

GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION (GPTCA)
POSITION PAPER on INDIAN EDUCATION
&
RECOMMENDATIONS

On behalf of the sixteen Tribes in the states of South Dakota, North Dakota, and Nebraska which comprise the Great Plains Tribal Chairman's Association (GPTCA), we wish to thank Secretary Jewell for her interest and attention to tribal education.

The Great Plains Tribal Chairman's Association was formed to promote the common interests of the sovereign Tribes and Nations and their members in the Great Plains Region. The Great Plains Tribes have the responsibility and obligation to provide tribal education to THEIR Enrolled Members. The Reservations in the Great Plains comprise the largest geographical land base and Trust Land of any Region in the United States next to Navajo. The total acreage comprising the Reservations and homelands within the Great Plains that are Indian country pursuant to 18 U.S.C. 1151, is over 10 million acres. The Great Plains Region Tribes have a total population in 2005 of over 189,428 people, second only to the Navajo Nation. Unemployment rates in the Great Plains Region average seventy-seven percent (77%), with forty-eight percent (48%) of those working still living below the poverty level. There are no jobs on the reservations.

Most importantly, the Great Plains Region has approximately one-third of all tribal schools in the United States (33) and 8 of the Tribal Colleges. Tribal education in the Great Plains region is at the center of this region's tribal Priorities, because of its impact upon and connection with other issues, but also because the education of our children and the manner in which we educate them determines the future of our people.

The Foundation of Treaty Law in Education in the Great Plains

Many of the Tribes within the Great Plains Region are a party to the 1868 Treaty between the Sioux Nation and the United States, or other treaties that guaranteed education for tribal members in perpetuity. For example, Article 7 of the 1868 Ft. Laramie Treaty states that:

"In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among

said Indians, and faithfully discharge his or her duties as a teacher.”

The 1858 Treaty entered into with the Yankton Sioux Tribe and which is similar to other treaties entered into at that time period, in Article 4, set forth the following:

“To expend ten thousand dollars to build a school-house or school-houses, and to establish and maintain one or more normal-labor schools (so far as said sum will go) for the education and training of the children of said Indians in letters, agriculture, the mechanic arts, and housewifery, which school or schools shall be managed and conducted in such manner as the Secretary of the Interior shall direct. The said Indians hereby stipulating to keep constantly thereat, during at least nine months in the year, all their children between the ages of seven and eighteen years; and if any of the parents, or others having the care of children, shall refuse or neglect to send them to school, such parts of their annuities as the Secretary of the Interior may direct, shall be withheld from them and applied as he may deem just and proper; and such further sum, in addition to the said ten thousand dollars, as shall be deemed necessary and proper by the President of the United States, shall be reserved and taken from their said annuities, and applied annually, during the pleasure of the President to the support of said schools, and to furnish said Indians with assistance and aid and instruction in agricultural and mechanical pursuits, including the working of the mills, hereafter mentioned, as the Secretary of the Interior may consider necessary and advantageous for said Indians; and all instruction in reading shall be in the English language.”

Article 2, para. 4 of the 1858 Treaty with the Ponca also guaranteed education, as did more generally Article 9 of the 1858 Treaty with the Sisseton Tribe, the 1861 Treaty with the Sac and Fox and Iowa Tribes (Mesquakie) that has been upheld and enforced in federal court regarding the obligation of the United States government to educate their members.

Applying the Canons of Construction to this promise of the United States government in 1868, construing this as our ancestors would have understood the language of the treaty, and construing all ambiguities in favor of the Indian tribes who were signatories, tribal education is an enforceable obligation of the United States government in the Great Plains.

Legal and Policy Obligations of the United States Regarding Tribal Education

In addition, the United States government has certain obligations and responsibilities as the “trustee” of Indian people, which arose out of the United States’ military occupation and annexation of millions of acres of tribal lands and its assumption of political control of tribal governments. Over the years, direct and overt colonization has ended, and it has been federal policy to gradually return at least local control to Indian tribes.

