TOHONO O'ODHAM NATION OFFICE OF THE CHAIRMAN AND VICE CHAIRWOMAN

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Tony Dearman
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Sent via e-mail to consultationcomments@bie.edu and Juanita.Mendoza@bie.edu

Re: The Tohono O'odham Nation's Comments on Executive Order 14191 to Expand Educational Freedom and Opportunities for Families

Dear Secretary Burgum and Director Dearman:

The Tohono O'odham Nation ("Nation") is committed to ensuring high-quality educational opportunities for all families within our tribal community. For this reason, the Nation is deeply concerned about Executive Order 14191, *Expanding Educational Freedom and Opportunity for Families*, and the negative impacts of diverting funding from our on-reservation schools.

The Bureau of Indian Education ("BIE") has requested the Nation's advice on mechanisms, funding sources, and alternative educational options to facilitate implementing a school voucher program. But the BIE has not asked whether we actually *want* a voucher program or whether we think it is a good idea. Further, it is unclear why the Nation would want to design a system that is fundamentally unviable for our students and could lead to the closure of the BIE schools which provide educational opportunities within our O'odham community. What we want is more funding for, and robust staffing of, our existing schools – not to be forced into a position in which we have to ship our students off-reservation.

In our large, rural community, our students already travel long distances to attend school. A voucher program provides no meaningful additional choice. Shifting BIE funds to off-reservation private or charter schools would also further deplete resources for our already-underfunded schools, potentially leading to their closure. For the reasons articulated in more detail below, the proposed

voucher program directly undermines the government's direct trust responsibility to provide a quality education for our tribal members.

Given the serious risks posed by diverting funds from BIE schools, the Nation is also deeply concerned about the lack of meaningful tribal consultation on this issue. Policies affecting Indian education must be developed with direct tribal input to ensure they meet our community's needs and support tribal self-determination.

The Educational Landscape of the Tohono O'odham Nation

The Nation's reservation spans over 2.8 million acres—approximately the size of Connecticut. Our four BIE schools serve approximately 500 students from the approximately 64 remote villages and communities that are spread across our lands.

These schools, most of which were established in the 1970s and 1980s to replace federal Indian boarding schools, provide critical educational services to our children from the most rural and remote areas of our reservation, particularly on the Nation's west side. They serve as crucial community hubs, employing tribal members as leaders, educators, and staff and providing appropriate education. They are also governed by a school board consisting of tribal members, providing direct, local control. The creation of these schools allowed our children to come home and our families to be kept together. Today, the Santa Rosa Ranch School serves 66 students K-8 on the eastern side of the reservation, the Santa Rosa Day School serves 115 students K-8 in the north/central part of our reservation, and the San Simon School and Tohono O'odham High School serve 351 students K-12 on the west side of the reservation.

Beyond the BIE system, families have few additional schooling options. The largest alternative is the Baboquivari Unified School District #40, an on-reservation Arizona public school district. It serves approximately 883 students at two elementary schools, one middle school, one high school, and an alternative middle and high school, all of which are in or near Sells. There are also two private faith-based schools on the Nation: the Living Word Academy, run by the World Gospel Mission, which serves 21 students grades 5-10 in Sells, and the San Xavier Mission School, a Catholic community school in our San Xavier District abutting Tucson, serving K-2 students. The Nation has no public charter schools or tribally controlled schools. *See Figs. 1 and 2 on next page.*

