

# **U.S. Department of the Interior**

## **Bureau of Indian Education**

### Bureau of Indian Education Advisory Board for Exceptional Children



Annual Report 2020

**October 1, 2019 - September 30, 2020**

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# Recommendations Letter

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September 30, 2020

**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 two primary concerns and related recommendations:

1. Effective and consistent implementation of BIE system(s) workforce plan.
2. Coordination of Special Education Services to include effective communication, collaboration, and transparency across the BIE system, other BIA divisions and tribal education departments in support of tribal sovereignty.

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 ninth consecutive year. The board has also reviewed the Government Accountability Office (GAO) report 20-358 released in May 2020 “Actions Needed To Ensure Students With Disabilities Receive Special Education Services” , listened to reports from stakeholders to include Tribally Controlled, Navajo region schools, Bureau Operated Schools and comments from the public to develop our recommendations for the 2020 Annual report.

The Advisory Board fulfilled its charge of meeting twice this year. 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. The Advisory Board noted the same concerns that have arisen repeatedly. The Board received a response from the Secretary of Interior’s office for the 2018 annual report at the August 2020 board meeting. The advisory board has yet to receive a response to the 2019 annual report.

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.

## **I. Effective and Consistent Implementation of BIE System(s) Workforce Plan**

**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 ninth 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 stated in the 2019 annual report. The board reviewed the Government Accountability Office (GAO) report 20-358 released in May 2020 “Actions Needed To Ensure Students With Disabilities Receive Special Education Services” , listened to reports from stakeholders to include Tribally Controlled, Navajo region schools, Bureau Operated Schools and comments from the public workforce continues to remain a high priority initiative in the 2020 Annual report.

The GAO report found that nearly 40 percent of students at BIE schools were not receiving required special education and related services. Students are not receiving these services due to the lack of qualified personnel. The board agrees to adopt the GAO Recommendation to establish consistent requirements for schools on making up missed special education and related services and monitor schools to ensure that they follow these requirements. 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 ERC, ADD and SEA levels, in alignment with the Continuous Quality Improvement Plan (CQI).

The board agrees to adopt the GAO Recommendation that the Director of BIE should update the agency's workforce plan to include a strategy and timeframe for filling vacant staff positions responsible for overseeing and supporting schools' special education programs. (Recommendation 4)

The board noted that the BIE already agreed with this recommendation and plans to update and expand its Strategic Workforce plan to include new function areas. They expect to update it in the coming months to include special education.

Specifically the board recommends the following:

- A. 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, including expanded utilization of virtual delivery systems.
- B. Ensure the BIE works to implement effective and efficient 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 educator 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.

- C. 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.
- D. Build the capacity of special education personnel at the DPA, ERC and school levels to facilitate compliance and performance accountability. Personnel hired at these levels need to be fully certified/licensed and experienced in special education.
- E. Develop and update job categories, standards and descriptions for all special education and related service positions to ensure that personnel hired are fully certified/licensed and experienced in special education and/or related service fields.

The Advisory Board recommends that a plan be developed to address the following priorities to be completed by the end of the 2020-2021 school year. These recommendations are critical to ensure compliance and timely delivery of services to students with special needs.

## **II. Coordination of Special Education Services to include effective communication, collaboration, and transparency across the BIE system, other BIA divisions and tribal education departments in support of tribal sovereignty.**

**Justification:** The BIE has sponsored both the Sovereignty Indian Education and the Tribal Education Grant programs that extends to tribes across the nation. A concern is that the communication between BIE and tribal education departments is limited in the coordination of how these grants are to be implemented.

The BIE has established a Tribal Education Department grant program to support tribal education agencies with the authority for the education of all students within their nations. The success of this program relies on the capacity for the BIE and Tribal Education Departments to communicate and coordinate activities, specifically special education services.

The advisory board supports the GAO recommendation that the director of BIE should take steps to ensure that all of the agency's education resource centers conduct outreach with schools to inform them of the new rules in overseeing and supporting schools special education programs under the BIE reorganization.

The board has not received a written response from the Secretary of the Interior's Office for the last four years. 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). In order for the Advisory Board to act in its full capacity, the board requests acknowledgement of the report. If the Advisory Board does not receive

an acknowledgement or 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.

Specifically the board recommends the following:

- A. Encourage and support interagency communication and collaboration between the BIE special education system and Tribal Education Departments.
- B. Clarify roles and responsibilities of BIE staff, departments and regions to ensure appropriate special education programs and services for students with disabilities.
- C. Increase direct community participation from all stakeholders across the BIE system.
- D. Develop/revise and implement the plan of coordination of the IDEA statute.
- E. Finalize and adopt the BIE Special Education Policy and Procedures.

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](mailto:Jennifer.davis@bie.edu)) on behalf of the Advisory Board, if specific content in this letter needs further clarification.

