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THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #SD-02-002

Title: Opposing the Forced Privatization of Bureau-Operated Schools in Violation of Federal Law and in the Absence of Mandatory Consultation with Indian Tribes

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people and their way of life, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, sovereign Indian tribes share a unique trust relationship with the United States of American, which is embodied in the Constitution of the United States, numerous court opinions, statutes, executive orders, and federal agency policies; and

WHEREAS, by its passage and implementation of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.) and similar legislation, the United States of America has recognized the need to work with Indian tribes on a government-to-government basis and to support Indian tribal self-determination and self-governance; and

WHEREAS, Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" ("Consultation Order"), mandates that Executive Branch agencies work with tribes when formulating and implementing policies or taking other actions that have a substantial direct effect on any Indian tribe; and

WHEREAS, the Consultation Order and earlier executive orders and memoranda require that all Executive agencies ensure there is "meaningful" and "timely" tribal input when formulating policies that have tribal implications; and

WHEREAS, in violation of the Consultation Order and the principles of self-determination, the Bureau of Indian Affairs' Office of Indian Education Programs in February 2002 began implementing plans to privatize all sixty-four BIA-operated school by the end of FY 2007; and

WHEREAS, that same month, the National Congress of American Indians passed Resolution #EWS-02-002, opposing the BIA privatization plan; and

WHEREAS, although the Bush Administration subsequently withdrew its request to fund this plan in FY 2003, the OIEP still intends to move forward with privatization in the future as part of its implementation of the No Child Left Behind Act ("NCLBA") (P.L. 107-110, January 8, 2002, 115 Stat. 1425); and

WHEREAS, under the proposal, which has been developed and implemented without consultation, tribes would be forced to either assume the administration and management of BIA-operated schools or face the threatened takeover of these schools by private school management consultants, none of which has experience working with Indian tribes; and

WHEREAS, as private contractors, these consultants will not be subject to the government-to-government relationship, Indian preference, or other fundamental principles that Indian tribes have worked hard to enforce within the existing BIA; and

WHEREAS, the forced privatization of Bureau-operated schools would, furthermore, violate the No Child Left Behind Act which, with certain limited exceptions, requires the approval of the appropriate tribal governing body the BIA transfers to any other authority the operation or facilities of a Bureau-funded school (25 U.S.C. § 2001(d)(7)(2002); and

WHEREAS, it is in the best interest of Indian tribes for the NCAI to reinforced its opposition to the privatization of BIA schools.

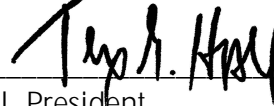
NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby reaffirm its strong opposition to the involuntary privatization of BIA-operated schools as an attempt to ignore or diminish the federal government's trust obligation to educate Indian children; and

BE IT FURTHER RESOLVED, that the NCAI urges that, in the absence of meaningful tribal consultation, the privatization plan be withdrawn; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of the NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted at the 2002 Annual Session of the National Congress of American Indians, held at the Town and Country Convention Center, in San Diego, California on November 10-15, 2002 with a quorum present.



Tex Hall, President

ATTEST:



Juana Najel, Recording Secretary

Adopted by the General Assembly during the 2002 Annual Session of the National Congress of American Indians, held at the Town and Country Convention Center, in San Diego, California on November 10-15, 2002.