condition and Costs to Repair Schools Funded by Bureau of Indian Affairs*, GAO/HEHA-98-47, December 31, 1997.

<sup>161</sup> U.S. Government Accountability Office, *Indian Affairs: Preliminary Results Show Continued Challenges to the Oversight and Support of Education Facilities*, GAO-15-389T, February 27, 2015.

<sup>162</sup> U.S. Government Accountability Office, *Indian Affairs: Preliminary Results Show Continued Challenges to the Oversight and Support of Education Facilities*, GAO-15-389T, February 27, 2015; U.S. Government Accountability Office, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, GAO-17- (continued...)

or Indian Affairs. The weaknesses include a lack of consistent and complete facilities condition information, inadequate implementation of procedures to address facilities' deficiencies, insufficient staffing, inadequate staff training, inconsistent oversight, insufficient internal controls and procedures, and poor communication. Several efforts have been employed to address facilities' deficiencies.

In addition to management concerns, annual funding levels have been insufficient to reduce estimates for eliminating facilities in poor condition. In 2016, DOI estimated that the replacement cost of BIE school facilities exceeded \$4.6 billion and that the cost to correct known deficiencies exceeded \$430 million.<sup>163</sup> At the end of FY2019, BIE reported 71 schools in poor condition, 43 in fair condition, and 65 in good condition.<sup>164</sup> In August 2023, BIE reported that in addition to the schools to which funding has been allocated, 68 schools are in poor condition and in need of replacement at an estimated cost of \$6.2 billion.<sup>165</sup>

### ***Prioritization of Facilities***

The BIE is responsible for BIE school facilities, including replacement, improvement, and repair of existing school facilities, and repair of education employee housing. In response to ongoing facilities needs and unsafe conditions, Congress has established requirements of DOI in an effort to facilitate addressing the issues. The No Child Left Behind Act (NCLB, P.L. 107-110) required that DOI establish a negotiated rulemaking committee to report on BIE schools' needs for school and school facilities replacement and repair, and to develop formulas to distribute funds to address these needs.<sup>166</sup> Congress has periodically directed the BIA to develop replacement school priority lists. As of March 2023, work is incomplete on the most recent congressionally requested replacement school construction lists developed in 2004 (14 schools) and 2016 (10 schools).<sup>167</sup> More recently, in each year from 2019 to 2023, BIE developed school replacement priority lists.<sup>168</sup>

### ***Oversight of Water Systems***

In 2011, the U.S. Environmental Protection Agency (EPA) reached a settlement with the BIA and BIE to address alleged violations of waste, water, air, toxics, and community right-to-know laws at schools and public water systems. The alleged violations are related to the labeling, storage, and release of wastes; asbestos management plans; and drinking water monitoring and contaminant levels. The original settlement required BIA and BIE to correct alleged violations at 72 schools and 27 water systems and implement an environmental compliance auditing program and an environmental management system (EMS) to improve environmental practices at all of its

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407T, February 15, 2017; U.S. Government Accountability Office, *Indian Affairs: Key Actions Needed to Ensure Safety and Health at Indian School Facilities*, GAO-16-391T, March 16, 2016; and U.S. Department of the Interior, Office of Inspector General, *Condition of Indian School Facilities*, Report No.: C-EV-BIE-0023-2014, September 2016.

<sup>163</sup> U.S. Department of the Interior, Office of Inspector General, *Condition of Indian School Facilities*, Report No.: C-EV-BIE-0023-2014, September 2016.

<sup>164</sup> U.S. Department of the Interior, Bureau of Indian Education, *Site Assessment Analysis for FY2020*; data as of the end of FY2019 Q4.

<sup>165</sup> U.S. Department of Education, *Transcript of National Advisory Council on Indian Education meeting*, March 30, 2023, p. 37.

<sup>166</sup> 25 U.S.C. §2005(a)(5).

<sup>167</sup> *FY2024 Budget*. pp. BIE-CONST-16- BIE-CONST-17.

<sup>168</sup> *FY2024 Budget*. pp. BIE-CONST-16- BIE-CONST-21.

