



**U.S. Department of the Interior
Bureau of Indian Education
Advisory Board for Exceptional Children**

**Annual Report 2019
October 1, 2018 – September 30, 2019**

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Recommendations Letter

November 15, 2019

The Honorable David Bernhardt

Secretary of the United States Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Bernhardt:

This letter will outline the Bureau of Indian Education (BIE) Advisory Board for Exceptional Children concerns and recommendations regarding the provision of special education and related services to students within BIE funded schools. In doing so, we outline three primary concerns and related recommendations:

1. BIE Reorganization
2. Recruitment and Retention of staff
3. Transparency

The Office of Special Education Programs has determined that the BIE “needs intervention” to be in compliance with regulations for implementing the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) for the eighth consecutive year.

The Advisory Board did not fulfill its charge of meeting twice per year because of the government shutdown. The Board continues to meet its obligation to provide an annual report to the Secretary of the Interior. Previous Advisory Board annual reports listed specific recommendations, with timelines and assigned duties, to improve the quality of education services for students with disabilities. During this meeting, the Advisory Board noted the same concerns that have arisen repeatedly with no response from the Secretary of Interior’s office.

The Advisory Board respectfully requests that you acknowledge receipt of this letter in writing and the accompanying report and that you address the following concerns in a timely manner. We welcome the opportunity to meet and discuss with you to address these issues.

BIE Reorganization

Justification: The Advisory Board is concerned that the Secretary of the Interior has not clearly outlined and communicated the extent to which the reorganization of the BIE will impact the provision of special education and related services to students within BIE funded schools. This lack of a clearly articulated plan for reorganization as it relates to special education and related services will continue to result in inadequate services for students with disabilities. The BIE Advisory Board has not received a response from the Secretary of the Interior’s office to address the recommendations and concerns for items A, B and C, from Annual Reports 2016, 2017. On November 26, 2019 Margaret Triebisch, the

Committee Managing Officer (CMO) sent an emailed to Jennifer Davis, DFO a copy of a written response from the BIE Director regarding the 2018 Annual Report. The DFO forwarded a copy of the written response to the BIE Advisory Board members December 2, 2019.

- A. We recommend that the BIE immediately communicate the reorganization plan as it relates to special education programs and services. Specifically, we request an update as to the status of the reorganization the BIE is currently engaged as per Secretarial Order No. 3334. No response received.
- B. We recommend expediting the hiring process for positions associated with this reorganization. No response received.
- C. We recommend that clear roles and expectations for personnel (e.g., Division of Performance and Accountability, Educational Resource Centers, local schools, etc.) be communicated throughout the reorganization. No response received.

Recruitment and Retention of Staff

Justification: The BIE continues to lack qualified staff for special education and related services, which is a denial of Free and Appropriate Public Education (FAPE); furthermore, schools are in need of substantial improvement. Without appropriate staffing to assist schools in providing services for students with disabilities, the BIE is out of compliance with federal requirements (currently in its eighth consecutive year of “needs intervention” status) regarding the provision of special education services and coordination of related services. This is a violation of the federal trust responsibility for Indian Education as well as Individuals with Disabilities Education Act (IDEA). The BIE Advisory Board has not received a response from the Secretary of the Interior’s office to address the recommendations and concerns for items A, B, and C, (below) from Annual Reports 2016, 2017. A copy of the written response from the BIE Director regarding the 2018 Annual Report was forwarded to the BIE Advisory Board members December 2, 2019.

- A. We recommend that the BIE implement a system by which schools have access to daily support services for students with disabilities (e.g., school-level special education coordinator, program improvement specialist for special education, or education specialist at the ADD and SEA levels, implement the Continuous Quality Improvement plan (CQI)). No response received.
- B. We recommend that the BIE work to ensure adequate recruitment and training of special educators and related service providers. To assist in this effort, the BIE is asked to work with existing Native American administrator preparation programs that can be leveraged to increase the number of special education professionals. We also recommend that school personnel have opportunities to participate in relevant, high quality professional development programming. No response received.
- C. The Advisory Board recommends that collaborative partnerships between educator preparation institutions and BIE schools be developed for the purpose of preparing

teachers, specialized service professionals, and school leaders for BIE schools. No response received.

In addition, the Advisory Board is recommending that a plan be developed to address the following priorities to be completed by the end of the 2019-2020 school year. These recommendations are critical to ensure compliance and timely delivery of services to students with special needs.

