



DINÉ BI OLTA SCHOOL BOARD ASSOCIATION, INC.

DBOSBA

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DBOSBA TASK FORCE WORK ON DINÉ EDUCATION INITIATIVE

September 17, 2016

Status of DODE Initiative: It is unclear at this time just what Department of Diné Education (DODE) is proposing. There is some information that DODE is proposing to contract with BIE for agency level services. However, it is also reported that DODE is proposing to contract all the 32 remaining BIE operated schools on Navajo. It is possible that DODE plans to contract both agency level services and the operation of the 32 schools.

DODE has presumably presented some kind of document to the Navajo Nation Board of Education (NNBOE) on September 2, 2016 and apparently requested and received approval to move forward in an effort to receive authorization for a PL 93-638 contract. The actual intent of the Navajo Nation Board of Education needs to be shared with all concerned prior to moving forward, pursuant to *10 NNC §497*.

- The next formal step in receiving tribal authorization for any contract or grant involving the assumption of schools or BIE agency functions would be to present the plan to the Health, Education, and Human Services Committee of the Navajo Nation Council.

DBOSBA's Activity concerning DODE Plans:

- The Dine' Bi' Olta School Board Association (DBOSBA) has provided comments and analysis of the Initiative during its on-going development.
- DBOSBA strongly objected to the so called "single grant option" and it was rejected by the HEHS Committee.
- DBOSBA opposed organizational changes that would eliminate local and agency school boards.
- DBOSBA has insisted on full consultation and transparency on any and all proposals to significantly change the provision of educational services, in accordance with (*10 NNC§ 497 - Changes in educational program or operation*)
- An option to create 5 "regional school boards" was under consideration by DODE at one time. The boards would have apparently been the contractors or grantees for a number of the remaining BIE schools. Few details were ever

shared with DBOSBA so the many questions it raised were never answered. We, therefore, believe that this option is no longer under consideration though that is unclear.

- As part of the “regional board” option, there was also a proposal to create “Local School Advisory Councils” made up of the local principal, the HR technician, the Business technician, a teacher, two parents, and a student council representative. We assume this idea has also been abandoned along with the “regional boards” plan. The idea was seriously flawed since it was establishing a group at the school level whose job it was to advise the very employees who were members of the group; ie., themselves.

DBOSBA’s Recommendations to DODE, the NNBOE, and the HEHS Committee

1. The Navajo Nation should focus on the option of contracting the regulatory and technical functions authorized in Title 10. **The critical thing for the Navajo Education System is a workable balance between the Nation with its regulatory authority and the school boards with their operational authority.** The regulatory authority is not something that would be taken away from local boards; rather, it is the Nation taking over functions from the states and the BIE.
2. The Navajo Nation should develop a contract proposal under PL 93-638 in which it would propose to assume various functions currently performed by the BIE. Such functions would be costed-out and negotiated with the Bureau.

Such a proposal should include:

- (a) developing a Navajo Accreditation System, [10 NNC§109 (B)]
- (b) developing a licensing system for grant school administrators and other professional education positions, [10 NNC § (G)(3) (c)]
- (c) developing a clear enforceable system for compulsory attendance, [10 NNC§118(C)] and [10 NNC §504]
- (d) reviewing current school board payment rules and enforcement procedures and proposing changes as necessary, [10 NNC § 107)]
- (e) developing plans relating to the proposed accountability workbook (this needs to be done prior to approval by the US Dept of Education), [10 NNC§106 (G) (3) (a) (b)]
- (f) developing procedures for conducting Inquiries to look into complaints and perceived problems at schools, [10 NNC§107 (B) (3)]

- (g) establishing clear procedures for assuming control of community controlled schools in cases of extreme mismanagement by the local school management, [10 NNC §106 (G) (1) (a)]
- (h) developing criteria for endorsing Navajo language and cultural knowledge curricula and certifying the competency of instructional personnel to teach them, [10 NNC § 106 (G) (g)] etc.
3. DODE, NNBOE, and the HEHS Committee should include in the PL 93-638 proposal all appropriate functions; including those that DODE already performs using tribal dollars. (For example, DODE funds compliance monitoring, technical assistance programs, the NCA accreditation program, functions relating to defining and developing accountability standards, etc.)
 4. In addition to the regulatory systems for the schools, the SIEG team should conduct a thorough review of DODE, eventually making recommendations on all aspects of the Department's capabilities of conducting effective oversight and policy direction for the Navajo School System.
 5. The SIEG team should review the various provisions of the Navajo Nation Code, evaluating which provisions are being implemented effectively, which are being ignored, which are duplicative, etc. Recommendations should then be made to the NNBOE, DODE, and the HEHS Committee as well as DBOSBA.
 6. DODE, NNBOE, and the HEHS Committee must consult with all interested parties along the way and report on progress, as well as obstacles and challenges; pursuant to 10 NNC §497.