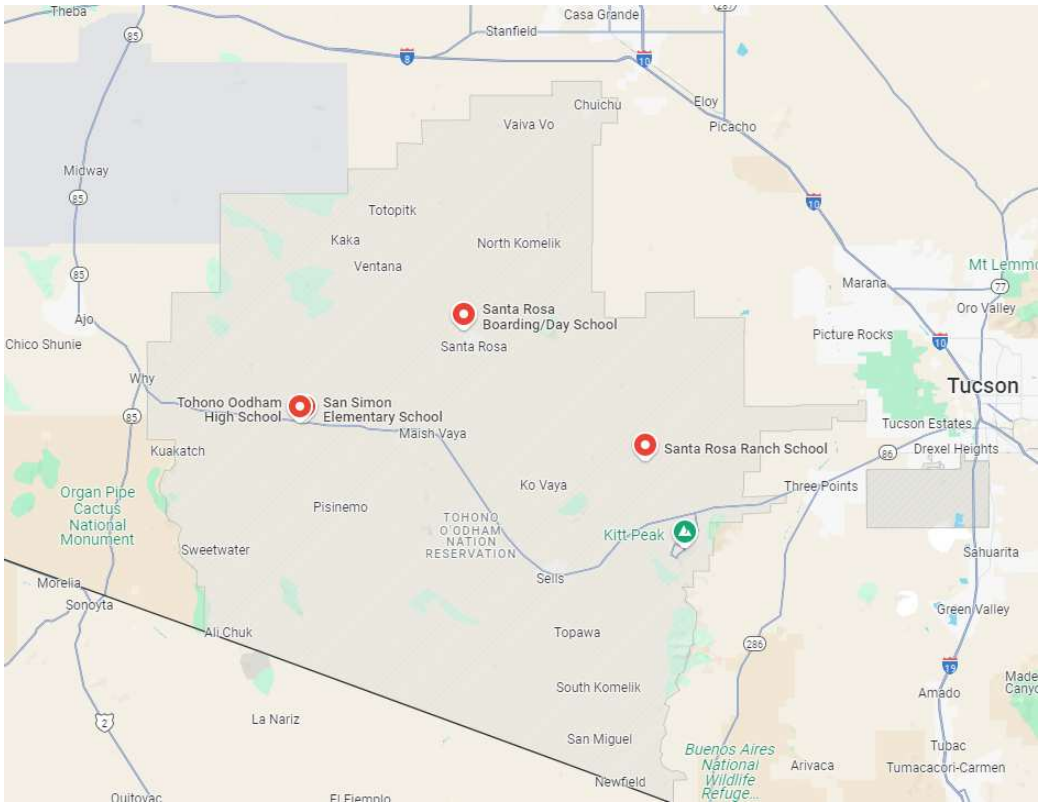

Figure 1. BIE Schools on the Nation

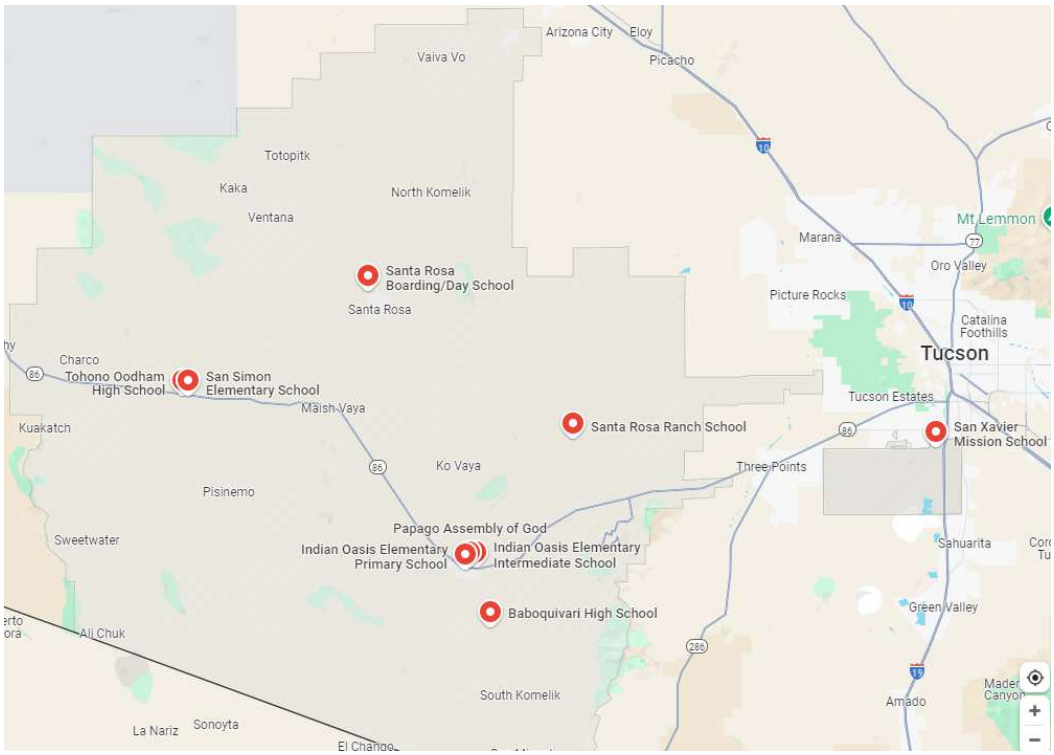

Figure 2. All K-12 schools (public, private, faith-based, charter) on the Nation

School-Choice Vouchers Would Diminish, Not Expand, Education Opportunities for the Nation's Children

A school voucher program for BIE-eligible students would not create meaningful additional choices for most of our students. Our children already have the option to attend BIE, BUSD, or private schools within our tribal community, and vouchers would *reduce* educational options by undermining BIE schools' ability to remain open.

Logistically, school vouchers are impractical to implement for our families. It is approximately 100 miles (1.5+ hours by car) from the western edge to the eastern edge of our reservation, and approximately 100 miles (1.75+ hours by car) from the southernmost to northernmost villages. The vast distance between villages and limited school options creates unique and persistent transportation challenges to access education for our community members. Community members in our most rural areas, particularly on the west side of the Nation, which is only served by BIE schools, often lack access to reliable transportation and could not transport their children to even more distant schools.

Many students who currently attend on-reservation schools face extremely long commutes without having to travel even longer distances to off-reservation schools under a voucher program. Some students in our outermost villages wake up at 4:00 a.m. to catch a school bus at 5:00 a.m. in order to arrive at their campuses by 7:30 a.m. Our BIE and BUSD school districts work hard to provide efficient transportation for these students, including students who wish to take part in after-school activities like sports and academic enrichment programs. Some students who stay to take part in these programs don't get home until after 7:30 p.m. In short, any sort of voucher program is simply not feasible given, in part, the lack of any viable alternatives to the BIE schools within a reasonable driving distance for our students.