- D. Develop an equitable system for funding, staffing and procurement across Bureau Operated, Tribally Controlled, and Navajo Schools to fill the support positions (Associate Deputy Director's level, ERC level, etc.) needed to provide focused and meaningful special education technical assistance to all schools as reflected in the reorganization.
- E. Build the capacity of special education personnel at the DPA, ERC and school levels to facilitate compliance and performance accountability.

The current organizational chart identifies a DPA special education specialist assigned to the ERC. This is not a true reflection of the organizational structure and responsibilities of these staff members. The DPA special education specialists perform state level general supervision responsibilities and duties under the office of DPA (SEA). There is currently no special education specialist on staff at the ERC level.

- F. Initiate timely processes for recruitment, employment and retention of qualified personnel, aligning with the school calendar to ensure positions are filled at the start of the school year across the BIE system.

Transparency

Justification: A written response to the last three reports from the Secretary of the Interior's Office has not been received. The lack of response makes it impossible to fulfill the duties of the Advisory Board. The existence of the Advisory Board is statutorily mandated by Part B, Section 611(h)(6) of the IDEA Reauthorization of 2004 (the Act, 200 U.S.C. 1400). If the Advisory Board does not receive a written response from the Secretary of Interior, perhaps another mechanism or approach should be considered by which the Advisory Board can request information and provide guidance.

In addition, the following are recommended:

- A. Clarify roles and responsibilities of BIE staff, departments and regions to ensure appropriate special education programs and services for students with disabilities.
- B. Increase direct community participation from all stakeholders across the BIE system.

Timely implementation of the recommendations as outlined above are critical as the BIE works to ensure compliance and fidelity to federal regulations regarding the education of Indian students with disabilities. Furthermore, such actions strengthen the federal government's efforts to respect and honor the federal trust responsibility for Indian education.

Thank you for the opportunity to share these recommendations. Please inform the Designated Federal Officer, Jennifer Davis (Jennifer.davis@bie.edu) on behalf of the Advisory Board, if specific content in this letter needs further clarification.

Maec-waewaenen (Thank you),

Katinee Shawanokasic, Vice Chair
Brenda Anderson, Board Member
Adrienne Benally, Board Member
Dr. Eudore Camata, Board Member
Teresa McMakin, Board Member
Jennie Platerio, Board Member
Dr. Harvey Rude, Board Member
Marcy Oliver-Starr, Board Member
Gretchen Wendell, Board Member
Ronald Worst, Board Member
Rebecca Youngman, Board Secretary

cc:

Congressman Bobby Scott, Chairman of Education and Labor Committee, U.S. Congress
Betsy DeVos, Secretary of Education
Tara Sweeney, Assistant Secretary - Indian Affairs
Tony Dearman, Director, BIE
Dr. Jeffrey Hamley, Associate Deputy Director, BIE
Donald Griffin, Supervisory Education Specialist (IDEA), BIE

Advisory Board Introduction and Background

The Individuals with Disabilities Education Improvement Act (IDEA, P.L. 108-446) guarantees free and appropriate public education to all children with disabilities in the United States. To guide states and other agencies that deliver special education and related services to children with disabilities, IDEA requires states to establish advisory boards that represent stakeholders, such as educational and program administrators, teachers, individuals with disabilities, and parents of children with disabilities. These advisory boards offer input on priorities and unmet needs within special education.

The Bureau of Indian Education (BIE), an agency within the Department of the Interior, oversees education for American Indian and Alaska Native students. Just as states must establish advisory boards to offer guidance on special education needs, the BIE is required to establish an advisory board for the same purpose. The BIE Advisory Board for Exceptional Children (Advisory Board), authorized by Part B, Section 611(h)(6) of the IDEA Reauthorization of 2004 (the Act, 200 U.S.C. 1400), represents the special education needs of all students with disabilities served by the BIE education system.

Currently, the Bureau of Indian Education (BIE) oversees a total of 183 elementary, secondary, residential and peripheral dormitories across 23 states. There are 130 schools that are tribally controlled under P.L. 93-638 Indian Self Determination Contracts or P.L. 100-297 Tribally Controlled Grant Schools Act. The remaining 53 schools are directly administered by the BIE. Currently, the BIE education system serves approximately 49,000 elementary and secondary students; of these students, approximately 6,233 have disabilities.

Board Responsibilities

The Advisory Board's duties, which are solely advisory, are to:

- assist in the coordination of services within the Bureau of Indian Affairs (BIA) and the BIE with other local, state, and federal agencies in the provision of education for infants, toddlers, and children with disabilities;
- advise and assist the Secretary in the performance of the Secretary's responsibilities as described in Section 611(h)(6) of the Act;
- develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations and the elimination of barriers to inter- and intra-agency programs and activities;
- provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and
- provide assistance in the preparation of information required to be submitted under Section 611(h)(6) of the Act.