The United States Congress has undertaken several legal obligations to educate tribal members and their children, with a policy enshrined in several pieces of specific

legislation mandating that this be done with a maximum effort toward ensuring that the tribes themselves have the right to assume the governance and operation of their own elementary and secondary schools and higher education in Indian country, and to make the decisions about education of their own members pursuant to the Indian Self-Determination and Education Assistance Act and the Tribally Controlled Schools Act.

Erosion of Sovereignty & Self-Determination in Tribal Education

The days are long past when the president and federal department heads could get away with generic lip service to “tribal sovereignty,” a term which really has no meaning vis-a-vis the federal government, because there is no tribal sovereignty under federal Indian law against the federal government, only against the states. Although at one time there was a strict wall between the tribes and the states regarding tribal sovereignty, this is gradually being eroded in the areas of gaming and now in education.

What was once a wall is now a curb which the Executive Branch drives over whenever it is feeling pressure from state governments, or whenever it wishes to divest itself of its treaty and trust obligations, and hand those off to the states. The latest vehicle for subverting tribal sovereignty and tribal self-determination is the No Child Left Behind Act and now comes Common Core.

The Bush Doctrine & No Child Left Behind Act

NCLB became a clever way to undermine tribal self-determination because, as the Bush administration well understood and predicted, who is going to be against the stated goal of improving education for Indian children? In the area of education, NCLB has become the Trojan Horse for federal bureaucrats who seek to rebuild the glory days of a bygone era of archaic federal policies and paternalistic, colonial-style bureaucracies that were routed by several decades of hard work and progress by Indian tribes, tribal self-determination advocates, and their Congressional allies throughout the 1970s and 1980s.

It has also become a back door way for states and state agencies to traverse that same wall of self-determination and sovereign immunity in order to get their hands on some of the federal education dollars that flow to tribes.

Other than the indirect costs and administration monies they make off of channeling federal programs to Indians and Indian tribes, the states really have little interest in carrying out federal programs or seeing successes on Indian reservations. Many states are still locked in a 19th century effort to retain political, economic and social superiority over tribes and to eventually swallow them and their resources up - something that is intrinsically at odds with the effort to provide the educational tools for self-determination on Indian reservations.

The political leaders of state government present a smiling face while allowing - and sometimes even encouraging - the legislature to throw up obstacles and the Attorney General’s office to pound away in the courts - forcing the tribes to constantly play defense because, if they are playing defense all the time, they do not have the time or the resources to rebuild their infrastructures and prosper economically, or to educate their children. As a result, the racially stereotypical views of Indian reservations and tribes by non-Indians become self-fulfilling prophecy.

The formal political structure in states with large tribal populations joins with

the informal socioeconomic structure to ensure that Indian tribes and tribal members remain locked away in the basement of society, and then adds insult to injury by condemning tribal members for having basement behavior.

Little has been done to end the practice of racial discrimination in employment, housing and particularly in education – critical institutions that determine success or failure for tribal members seeking to work, provide a safe and positive environment for their children, and a good education. The failure of larger society to ensure that these critical institutions support rather than detract from the energies of tribal members both on and off the reservations contributes to a sort of automatic protraction of socioeconomic inequality for Indian people. Much as Dr. William Julius Wilson has described in his brilliant research in Chicago, exploring the reasons for minority poverty and the conditions of the inner cities, we see the same conditions at work on and around Indian reservations. There is a lack of capital stimulus and investment on Indian reservations, except for public dollars spent largely through the tribal schools, colleges and the tribes.

As Dr. Wilson has described, no amount of self-help can dig these communities out of their difficulties - it takes money and investment or public spending – and lots of it. In addition, when there is a cordon of racial discrimination in housing and employment around these reservation communities – in border towns and nearby urban areas, this lack of stimulus combined with that results in these Native communities being left to implode upon themselves.