Specific Issues related to PL 93-638 contracting of BIE functions

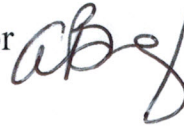
- A contractor of a Bureau programs under PL 93-638 is eligible to contract any function provided that it is not an “inherently federal function.” As a part of negotiating with the BIE, it is important to identify what is and what is not inherently federal and what functions the contractor/grantee wishes to assume.
- Contract and grant schools both are eligible for Administrative Cost Grants (ACG) on the same basis.
- “Choctaw Decision” schools [25 USC § 1128 (h)] – Contractors that operate non-school programs under PL 93-638 and also operate a BIE funded school under contract or grant, are entitled to receive an amount of funding in addition to their ACG funding that would equal full funding under their current indirect cost rate. The Navajo Nation Indirect Cost Rate is about 17 %. Over 25 contractors (mostly tribes that operate non-education BIA programs under PL 93-638) currently receive an amount equal to their

indirect cost rate, instead of being capped at their ACG amount. They seem to do this by taking their share of the ACGs, then adding to it from the contract support line item.

- Prior to 2016, an amount of funding (\$500,000) was set aside for ACG grants for first year contractors/grantees. In the 2016 budget, the set aside was eliminated and it was not restored in the 2017 budget. This creates a problem for any new contractor/grantee (particularly large ones) and for the BIE in providing the additional dollars that a contractor/grantee is entitled to. It requires considerable advance planning.
- The recent U.S. Supreme Court (SC) judgment requires the Bureau to pay 100 % of contract support costs. Prior to this judgment the Bureau simply paid a pro rata amount to contractors because they were precluded from spending more than a certain amount set by a Congressional cap. Since the SC decision, the Bureau has greatly increased their funding request; however, the caps for both contract support costs and ACGs are still there. BIG problem when new contractors/grantees want to convert!
- The effective date for PL 100-297 grants to be awarded is the beginning of the academic year (July 1) of the fiscal year succeeding the fiscal year in which the application for the grant is made, or an earlier date determined by the Secretary. If the Bureau fails to act on an application from a potential grantee within 180 days after receiving the application, then the grant would become effective 18 months after the date the Secretary received the application.
- For 32 BIE schools to go contract/grant in the same year, the ACG grants required would create a huge shortfall for existing grant/contract schools. An estimate of the ACG grants if the 32 schools were lumped together in one contract/grant would be about \$14,500,000. However, if Navajo pursued the Choctaw decision option, CSF funding might add an approximate \$7,900,000, for a new total of about \$22,000,000. However, over the short term, it is very hard to imagine a scenario where anywhere near such funding could be delivered by the BIE. It is simply not in the budget!
- The average size school's ISEP funding for the 32 schools in question is about \$2,900,000, plus the non-ISEP dollars they administer. If each school contracted separately, an average percentage amount per school would probably be around 30% or somewhere well over \$30,000,000, much of which would be money spent initially at the local level.

- Several years back, NASBA supported a plan whereby a limited number of slots for BIA schools would be available to go grant each year. The schools identified their interest and were selected and the Bureau was aware of the tribe's schedule. In this way, the schools received training and received assistance in developing the application. The Bureau assisted in the training and, more importantly, had sufficient time to request the additional funds needed for Administrative Cost Grants, as well as severance pay for BIA employees. Several schools went grant at that time. It may be time for this type of scheduled transition to be used again. As schools go grant, they are clearly entering into the jurisdiction of the Navajo Education System.

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POSITION STATEMENT OF THE DINÉ BIOLTA SCHOOL BOARD ASSOCIATION, INC.

Navajo Nation Option for Implementing the Navajo Nation Alternative Accountability System September 17, 2016

EXHIBIT "A"

On September 27, 2016, a document will be signed by leaders of the Navajo Nation and high ranking officials in the U. S. Departments of the Interior and Education. On the Federal side the authority to enter into this agreement comes from the Elementary and Secondary Education Act (ESEA) as amended by the so called No Child Left Behind Act (NCLBA) and its successor Every Student Succeeds Act (ESSA). The law provides that Indian tribes served by BIE funded schools have the authority to waive the education accountability provisions established by the BIE as long as they establish an alternative that comports with the applicable laws and rules that govern such plans.