BIE schools. The consent agreement was modified in 2014, expanding the list of BIA/BIE facilities subject to the consent agreement.<sup>169</sup>

### ***Construction Bonds***

In addition to annual appropriations, the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) authorized Qualified School Construction Bonds (QSCBs; 26 U.S.C. §54F).<sup>170</sup> QSCBs were a tax credit bond program that made bond proceeds available for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land for a public school facility. Treasury allocated \$200 million in each of 2009 and 2010 to DOI for Indian tribal governments to construct or repair BIE-funded schools. The authority to issue QSCBs was repealed beginning in 2018. No tribe took advantage of the program partly because many tribes are unable to sell bonds because they are high risk entities; although the allocation remains available.<sup>171</sup>

### ***ISDEAA Section 105(l) Facilities Leasing***

A 2016 court decision, *Maniilaq Association v. Burwell*,<sup>172</sup> required that IHS enter into a “lease,” upon request, with any tribe or tribal organization furnishing a facility that supports ISDEAA programs and that under any such lease, Indian Health Service (IHS) reimburse “the Tribe or Tribal Organization for its reasonable facility expenses.” The decision is applicable to BIE. Once a lease agreement is entered into, meeting the annual costs becomes a legal funding entitlement. The popularity and ongoing costs of such leases are unknown. The FY2022-FY2024 President’s budgets proposed shifting the costs to indefinite mandatory funding to reflect the entitlement nature of the leases.<sup>173</sup>

### ***Trust Fund Accounts***

Another approach to funding facilities construction and renovation is the establishment of a trust fund account from applicable contributions that can be used for these purposes. In 2000, DOI was directed to establish a charitable, nonprofit foundation called the American Indian Education Foundation, later renamed the National Fund for Excellence in American Indian Education (Foundation).<sup>174</sup> The Foundation was established to raise private contributions but has not been functional. The National Parks and Public Land Legacy Restoration Fund (see “National Parks and Public Land Legacy Restoration Fund”) is providing funds for a limited period (FY2021-FY2025). The Foundation was intended to support the mission of the BIE and further the educational opportunities of American Indians who attend BIE-funded schools. It was to be a federally chartered nonprofit corporation accepting and administering charitable donations that further the educational opportunities of Indian children attending BIE-funded schools. The Foundation was established in July 2004, but it lacked start-up capital, lacked operational funds,

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<sup>169</sup> United States Environmental Protection Agency, “Settlement with the Department of the Interior (DOI) to Resolve Violations at Schools in Indian Country,” <https://www.epa.gov/enforcement/settlement-department-interior-doi-resolve-violations-schools-indian-country>.

<sup>170</sup> For more information about QSCBs, see CRS Report R40523, *Tax Credit Bonds: Overview and Analysis*.

<sup>171</sup> Letter from Jon Tester, United States Senate, Tim Johnson, United States Senate, and Al Franken, United States Senate, to Honorable Sally Jewel, Secretary, U.S. Department of the Interior, May 19, 2014.

<sup>172</sup> *Maniilaq Ass'n v. Burwell*, 72 F. Supp. 3d 227 (D.D.C. 2014) and *Maniilaq Ass'n v. Burwell*, 170 F. Supp. 3d 243 (D.D.C. 2016).

<sup>173</sup> *FY2024 Budget*. p. IA-PTL-3.

<sup>174</sup> Title XIII of the Omnibus Indian Advancement Act (P.L. 106-568). 25 U.S.C. §5421 et seq.

and was unable to raise money.<sup>175</sup> In March 2023, the Foundation held its first board meeting.<sup>176</sup> As of November 2023, the Foundation is seeking a Lead Executive Officer to head the organization.<sup>177</sup>

### ***Additional Potential Options***

There are several potential options for addressing poor facilities at BIE schools. Some that are routinely suggested or have been suggested by organizations like GAO include the following:

- additional funds for maintenance, improvement, and construction could be appropriated to cover the estimated cost of bringing facilities into good condition;
- public-private partnerships could be formed to fund and/or provide expertise to affect facilities improvement and construction;<sup>178</sup>
- implementation of a DOI-based unit or organization that would execute appropriate communication, procedures, internal controls, oversight, and staffing to properly manage BIE facilities;<sup>179</sup> and
- congressional and administrative oversight of measured progress in facilities' improvement and construction may affect outcomes.<sup>180</sup>

## **Public School Indian Education—Johnson O'Malley (JOM) Program Freeze and Modernization**

From FY1995 until enactment of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (JOM Modernization Act; P.L. 115-404), program administration was subject to the *JOM freeze*. By statute, JOM funds are distributed to contractors by formula, based on a count of Indian students and average per-pupil operating costs. Student counts for allocating funds were frozen in FY1995.<sup>181</sup> The intention was to include the JOM funds in each tribe's recurring base funding, tribal priority allocations (TPA), in an effort to stabilize funding for tribes and provide them additional control and flexibility in the use of the funds. Because there is a statutory prohibition on changing a tribe's base funding, JOM allocations were based on FY1995

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<sup>175</sup> U.S. Congress, Senate Committee on Indian Affairs, Amending the Indian Self Determination and Education Assistance Act to Modify Provisions Relating to the National Fund for Excellence in American Indian Education, To accompany S. 1231, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., July 29, 2005, S.Rept. 109-118.

