

DRAFT

TESTIMONY

OF

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ALASKA FEDERATION OF NATIVES

BEFORE THE ALASKA STATE SENATE COMMITTEE ON EDUCATION

February 11, 2022

I. Introduction

Good morning/afternoon. My name is Julie Kitka, and I serve as the President of the Alaska Federation of Natives (AFN). AFN is the largest statewide Alaska Native membership organization in Alaska. Our membership includes over 130,000 Alaska Natives and their institutions set up to serve our people. AFN's membership includes federally recognized tribes, regional tribal consortiums, regional non-profit organizations, and Alaska Native Claims Settlement Act (ANCSA) village and regional corporations.

I am here today to ask for your support for Senate Bill 34, which would authorize a demonstration project for compacting of education services for Alaska Native students.

Please include with my written testimony two attachments:

attachment A: *Transformational Education Post Pandemic: A Path Forward*, dated December 2, 2021.

attachment B: *AFN White Paper: The Origins, Meaning and Future of Indian Self-Determination*, dated December 2021.

The worldwide pandemic of the past two years has created an unprecedented disruption in the delivery of education to Alaska's students and has demonstrated a far greater demand for innovation in education methods, service delivery, and awareness of community needs. From the COVID-19 pandemic, we learned that we need to make sure the institutions around us have flexibility to adapt and meet the true needs of the people.

Compacting has long been one of the federal government's most effective tools for the promotion of innovative and cost-effective tribal programs, such as those under the Indian Health Service and Bureau of Indian Affairs. We have great and long-lasting experience in compacting in these areas.

The State Board of Education and the Alaska Department of Education and Early Development have identified compacting as the mechanism that will allow for the transformation of Alaska Native education. Through tribal compacting of education, we will improve outcomes for students, schools, and communities.

II. The Need for a New Approach

The indigenous population in Alaska is large and diverse. There are over 200 federally recognized Indian tribes and at least twenty distinct indigenous languages, some of which are now spoken by only a few people.¹ Over the years, you have heard a lot about the disastrous history of education of Native children in this State—including government policy to eliminate our traditional cultures, traditions, language and assimilate our children to be something they are not. This has had tragic impacts on generations of Alaska Native people. I am not going to dwell on that history, except to note its role in creating the current educational crisis for Native students in our state, where only about 68% of Native students in Alaska graduate from high school—compared to 80% percent of all students—and more than 5% drop out—compared to 3% of non-Native students.² It is also of note that, despite the fact that 22% of students in our state are Alaska Native, only 5% of our teachers are Alaska Native or American Indian—a number that has not changed for decades.³

Alaska’s vast size and the isolated nature of most of its Native villages also present special challenges to traditional approaches to education.⁴ More than 300 communities in Alaska, the vast majority of which are predominantly indigenous, are accessible only by plane or boat.⁵ The pandemic only exacerbated the challenges to providing quality education to Alaska’s Native students, who struggled to adapt to remote learning due to the lack of reliable internet access in Alaska’s rural areas. The true impacts are yet to be determined as we are still in the pandemic.

These historical, geographic, and practical complexities--and just common sense--calls for creative and flexible solutions that expand access to and leverage modern technology and innovations. We have those solutions at hand now if we exercise the right authorities and access the tremendous value in teaching through culture.

¹ Diane Hirshberg, PhD, *Educational Challenges in Alaska*, University of Alaska Anchorage Institute of Social and Economic Research, February 2022, at 5.

² *Id.* at 14.

³ *Id.* at 11.

⁴ *Id.* at 22.

⁵ *Id.* at 4.

The Alaska State Board of Education and Early Development has recognized this need for innovation *even before the pandemic*, and, in 2016, changed the Department’s mission and vision statements to include five strategic priorities designed to ensure an excellent public education for all of Alaska’s students. One of those priorities was to “inspire tribal and community ownership of educational excellence.” The recommendation based on that priority, which the State Board later adopted, was to “create the option for self-governance compacting for the delivery of education between the State of Alaska and Tribes or tribally-empowered Alaska Native organizations.” Before the legislature is a bill that would allow the Commissioner of Education and Early Development to begin authorizing tribal compact schools, and AFN has partnered with the Alaska Department of Education to advance a *demonstration project* that would establish the first tribal compact schools in the state.

There has been important progress made in the education of Native students in Alaskan schools that have adopted the teaching recommendations of Alaska Native leaders, tribes, and tribal organizations, educators, and academic experts. For example, Native language education is now part of the curriculum, and many schools have found ways to present other aspects of Native culture to students. But it is clear that just teaching Native students about their culture in a classroom is not enough to change educational outcomes. To influence those outcomes and improve our children’s future, we need our schools to implement pedagogies based on and provided through Alaska Native cultural perspectives.

Schools help shape the way students think about the world and prepare them to live in that world. Academic research has established the benefits of Alaska Native children remaining linguistically and culturally connected to their tribes and communities. It is time to go beyond theory and implement change that will transform the education of Alaska Native students and improve their futures.

Through Alaska’s Education Challenge, five strategic priorities emerged that were designed to better ensure an excellent public education for all of Alaska’s students, one of which was “Inspire Tribal and Community Ownership of Educational Excellence.” One of the recommendations developed to implement this priority was to “create the option for self-governance compacting for the delivery of education between the State of Alaska and Tribes or tribally-empowered Alaska Native organizations.” AFN has been working to support the State Board of Education’s priority of identifying a legal and practical pathway for a state-tribal compact in which Alaska Natives could administer K-12 public education with support from the local school board and community. We seek state legislative authorization to allow the Commissioner of Education to test innovative ideas through real-world experience, and then use that experience to evolve programs to make

them more effective. Aligning vision, goals, and resources through demonstration projects to prove the value is an important first step.