Illicit economies grow up on the reservations, and crime increases, because people will survive any way they can, and when combined with the poverty that is reinforced by the larger society, economy and political system, we see all of the resulting effects in the newspapers and on television. This has everything to do with forces that are largely outside of the control of tribal governments or even individual families. One thing is certain; it is the tribes, tribal schools and tribal law enforcement that deals with the fallout from this legacy of racial discrimination and federal neglect in social and economic programs. These problems must be urgently attacked at the front end, through education and investment in Indian tribes and Indian people, rather than by sending more tribal members to federal prisons. The tribes themselves and their committed educators are the experts on this; they just need the support and resources to make it happen.

Other than the tribes' own fight for social, economic and cultural survival, there can only be one real barrier against these destructive socioeconomic processes, and that is the will and commitment of the federal government. In that light, it is heartening and timely to hear that President Obama is seeking sweeping changes to the No Child Left Behind Act. Nowhere is that change more necessary or timely than in the area of tribal education, for numerous reasons.

Tribes across this nation had to fight a rearguard action against the Bush administration and its policies for the past nine years. The Bush policies are still being perpetuated as fast as possible by a number of Bush people inside of the Bureau of Indian Education, most of them in the SES positions that the GPTCA fought against in its lawsuit against BIE and Bush's proposed "restructuring" of what was then the Office of Indian Education Programs within the BIA.

The push for restructuring of OIEP which eventually became BIE had several goals: to centralize the bureaucracy nationally and transfer the salaries to upper echelon bureaucrats, re-prioritize the hierarchy so that it was more top down than bottom up, to move education line offices away from the reservations where they had traditionally served tribal and Bureau schools, and to gradually move regional offices

into state capitals where tribal education duties would be shared with state education offices. This move cost the BIE over \$11 million dollars more initially, took education services away from the very tribes it was supposed to serve, and it did so without one shred of scientific evidence that the restructuring would improve the literacy of Indian children or improve tribal education at all. We know this top-down growth in upper management was replicated in other Departments including the DOE.

This was the ultimate cynicism of the federal government under Bush, and it reflected the corruption of that administration in their dismantling of programs that had worked well for decades in Indian country. The Bush administration used the mandates of the No Child Left Behind Act as its primary engine for enforcement, deliberately ignoring the older and more specific legislation in the Indian Self-Determination and Education Assistance Act and the Tribally Controlled Schools Act – federal statutes that were never abrogated and which, according to federal case law, must prevail over general legislation such as the No Child Left Behind Act. As the Eighth Circuit Court of Appeals has held: “General statutes should not be construed so as to abrogate rights of tribal self-government absent specific congressional intent to the contrary, United States v. White, 508 F.2d 453, 455 (8th Cir.1974). Also, “[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.” Morton v. Mancari, 417 U.S. 535, 94 S.Ct. 2474, 2483 (1974). See, also, Radzanower v. Touche Ross & Co., 426 U.S. 148, 96 S.Ct. 1989, 1993 (1976).

During the past nine years, we have seen Education Line Office staffs and support programs decreased by BIE on the reservations while a new bureaucratic center mushroomed out of control in Albuquerque, with DPMA and BIE offices growing their staffs accordingly. There has been a reported growth in the BIE centralized bureaucracy by 150% while funding to schools has diminished in both real dollars and in inflationary dollars. Regardless of the professed mission of the BIE, the effect on the ground has been to decrease on-reservation services and increase executive positions that drain much needed resources and support on or near Indian reservations. This is a trend from the Bush era that must be reversed by the current administration.

The Bush administration and its acting leadership in the Bureau of Indian Affairs and the Office of Indian Education Programs, created a group of senior SES positions within BIE, people who essentially were made permanent, nonremovable bureaucrats who now must justify positions which were never justified in the first place, based upon the needs of reservation and urban Indians. What we were really seeing was the redistribution of resources from the reservations to this centralized national center in Albuquerque, contrary to and a complete reversal of the very principles of Indian self-determination and trust and treaty obligations of the federal government. In other words, NCLB has been used as a back door way to dismantle tribal self-determination using the disguise of educational improvement.

It has been a disaster for tribal self-determination and it has been a disaster for tribal education and for Indian children, because its mandates fail to take into account the socioeconomic conditions of Indian reservations and the unique cultural resources that exist within Indian tribes.