<sup>176</sup> The White House Domestic Policy Council, *2023 Progress Report for Tribal Nations*, p. 67, <https://www.whitehouse.gov/wp-content/uploads/2023/12/2023.12.04-TNS-Progress-Report.pdf>.

<sup>177</sup> National Fund for Excellence in American Indian Education, <https://www.nfeiae.org/opportunities> (as available on November 20, 2023).

<sup>178</sup> For example, see U.S. Congress, House Committee on Rules, *Explanatory Statement*, To accompany House Amendment to Senate Amendments to H.R. 244 (Rules Committee Print 115-16, showing the text of the Consolidated Appropriations Act, 2017.), 115<sup>th</sup> Cong., 1<sup>st</sup> sess., p. 30.

<sup>179</sup> U.S. Government Accountability Office, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, GAO-17-407T, February 15, 2017.

<sup>180</sup> U.S. Government Accountability Office, *Indian Affairs: Management Challenges Continue to Hinder Efforts to Improve Indian Education*, GAO-13-342T, February 27, 2013.

<sup>181</sup> U.S. Congress, House Committee on Appropriations, *Department of the Interior and Related Agencies Appropriations Bill, 1995*, Report to accompany H.R. 4602, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., June 17, 1994, H.Rept. 103-551, pp. 54-55; and U.S. Congress, Senate Committee on Appropriations, *Department of the Interior and Related Agencies Appropriations Bill, 1995*, Report to accompany H.R. 4602, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., June 28, 1994, S.Rept. 103-294, p. 55.

student counts.<sup>182</sup> Over time, the JOM freeze resulted in an inequitable allocation of funds and restricted new contractors from program access.<sup>183</sup>

In an effort to distribute funds in accordance with more current student counts and to reach additional students, Congress has generally taken four steps—direction to BIE, legislative amendments, a GAO review, and increased funding.

- FY2012-FY2019 appropriations conference reports directed the BIE to count the number of students participating in and eligible to participate in the JOM program and recommend a methodology to distribute funds in the future.<sup>184</sup> Despite BIE requests to current and prospective JOM contractors, some did not report actual or potential participants.
- In December 2018, the JOM Modernization Act was enacted, requiring the Secretary of the Interior to conduct a comprehensive estimate of actual and potential JOM participants, requiring contractors to report participation numbers in order to receive JOM funding, adjusting over time the amount of funds allocated to contractors based on eligible student counts, and increasing program access for new contractors depending on appropriations levels.
- Congress requested that GAO review the JOM program, resulting in an April 2020 GAO report on issues in the implementation of JOM. In part because JOM is administered by several BIA offices, the BIE is unable to compile a complete list of contractors and has not defined roles and responsibilities for BIA staff. The BIE does not provide training to contractors to help them administer the program. GAO recommended that BIE “maintain an accurate and complete list of JOM contractors, develop JOM training, and clearly define roles and responsibilities and identify staff for carrying out JOM functions.”<sup>185</sup>
- Explanatory statements to accompany the FY2020-FY2023 appropriations acts have directed BIE to provide training and capacity building activities and implement GAO’s recommendations.

JOM distributions in FY2024 and subsequently are to be based on “the actual count of JOM eligible students within a JOM contractor’s tribal service area or school district.”<sup>186</sup> Congress may continue monitoring the extent to which the oversight and actions impact the program’s scope and effect.

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<sup>182</sup> 25 U.S.C §450j-1(b)(2). U.S. Department of the Interior, Bureau of Indian Affairs, “Tribal Consultation of Indian Education Topics,” 60 *Federal Register* 53932, October 18, 1995.

<sup>183</sup> U.S. Congress, Senate Committee on Indian Affairs, To Direct The Secretary of the Interior to Conduct an Accurate Comprehensive Student Count for the Purposes of Calculating Formula Allocations for Programs Under the Johnson-O'Malley Act, and for other Purposes, Report to accompany S. 943, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 24, 2018, S.Rept. 115-201.

<sup>184</sup> See for example, U.S. House of Representatives, “Explanatory Statement Submitted by Mr. Frelinghuysen of New Jersey, Chairman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendments on H.R. 244,” *Congressional Record*, vol. 163 (May 3, 2017), p. H3881.

<sup>185</sup> U.S. Government Accountability Office, *Bureau of Indian Education: Actions Needed to Improve Management of a Supplemental Education Program*, GAO-20-308, April 2020.

<sup>186</sup> *FY2024 Budget*. pp. BIE-OIEP-7-BIE-OIEP-8.

## **Author Information**

Cassandra Dortch  
Specialist in Education Policy

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