Annual Reporting

The Advisory Board is required by federal regulation (34 C.F.R.: 300.715) to submit an annual report describing its activities during the preceding year. The annual report identifies specific areas of need that the Advisory Board selected as priorities. The report advises BIE staff, the Secretary of the Interior, and Congress regarding programs, regulations, and policy development that will support and improve

the education of American Indian and Alaska Native students with disabilities. This report is submitted in fulfillment of the annual reporting requirement for 2019.

Board Membership and Stakeholder Group Representation

The Advisory Board currently has 11 out of 15 members. The Secretary of the Interior selects and appoints members who represent a wide range of stakeholders involved in or concerned with the education and provision of services to American Indian and Alaska Native children with disabilities. Stakeholder groups include:

- Native American persons with disabilities,
- Native American parents or guardians of children with disabilities,
- Teachers of children with disabilities,
- Service providers to children with disabilities,
- State and local education officials,
- Representatives of tribes or tribal organizations,
- Representatives from state interagency coordinating councils in states that contain reservations,
- Members representing entities of BIE or BIA.

Advisory Board members are appointed to terms of either 2 or 3 years, so that half of the membership terms expire after 2 years and the terms of the remaining members expire after 3 years. The Secretary of the Interior selects the Advisory Board chairperson. (Appendix 1: Advisory Board Members lists all members of the 2019 Advisory Board and indicates which stakeholder category each member represents).

FACA Regulations

As an advisory board to a federal agency, the Advisory Board falls under the requirements of the Federal Advisory Committee Act (FACA; 5 U.S.C., Appendix 2). FACA aims to ensure that the advice of federal advisory committees is objective and available to the public, and that the committees comply with cost control and recordkeeping requirements. The Advisory Board must comply with FACA regulations by:

- Making Advisory Board meetings open to the public,
- Publishing advance notice of upcoming meetings in the Federal Register,
- Recognizing a Designated Federal Officer (DFO) assigned by the BIE to support the Advisory Board,
- Ensuring that members avoid conflicts of interest, and
- Limiting membership terms.

The current DFO Jennifer Davis has assisted the Advisory Board in maintaining compliance with these requirements.

2019 Advisory Board Meetings

The Advisory Board generally meets two to three times per year, as is necessary to complete its work. For FY 2018-2019 (October 1, 2018 through September 30, 2019) the full Advisory Board met once in 2019 and once for an administrative meeting.

- The Advisory Board attempted to meet January 16-18, 2019 in Albuquerque, NM however, due to the federal government shutdown the meeting was cancelled. The Advisory Board attempted to meet again April 17-19, 2019 in Albuquerque, NM and September 26-27, 2019 in Washington, D.C. Neither meeting was convened, since the federal register notices for both meetings did not make publication in a timely manner.
- **May 1-3, Albuquerque, NM (Advisory Board Meeting)**

The Advisory Board received an update about the BIE's special education programs, from the Associate Deputy Directors, Office of Sovereignty, Human Resources, Office of the Director of BIE, and the Division of Performance and Accountability. The Board discussed various items for priorities. Eight new board members were added and provided the required orientation. The Board worked on three priorities:

 1. BIE Recruitment and retention
 2. BIE Reorganization
 3. Transparency
- **September 26-27, 2019, Albuquerque, NM (Administrative Meeting)**

During the September meeting the Advisory Board subcommittee developed a draft 2019 annual report.



United States Department of the Interior

BUREAU OF INDIAN EDUCATION

Washington, D.C. 20240

SEP 17 2019

Mr. Norman Shawanokasic
Chairperson, Menominee Tribal Enterprises
Board of Directors
P.O.Box 10
Neopit, Wisconsin 54150

Dear Chairperson Shawanokasic:

On behalf of the U.S. Department of the Interior (DOI) and Bureau of Indian Education (BIE), thank you for your commitment to Indian children and for your letter to Secretary Zinke dated September 22, 2018, regarding special education. The BIE values its partnerships with the BIE Advisory Board for Exceptional Children (Board) and appreciated the work of you and your colleagues, especially the 2018 Annual Report included in your September correspondence.