It is essential that the Obama administration take steps now, while it is moving to change NCLB generally, exempt tribes completely from NCLB, but allowing those tribes who embrace it to opt back in to NCLB, which is the most efficient way to honor tribal self-determination. In the alternative, at the very least, the Obama administration needs to provide a way for the BIE to allow tribes to opt out of the

NCLB, and to dismantle the new bureaucratic central office that was created in Albuquerque under Bush, and send those resources back out into the field where they actually matter – because BIE has no reason to exist but for its service to the tribes, tribal schools and the needs of Indian children. There are other ways to ensure accountability by tribal schools, other than micromanaging their lives and creating more needless bureaucracy that detracts from the literacy and education of Indian children.

If there is a return to tribal self-determination in education, and a recognition of the socioeconomic realities of tribal schools which tribal educators deal with on a daily basis, and there is a reemphasis on the importance of culture and language, the Tribes want to completely disengage the states from involvement in tribal education, unless the tribes seek out a relationship independently. This will end the need for alternative AYP development, it will end the designation of schools as being in need of improvement or forced to accept state education consultants to assist in getting schools back in compliance, it will get states out of the tribal education business and return federal education policy to its proper role of supporting tribal self-determination and sovereignty, rather than reintroducing federal paternalism and dominance through the back door of NCLB.

The tribes of the Great Plains region are respectfully requesting that President Obama reaffirm his commitment to tribal self-determination, and to direct his Indian affairs, education staff and the departments and agencies to immediately work toward real changes in federal law and regulation that reaffirm those principles – laws that should be rewritten by both the White House and the Congress, particularly the Senate Committee on Indian Affairs under Senator Dorgan and the House Resources Committee under Chairman Rahall, in consultation with the tribes, under the coordination of the White House.

Thank you.

Following are some specific Recommendations:

- **Fund Operation and Maintenance of Schools at 100%.** Basic Operations and Maintenance Funding for Schools must be at 100% of need so that Schools can provide a safe and healthy environment for our children, without reducing their staffing and supplies. At the present time, tribal schools are constrained in their operation funds to 47% of need, (53% last year constrained at 43%.) Operation & Maintenance Funds DO NOT provide fuel for our buses under ISEP and doesn't meet the needs of our Schools. Administrative costs are constrained to 67% to 72% of identified need. This will usually show up in the school audits as an identified problem by stating that the schools do not segregate duties. Operations and maintenance includes fuel for school buses and heating, electricity, and other essential operations. This requires a permanent legislative fix in the Congress so that this situation will not continue. Additionally, the GPTCA requests **Forward Funding** so Education won't be hindered waiting for funds.

- **Review Pending School Construction Projects to Expedite Construction.** The President and his staff should direct the undertaking of an immediate review of all pending construction applications in order to speed their approval, and to create a program for BIA Facilities to solicit from tribes and approve construction grants at a quicker pace over the next five (5) years. This funding must consider Housing for Teachers.

- **Hire a New BIE Director Based upon Consultation With Tribal Governments.** Hire the Director of Bureau of Indian Education after consultation with tribal governments as soon as possible. The position should be filled based on demonstrated ability to consult effectively with Tribal Nations prior to making decisions, and demonstrated commitment to self-determination in education.

- **Appoint a New Director of the Office of Indian Education Based upon Consultation with Tribal Governments and as soon as Possible.** The Position must be filled based on demonstrated ability to consult effectively with Tribal Nations prior to making decisions, and demonstrated commitment to self-determination in Education.

- **Appoint the Members of the National Advisory Council of Indian Education (NACIE) including the Executive Director as soon as possible.** These positions have been vacant too long and are preventing important decisions to be made regarding Indian Education both within the Department of Education and for the Department of Interior. (BIE)

- **Appoint the Education Director of the White House Initiative on Tribal Colleges As Soon As Possible.**

- **Elevate the Office of Indian Education within the Department of Education to an Assistant Secretary Level** so decisions can be made with more effective results. This includes increasing the staff within Title VII and hiring more American Indians staff to improve delivery and more successful services to Schools with Indian Students. There is every reason for American Indian Educators to be recruited throughout DOE especially in Agencies such as Title I, Impact Aide, Civil Rights, Advisor to the Secretary etc.