III. Benefits of Tribal Compacting of Education

Tribal compacting of education offers significant benefits to all parties. A compact is a negotiated agreement between Tribes and a state and/or the federal government that sets forth the terms and conditions of the relationship. Unlike contracts, compacts may set political policies for the State and Tribes “and therefore have inherent value even beyond their stated goals”⁶ and practices under the compact may be changed without requiring new approvals for the change. Compacting for the delivery of education means that Alaska Tribes, or tribally empowered Alaska Native organizations, will be able to partner with the State to assume the responsibility (and receive the associated funding) to carry out educational programs, functions, services, and activities the State otherwise would be obligated to provide.

The present proposal—Senate Bill 34—would authorize a demonstration project for tribal compacting that would formally recognize the tribal entity’s authority to oversee certain functions of K-12 public schools. We have received great, thoughtful leadership from the Commissioner. We urge passage in this session.

Because only one other state—Washington—has implemented a program for the tribal compacting of education services, and because the circumstances in Alaska differ in several important ways from Washington, including the logistical challenges Alaska faces described above and a lack of pre-existing BIA schools, the Department of Education is committed to starting this endeavor into tribal compacting of education with a demonstration project. Those of us who have studied the needs here believe a test project will put Alaska in the best position to ensure that, when a permanent program is eventually implemented, it will best meet the needs of Alaska’s Native students.

The current legislative proposal is for a five-year demonstration period. Participation in the program would be voluntary and structured to honor tribal sovereignty through government-to-government negotiations and agreements.

The proposed demonstration project would improve education for Native students in Alaska by:

- Providing local control of schools in tribal communities
- Allowing for improved recruitment and training of Native educators
- Allowing for K-12 teaching through cultural methods

⁶ Intergovernmental Compacts in Native American Law: Models for Expanded Usage, 112 Harv. L. Rev.922, 924 (1999).

- Encouraging Native parents and community leaders to become and stay involved with the education of Native children
- Providing for Native language, culture, and vocational education
- Providing a reporting mechanism for ongoing review and improvement of the compacting program

The demonstration project would offer tribes and Native communities an opportunity to have a direct role in providing their children an education grounded in and driven by their culture, language, traditions, and values on a demonstration basis with the potential to grow into broader use of state-tribal education compacting. Requiring regular reporting on the program's implementation will also provide valuable information to guide Native education planning in Alaska and help ensure future success.

IV. The Federal Role

Importantly, tribal education compacts will be negotiated and created on a voluntary basis in a manner that does not diminish the Alaska Natives' right to self-determination or the federal government's trust responsibility toward Alaska Natives. The exercise of tribal control over Native education arises from a foundation of federal laws that have supported education for Native American students based on the federal government's trust responsibility.

Alaska's demonstration project for tribal compact schools will likely be a hybrid effort utilizing state and federal funding sources. Considerable legal authority already exists for the federal funding and operation of education programs for the benefit of Alaska Natives. The Johnson-O'Malley Act of 1934, which was modernized in 2018, authorizes the Secretary of the Interior through the Bureau of Indian Education, to enter into contracts with tribes, tribal organizations, states, schools, and private non-sectarian organizations to address the needs of Native students. In addition, the Indian Self-Determination, and Education Assistance Act, P.L. 93-638, as amended, authorizes self-governance compacts, which are used primarily for tribes to assume operation of the Indian Health Service and Bureau of Indian Affairs programs.⁷ The ISDEAA also authorizes tribal compacting of programs from other bureaus of the Department of the Interior.⁸

⁷ See *supra* n.1.

⁸ The Department of the Interior publishes a list annually of all non-BIA programs, services, functions, and activities that are eligible for inclusion in self-governance agreements. There are required programmatic targets. Currently nearly the entire Indian Health Service and Bureau of Indian Affairs is compacted – with Alaska Native tribes, consortiums or statewide compacts running for example the statewide hospital, regional hospitals, subregional and village health clinics.

AFN has asked the U.S. Department of Interior for a legal opinion as to whether it may enter into compacts on behalf of other federal departments, such as the United States Department of Education. If the Department of the Interior has that authority, it may act as a conduit for federal Department of Education funds supporting Alaska’s tribal compacting demonstration program on a temporary basis until direct Congressional authority is obtained. AFN’s initial legal analysis suggests such authority exists under the Johnson-O’Malley Act and its implementing regulations, the JOM Modernization Act of 2018, and the clear compacting authority of the Indian Self-Determination and Education Assistance Act.

V. Conclusion

We cannot rewrite the difficult history of Alaska Native education in our state, but there is precedent-setting value in the idea of tribal, state, and federal collaboration to promote innovative and meaningful ways to support our children. The lessons we learn from the demonstration project in Alaska might have other local, state, or national applications in terms of American Indian/Alaska Native programs or other multi-cultural programs or services. Establishing this demonstration project is critical to the future of Alaska Native children and offers hope in an area where hope has historically been hard to find. We are excited about the possibilities and respectfully ask this Committee to support our efforts and the passage of Senate Bill 34. Thank you.