The Navajo Nation's Department of Education (DODE) has been working for several years to develop such a plan, in conjunction with consultants, as well as BIE /DoED officials. It has been a difficult due to the complexity of the task and the fact that the Navajo Nation and the BIE, for that matter, have never developed the extensive assessment and standards infrastructure required of state education agencies (SEAs) over the past several years prior to the passage of NCLBA. Under NCLBA, the BIE simply deferred to the states and Navajo Nation has had to wrestle with the challenge of doing something that would be in harmony with the Navajo Nation's unique perspective on what the purpose of the educational process should be. *While states had to deal only with the problem of increasing test performance in reading and math, Navajo was trying to deal with the education of the whole child with a Navajo identity.* The effort was to ensure that the Education System actually served the Navajo goals of enhancing Navajo language and culture. The effort to develop and implement a NN Alternative Accountability Plan has three parts two of which appear to have been completed.

- *First*, as a matter of law, the existing accountability plan of the BIE needs to be waived by the Navajo Nation. Since the law has changed and there is currently a negotiated rule-making committee being formed by the BIE (AS – IA) to promulgate new rules related to the new ESSA, the requirement to waive the existing plan may be moot.
- *Second*, an alternative NN accountability plan that complies with the existing laws needs to be developed and approved by the Bureau and USDoED. The development of such a proposal has been completed and we understand the Navajo Nation plan is scheduled for signing by all parties on September 27, 2016.

- *Third*, DODE needs to work diligently to identify and formulate a work plan to implement the various functions required when the NN alternative plan is approved. DBOSBA believes the work required is substantial and implementation is likely to require most if not all the following.
- acquisition of a substantial amount of additional computer hardware and software will be necessary. DODE needs to take a leadership role to define a common standard for software and hardware. Computers used for this project need to be able to communicate with each other. (The Nation has received a substantial grant earlier for this purpose but the need needs to be reviewed and updated.)
- coordinating with NN IT services must occur to ensure clarity of shared functions where needed.
- development and publication of materials/manuals for training and business rules,
- development, review and publication of Navajo Academic Core / Navajo curricular standards, and assessment materials.
- development and publication of unique student and school report cards. DODE should spearhead an effort to develop content for a truly meaningful report card. A technical group could then translate these ideas into data points and merge them into a prototype report card.
- development of a clear process whereby the DODE program can sell and receive payment for the materials from outside parties/schools so that more materials can be published as needed, review publications of other entities for appropriate Navajo centric materials to be included as approved curriculum.
- Conduct training of both DODE and participating school staff involved with implementation needs to be a priority. Trainers need to be very familiar with the NN accountability plan, the new ESSA, and the role and policies of the BIE.
- conducting a capability/needs assessment on participating schools to ensure they are ready for the responsibilities under the program,
- locate additional office space, both in Window Rock and the agencies,
- identify of additional DODE staff/consultants for data collection and review,
- identify additional DODE staff/consultants related to Navajo-centric standards, curriculum and assessment.
- Conduct parental and community outreach and training (Outreach and collaboration are essential to the success of this process.)
- Prepare for conducting professional analysis of data and coordination with technical assistance staff to assist schools with school improvement activities based upon actual data from each school.

Depending on which functions are assumed by the NN and which are continued by the BIE, the costs may vary significantly. DODE needs to study the Accountability Plan and conduct a functional analysis of the expected functions and costs. This information then needs to be discussed with BIE officials with an eye toward identification of one time and continuing functions and costs and sources for this funding. A key part of this exercise will be to link the assessment and reporting functions with the technical assistance to be provided to the schools. Not only will the data be gathered, reported and disseminated, but it will be clearly related to what the school program does as a result.

DBOSBA recommends:

- An application for a PL 93-638 contract should be put together, separate from an overall PL 93-638 contract proposal for the Navajo Education System. There needs to be both a central office (WR) component and an agency based component.
- DODE should also contract with a highly knowledgeable consultant to conduct a continuous evaluation of the project over at least the first full year of the project. The evaluator would prepare reports and recommendations on an on-going basis.
- DODE should also explore the connection between this project and the accreditation office, since it seems that the Accountability Plan should be supplying much of the data for the school's accreditation report card.
- Close coordination between the DODE program office of Navajo Language and Culture is absolutely required for the success of this project.

DBOSBA's concerns:

- While this project has been in progress for years, the initiative seems to be poorly understood by the public and DODE officials. Outreach and collaboration have been pathetic.
- The effort to educate the public, including school boards, has been sporadic and inadequate; for example, the version appearing on the DODE website dates to 2011. It seems as though there has been a deliberate effort to proceed without sharing the details with the schools and the public. The schools and local boards must be partners in this endeavor if it is to be successful.
- DODE presentations on the initiative have focused on the "why" but rarely on answering the implementation questions of "how" and "what."
- Some of the DODE programs that should be directly involved and cooperating on the project seem to be left out for whatever reason.
- Much of the work identified above seems incomplete or not even begun. There do not seem to be resources identified to fund the tasks ahead.