- **The Director of the Office of Indian Education should be given the authority of Inter and Intra office coordination on Indian Education.** There are numerous Agencies within the Department of Education which deal with Indian Tribes and this will improve coordination and services. Some of these offices are Impact Aide, Civil Rights, Title I, Financial Aide, Research & Statistics, Office of English Language Acquisition, Office of Drug Free Schools and others.

- **Establish a White House Liaison on American Indian Affairs** similar to the Under Secretary (Ex. Dir. Kiran Aheya) on Asian American & Pacific Islanders.

- **Race to the Top,** The GPTCA recommends at least a 5% set aside to fund Indian Tribes so they can establish their Tribal Education Departments and overturn the neglect of the last 8 years. Similar to what Law Enforcement is doing today with added emphasis in officers, funding and resources for the Reservations. We need a 'Catch-up' emphasis.

- **The GPTCA requests establishing a Coordinator within DOE to carry out and assure accountable and proper delivery of services are being implemented**

for the requirements of Impact Aide, Migrant Education, Indian Education, Title I etc. for our Students.

- **The GPTCA requests that Formula Grants be retained and be increased within Indian Education. Parent Involvement should continue as a priority within Indian Education. Technical Assistance for Parents should also be a priority. Tribal Governments are finding two Generations of Parents were raised in Boarding Schools away from Families where they normally learned responsibilities. The Kennedy Study which led to the Indian Education Legislation now Title VII pointed out the necessity of Parent Involvement in their student's education.**

- **The GPTCA requests improved coordination at the Secretarial Level or US Attorney General and within Agencies.** For example, Many of our Schools request Public Safety Officers or apply for a School Resource Officer. The funding must be consistent and sustainable. Many of our schools are dealing with problems putting our students at risk such as suicides, drugs bullying and gangs, the Officer would be very helpful. Another example of the need for inter-Agency Cooperation is the need for improved roads, our School buses have to drive over dirt or gravel roads and maintenance costs are extremely high.

- **Funding is important to keep dormitories open 7 days in order to accommodate many students who are homeless.**

- **Enforce 25 U.S.C. § 2011 Government-to-Government Consultation Requirements.** While 25 U.S.C. § 2011 requires that, “[a]ll actions under this Act shall be done with active consultation with tribes,” and further that, “[t]he United States acting through the Secretary and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members,” this law has not been fully enforced. *See, e.g., Yankton Sioux Tribe et. al v. Kempthorne*, 442 F.Supp.2d 774 (D.S.D. 2006). Government-to-Government consultation between Department of Education, the BIE and Tribes must precede implementation of new programs. Tribal Schools must be able to exercise self-determination in programming for education to succeed. It is not acceptable to require tribal schools to treat our children as part of an experiment by forcing schools to adopt substantive programs, such as Reading First, that have not been shown to work, and which conflict with programming tribal schools are implementing, as a condition for receiving funding.

- **Rescind or Re-negotiate the 2005 Memo of Agreement between the DOE and BIE.** The Agreement isn't working and was completed without Tribal approval. Since the agreement, BIE has grown top heavy and the **BIE Office** in Albuquerque, NM has grown 150%. All the resources are at the top with little for the schools where they are drastically needed and where Education is really happening.

- **Direct Education Funds for Tribal Education to the Agency Level – Not the National Level.** The No Child Left Behind Act funds received by BIE must be used at the Education Line Office, to enhance Tribal Education Departments, and to fund Tribal Schools before any improvements in achievement will be realized. Funds provided should not be used to create entire new bureaucratic divisions such as the

DCMA in Albuquerque, who do not consult with Tribes and Tribal Schools before implementing new reporting requirements. Improved school reporting requires management on the ground where the schools are located – not in one central office for the entire nation.