The BIE special education professionals have reviewed the Board's 2018 Annual Report and look forward to working collaboratively with all stakeholders, including the Board, to address the recommendations contained therein. Specifically, the BIE continues to work on the two items highlighted in the Board's recommendations: (1) the ongoing reorganization of the BIE, and (2) recruitment and retention of high quality staff. Additionally, there have been multiple professional development opportunities such as face-to-face summer regional trainings and computer-based learning courses on special education topics for staff.

DIE Reorganization Status

As you are aware, in early 2016, the Department directed the BIE to institute organizational improvements to focus services based on the types of schools served. The BIE has committed considerable time and resources towards planning, consulting on, designing, and implementing a multifaceted, bureau-wide reorganization.

Implementation efforts have proceeded in two phases. Phase I included a realignment of the BIE organization from a regional basis to a structure based on the types of schools served; namely, (1) schools in the Navajo Nation, (2) tribally-controlled schools, and (3) BIE-operated schools. Positions specific to school improvement and special education were also created. The BIE has school-level special education coordinator and special education specialist positions across the Bureau. Phase I is fully completed. Phase II involves the realignment of functions from the Bureau of Indian Affairs to the direct management and control of the BIE, including human resources, contracting, information technology, and facilities. Phase II was initiated in January 2017 and remains ongoing. To date, however, the BIE has completed the realignment of human resources and school safety inspections.

Recruitment and Retention

We agree that recruiting highly effective principals, teachers, and staff and providing such personnel with the ongoing professional development is critical for serving special education students. To that end the BIE identified this issue as an area of priority in its recently published Strategic Direction. Specifically, strategy 3.1 and 3.2 are designed to directly address this historical challenge faced by the BIE and its schools. For example, strategy 3.1 and 3.2 Year One milestones include: (1) conducting a joint study with interested BIE-funded schools and Tribal Education Departments (TEDs) to identify and address barriers to community members serving as principals, teachers and staff; (2) formalizing a recruiting process to attract highly effective principals, teachers and staff; and (3) researching a professional development framework which leads to continuous learning opportunities and credentialing for individual principals, teachers and staff.

Additionally, as part of the ongoing reform the BIE recently filled two Education Talent Recruiters positions located in our Human Resources office. These positions are dedicated to conducting outreach efforts to boost recruitment of teachers and principals by establishing collaborative relationships with colleges, universities and professional organizations. The BIE held a series of summer regional trainings for school personnel, which included special education.

We understand fully the challenges highlighted in the Board's report, particularly in regards to the ongoing reorganization and recruitment and retention of high quality staff. We look forward to working with you, your colleagues, and all interested Indian education stakeholders in order to ensure that Indian children with special education needs are provided a quality education. If you need further information, please contact Dr. Jeff Hamley at (202) 208-6123.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony L. Dearman', with a long horizontal flourish extending to the right.

Tony L. Dearman
Director, Bureau of Indian Education

Appendix: FY 2019-2020 Advisory Board Members

Bureau of Indian Education Advisory Board for Exceptional Children

Board Member	Representative Category	Length of Term	Term Start Date	Term End Date
Norman Shawanokasic, Chairperson Keshena, WI	Representatives of tribes or tribal organizations	3-Years	04/01/2019	04/01/2022
Brenda Anderson Saint Michael, AZ	Representatives of tribes or tribal organizations	3-Years	04/01/2019	04/01/2022
Adrienne Benally Fort Defiance, AZ	Parents of Children with Disabilities	3-Years	12/02/2016	12/02/2019
Dr. Eudore Camata Shiprock, NM	Local Education Officials	2-Years	04/01/2019	04/01/2021
Teresa McMakin Lame Deer, MT	Local Education Officials	3-Years	04/01/2019	04/01/2022
Marcy Oliver-Starr Albuquerque, NM	State Education Officials	2-Years	04/01/2019	04/01/2021
Jennie Platerio Casa Grande, AZ	Bureau employees concerned with the education of children with disabilities	2-Years	04/01/2019	04/01/2021
Dr. Harvey Rude Loveland, CO	Service providers to children with disabilities	3-Years	12/02/2016	12/02/2019
Katinee Shawanokasic West Allis, WI	Indian persons with disabilities	3-Years	04/01/2019	04/01/2022
Gretchen Wendell Colman, SD	Bureau employees concerned with the education of children with disabilities	2-Years	04/01/2019	04/01/2021
Ronald Worst Aumsville, OR	Indian parents or guardians of children with disabilities	3-Years	12/02/2016	12/02/2019
Rebecca Youngman Rio Rancho, NM	Service providers to children with disabilities	3-Years	04/01/2019	04/01/2022

The "2019 Current Board Member" document was updated: 11/26/2019.