Maec-waewaenen (Thank you),

Brenda Anderson, Advisory Board Member

Dr. Robin Blitz, M.D., Advisory Board Member

Dr. Eudore Camata, Ed.D, Advisory Board Member

Cynthia Frank, Advisory Board Member

Teresa McMakin, Advisory Board Member

Marcy Oliver-Starr, Advisory Board Member

Jennie Platerio, Advisory Board Member

Dr. Harvey Rude, Ed.D, Advisory Board Member

John Struck, Advisory Board Member

Katinee Shawanokasic, Advisory Board Member

Norman Shawanokasic, Advisory Board Member

Gretchen Wendell, Advisory Board Member

**cc:** Honorable Lamar Alexander, Chair, Senate Health, Education, Labor and Pensions Committee  
Honorable Bobby Scott, Chair, House Education and Labor Committee  
Betsy DeVos, Secretary of Education  
Tara Sweeney, Assistant Secretary - Indian Affairs  
Tony Dearman, Director, BIE  
Margo Delaune, Acting Associate Deputy Director, BIE  
Dr. Eugene Thompson, Acting Supervisory Education Specialist (IDEA), BIE

# Advisory Board Introduction and Background

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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

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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

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The Advisory Board generally meets two to three times per year, as is necessary to complete its work. For FY 2019-2020 (October 1, 2019 through September 30, 2020) the full Advisory Board met once in 2019 and twice in 2020.

- **November 13-15, 2019, Albuquerque, NM (Advisory Board In-Person Meeting)**  
This was the first meeting for FY2019-2020. The Advisory Board received updates about the BIE's special education programs from the BIE Associate Deputy Directors, BIE Director's Office and the Division of Performance and Accountability. During the meeting the Board discussed various priorities for FY19-20.
- **April 22-24, 2020** - The Advisory Board attempted to meet in Washington, D.C. however the federal register notice failed to meet publishing deadlines and this was also the period the COVID-19 pandemic started and travel was very limited.
- **August 19-20, 2020, (Advisory Board Online Meeting)**  
The Advisory Board conducted its second meeting for FY2019-2020. There were five new Board members who attended this meeting: Dr. Robin Blitz, M.D., Cynthia Frank, Dr. Harvey Rude, Norman Shawanokasic and John Struck. The Advisory Board received updates about the BIE's special education programs from the BIE Associate Deputy Directors, BIE Director's Office, the Division of Performance and Accountability and Public commenting sessions were provided each day. The 2020 Annual Report was worked on however it was not finished. The Board needed one more day to complete the 2020 Annual Report.
- **September 30, 2020, (Advisory Board Online Meeting)**  
The Advisory Board conducted its third and last meeting for FY2019-2020 to complete the 2020 Annual Report. In addition to working on the Annual Report, the ADD Navajo Region provided their special education update since it did not occur during the August 2020 Board meeting. There was also a Public Commenting session that was also provided. For the remainder of the meeting the Board worked and finalized the 2020 Annual Report.

## BIE Advisory Board Membership Roster

1. **Brenda Anderson, Secretary.** 3-YearTerm Period: 4/1/2019 - 4/1/2022  
State Location: AZ. Represents Category: Tribes or tribal organizations
2. **Dr. Robin Blitz, M.D., Board Member.** 3-YearTerm Period: 7/9/2020 - 7/9/2023  
State Location: AZ. Represents Category: State Interagency Coordinating Councils  
(for states having Indian reservations)
3. **Dr. Eudore Camata, Board Member.** 2-YearTerm Period: 4/1/2019 - 4/1/2021  
State Location: NM. Represents Category: Local Education Officials
4. **Cynthia Frank, Board Member.** 3-YearTerm Period: 7/9/2020 - 7/9/2023  
State Location: NM. Represents Category: Indian parents or guardians of children with  
disabilities
5. **Teresa McMakin, Board Member.** 3-YearTerm Period: 4/1/2019 - 4/1/2022  
State Location: MT. Represents Category: Local Education Officials
6. **Marcy Oliver, Board Member.** 2-YearTerm Period: 4/1/2019 - 4/1/2021  
State Location: NM. Represents Category: State Education Officials
7. **Jennie Platerio, Board Member.** 2-YearTerm Period: 4/1/2019 - 4/1/2021  
State Location: AZ. Represents Category: BIE employees concerned with the  
education of children with disabilities
8. **Dr. Harvey Rude, Board Member.** 3-YearTerm Period: 7/9/2020 - 7/9/2023  
State Location: CO. Represents Category: Service providers to children with  
disabilities
9. **Katinee Shawanokasic, Board Member.** 3-YearTerm Period: 4/1/2019 - 4/1/2022.  
State Location: WI. Represents Category: Indian persons with disabilities
10. **Norman Shawanokasic, Board Member.** 3-YearTerm Period: 7/9/2020 - 7/9/2023  
State Location: WI. Represents Category: Tribes or tribal organizations
11. **John Struck, Board Member.** 3-YearTerm Period: 7/9/2020 - 7/9/2023  
State Location: MS. Represents Category: Teachers of Children with Disabilities
12. **Gretchen Wendell, Vice-Chairperson.** 2-YearTerm Period: 4/1/2019 - 4/1/2021  
State Location: SD. Represents Category: BIE employees concerned with the  
education of children with disabilities

Three Advisory Board members served during 2019 and their terms expired in 2019. One Board member resigned and vacated the Board position.

- **Adrienne Benally, Board Member.** 3-Year Term Period: 12/2/2016 - 12/2/2019  
State Location: AZ. Represents Category: Parents of Children with Disabilities
- **Ronald Worst, Board Member.** 3-Year Term Period: 2/2/2016 - 12/2/2019  
State Location: OR. Represents Category: Indian parents or guardians of children with disabilities
- **Dr. Harvey Rude, Board Member.** 3-Year Term Period: 12/2/2016 - 12/2/2019  
State Location: CO. Represents Category: Service providers to children with disabilities
- **Rebecca Youngman, Board Member.** 3-Year Term Period: 4/1/2019 - 4/1/2022  
State Location: NM. Represents Category: Service providers to children with disabilities



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