- **Fully Fund Tribal Colleges.** Tribal Colleges are vital to the education of tribal members and often are the only colleges accessible to tribal members on the Reservation. The Great Plains Tribes have set up our own Indian Colleges and Tribal Schools to practice our Sovereignty and educate our People on our culture as well as professional degrees. But, the constant lack of adequate funding to operate the schools and colleges remains. Tribal Colleges should receive a set aside of higher education funds earmarked for state colleges as well as BIE to ensure stable operations.

- **Support the Full Implementation of the Tribally Controlled Schools Act.** The Tribally Controlled Schools Act provides for *one* grant to each school comprised of Department of Education and BIE funds. BIE must halt its treatment of each source of funds within the grant as a separate grant, and halt recapture of funds used for education by the schools as “disallowed costs” simply because the funds are not accounted for separately based on the source of funds. BIE continues to impose new grant restrictions not supported by the law each year without consulting with Tribes, and then sanctions tribal schools for not complying with these new interpretations of the law. The “recapture” of funds used to provide education to already underfunded schools harms our children.

- **Amend the No Child Left Behind Act to Allow Tribes to Opt Out and/or BIE to Waive the Requirements of NCLB as They Pertain to Tribal Grant Schools.** The NCLB Act is slated for re-authorization this year. The Tribally Controlled Schools Act and Indian Self-Determination and Education Assistance Acts already state the DOE requirements, including the NCLB Act requirements, are not to be imposed on Tribally Controlled schools. Yet, without an amendment to make the law clear, through an opt-out provision and waiver authority to the BIE, the Tribally Controlled Schools Act single reporting system will continue to be ignored. Tribes are not asking that money be given without accountability, only that it be administered by the tribes directly and/or through the BIE who can better meet the socioeconomic and cultural needs and respect tribal governance and sovereignty.

- **Adequately Fund Tribal Education Departments. The GPTCA** supports and requests at least \$2 million for Tribal Education Departments (TED's) in the Labor, HHS, Education, and Related Agencies and \$2 million for TED's in the Interior, Environment, and Related Agencies FY'11 appropriations bill. 93% of Indian Students are in Public schools. The BIE has responsibility for 184 schools. The Sovereign Nations must determine their own Educational Systems and their own educational Assessments, Codes, Standards. TED funding is authorized by the No Child Left Behind Act of 2001 (NCLB). See Section 7135 of NCLB Title VII, codified at 20 U.S.C. § 7455 and Section 1140 of NCLB Title X, codified at 25 U.S.C. § 2020. Congress has authorized federal funding for TED's since 1988 but no federal appropriations ever have been made to aid this important support structure for some of our nation's most underserved Native American students. We find this unacceptable and request the

DOE request funding for Tribal Education Departments. In the Great Plains our Tribes signed a Treaty of Peace and within that Treaty it called for Education of all our People, funding for TED's would help fulfill the US responsibility.

- **Each Region is different, we are not all the same and the same is not equal, The GPTCA requests full consideration for cultural, political and economic differences.** Funding based upon need is a better measure than standardized tests which are often geared to middle class America. For Example on the NCLB test, there is a question asking for “where do you get your medicine?” the correct answer is the pharmacy, but an Indian Student would say, the Clinic as we all go to the Indian Health Clinic and see the doctor and get our medicine there. The student is marked wrong on this standardized test. The student is just as smart, just different environments. The same is true for Tribal Governments; some may have different needs than those of the Great Plains Tribes. Full consideration must be made of this diversity.

- **Need to reverse the Damage and Create a “Marshall Plan” to Rebuild our Schools and our Communities.** On the Pine Ridge Reservation when Pres. Regan came into office, there was 35% unemployment. The percentage increased to 85% unemployment when Pres. Bush left office. When President Clinton visited Pine Ridge in his last few months of his Presidency, he asked what was needed, he was told one word; JOBS! Many problems stem from poverty, including our Educational Problems. All of the Schools on our Reservations are in great need of solutions. The GPTCA Requests a Marshall Plan be instated immediately to overturn the damage directly contributing to the problems our students are experiencing.