Finally, there is a great deal of visibility to this Project/Initiative beginning with a Washington DC signing ceremony. It is imperative that the Navajo Nation have its act together as this project moves forward.

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Questions Regarding the Take-Over of Navajo Schools by DODE Issued 5/25/2015; Revised and Re-issued 9/17/2016

The Department of Diné Education (DODE) is planning to take over the operation of the BIE-funded schools on the Navajo Nation. The planning is being funded by a Sovereignty in Education grant from the federal Bureau of Indian Education (BIE) .

The DBOSBA hereby submits the following questions and look forward to a response. In addition, we request public meetings to hear the DODE response to these questions.

Employees: What is the number of employees in BIE-funded schools on the Navajo reservation?

Of that total, how many are principals and other administrative employees, how many are teachers, and how many are support employees?

How many are employees of grant schools? How many are employees of BIE-operated schools?

Will the employees of the BIE-funded schools become employees of the Navajo Nation?

What were the total costs for employees of BIE-funded Navajo schools in school year 2014-2015, and 2015-2016?

Severance Costs : _If the teachers and other employees in the BIE-operated schools lose their jobs when the Navajo Nation converts the schools to tribal grant or contract status, how many employees will be affected?

What will be the estimated total severance costs for BIE teachers, principals and other employees? How will the employee severance costs be funded?

Teacher Contracts: The BIE and grant schools use a system of annual contracts for the employment of teachers.

How will the teachers in the BIE-funded schools fit into the Navajo Nation personnel system?

Will the Navajo Nation utilize the current system of annual contracts to hire teachers in the BIE-funded schools?

Procurement: How will the DODE provide procurement services for the BIE-funded schools on the Navajo reservation?

For example, how will the DODE handle food services contracts for the 66 schools?

How will the DODE handle the purchase of textbooks and classroom supplies for the 66 schools?

How will the DODE handle the purchase of computer equipment for the schools?

Will the DODE utilize the existing procurement system, or will the DODE establish a separate procurement system for the BIE-funded schools?

Organization of the Schools: Will the Navajo Nation maintain the current structure of 66 schools? Or will the DODE establish districts? Will the DODE utilize the existing school boards? Or will the DODE abolish the existing school boards?

Facilities and Facility Maintenance: Has the DODE conducted an inventory of facilities associated with the BIE-funded schools on the Navajo Nation?

What is total square feet of education facilities for BIE-funded Navajo schools?

What is the condition of the facilities?

What is the estimated cost of the facilities maintenance backlog for BIE-funded Navajo schools?

How will the facilities maintenance backlog be funded?

Has the DODE made a request to the Bureau of Indian Education to bring the condition of the BIE-funded Navajo schools up to standards before assuming the control of the schools? Or does the DODE intend to assume the financial responsibility for the maintenance of the BIE-funded Navajo schools?

Facilities Operation: How will the DODE provide facilities operations services to the BIE-funded Navajo schools?

Will the DODE handle utilities costs for electricity, water and sewer, sanitation and waste disposal, gas and heating, and telephone services in a centralized system?

What was the total allocation of funds for facilities operations for BIE-funded Navajo schools in school year 2014-2015, or 2015-16?

Student Transportation: How will student transportation services on the Navajo reservation be provided for children in BIE-funded Navajo schools?

What was the total amount of funding for student transportation for BIE-funded Navajo schools in school year 2014-2015 or 2015-16?

How will the DODE handle the maintenance and repair of school buses?

If a school bus breaks down, will the DODE dispatch towing and repair services?

Department of Education Funds: How will pass-through funds from the U.S. Department of Education be handled?

What was the total amount of Title I funds provided to BIE-funded Navajo schools in school year 2014-2015?

Will the DODE develop a centralized method of allocating Title I funds?

How will the DODE administer the Individuals with Disabilities Act (IDEA) funds?

What was the total amount of IDEA funds provided to BIE-funded Navajo schools in school year 2014-2015, or 2015-16? How will the DODE provide support services to students with disabilities?

Teacher Certification: How will the DODE handle teacher certification?

School Accreditation: How will the DODE handle school accreditation?

DoEd STEP Grant: The U.S. Department of Education awarded a grant of \$357,347 to the Navajo Nation DODE in 2012 under the State Tribal Education Partnership (STEP) program. What was accomplished? What was learned?

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