Even assuming that a voucher program were viable on the Nation (it is not), such a program implemented as a result of EO 14191 could, in practice, divert funding from our local BIE schools to public, private, and faith-based schools off the reservation, undermining our public education system on the Nation, and potentially leading to BIE school closures. Because there are no viable alternatives to BIE schools for many of our students—especially those in the most remote villages— voucher expansion would likely primarily benefit more well-resourced students who have the ability to travel even longer distances from home to Tucson and Casa Grande, leaving our lowest-income, most rural, and most vulnerable students in underfunded BIE schools.

Enrollment losses driven by students transferring to private schools off the reservation could also lead to reduced budgets, increased financial strain, and exacerbated challenges for our BIE schools on the reservation. This is because BIE schools have many fixed costs that they must pay

regardless of student enrollment, such as transportation, utilities, and building maintenance. This is a real concern: public schools in voucher-implementing states have seen a significant decrease in funding, sometimes by as much as 12%, according to one 10-year study.[1] This leads to fewer resources and a decline in the quality of education for those students who choose to remain in public school. The loss of even a few students could have devastating financial consequences for our BIE schools, which operate on fixed budgets and already suffer from chronic underfunding. This, again, could eventually result in the closure of BIE schools.

As mentioned above, our BIE schools are critical community resources that employ many community members from the surrounding areas. Our BIE schools allow our children to remain rooted in their communities and to learn O'odham culture (*himdag*) and language (*Ñi'ok)* from O'odham educators. This education is invaluable and helps perpetuate our *himdag* into the future, which underpins our continued tribal sovereignty and self-determination. Encouraging students to leave BIE schools, dispersing them across various private or charter schools off the reservation governed by non-Indian school boards, even if feasible, echoes a dark chapter in U.S. history when the federal government's education policies forcibly removed Native children from their communities and placed them in boarding schools that sought to erase their identities and break up the cultural cohesion of their tribal communities. The Executive Order's approach threatens to replicate these past injustices by incentivizing the departure of our students from schools within our tribal communities.

Further, our BIE schools serve a high percentage of students with learning differences, special accommodations, and disabilities. If our BIE schools closed, our students with special needs would be disproportionately affected. Students with specialized needs in particular are often turned away from private schools entirely or forced to pay any additional costs associated with their education. Further, many of these students would be forced to travel much further distances to go to school. Four-hour long daily round-trip bus rides are simply not feasible for these children.

Additionally, if BIE schools close and students have to figure out a way to attend other schools on the Nation, a likely result would be an increase in class sizes for surrounding schools that are currently already overcrowded due to the shortage of teachers. In 2024, the Arizona School Personnel Administrators Association (ASPAA) reported data indicating about 25.4% of teacher vacancies across the state remain unfilled, while 52.2% of the vacancies are filled by teachers who do not meet the state's standard certification requirements. Sending our students on even more distant commutes to already overtaxed, understaffed schools off reservation isn't real school choice and will instead undermine our students' health and education.

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[1] SAMUEL E. ABRAMS AND STEVEN J. KOUTSAVLIS, PUBLIC FUNDS PUBLIC SCHOOLS REPORT: THE FISCAL CONSEQUENCES OF PRIVATE SCHOOL VOUCHERS (MAR. 2023), https://www.splcenter.org/wp-content/uploads/files/2023-splc-pfps-report.pdf.

A Voucher Program for BIE-Eligible Students Likely Violates the Law

In addition to the practical considerations, there appear to be legal constraints prohibiting this form of voucher program for BIE-eligible students.

As the BIE knows, the federal government has a legal obligation to uphold its trust responsibility to tribes, including ensuring access to quality education for Native American students on reservations. *See, e.g.* Snyder Act, 42 Stat. 208, codified at 25 U.S.C. § 13 (1921); Indian Self-Determination and Education Assistance Act, 25 U.S.C.A. § 5301 *et seq.;* Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 25 U.S.C. § 2501; Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico, 458 U.S. 832, 839–40 (1982). Federal law also mandates how BIE funding must be allocated. *See* Tribally Controlled Schools Act, 25 U.S.C. § 2501 *et seq.*; Indian School Equalization Program, 25 C.F.R. Part 39. Policies that siphon BIE funds into private voucher programs undermine this responsibility and violate statutory protections.

Lack of Meaningful Tribal Consultation

The Nation is also deeply concerned about the lack of meaningful tribal consultation on this issue. Federal law requires federal agencies to engage in government-to-government consultation with tribes on matters that significantly impact Indian education. *See* Exec. Order 13175 Consultation and Coordination with Indian Tribal Governments, 3 C.F.R. 13175 (2000); 25 U.S.C. § 2011; 25 U.S.C. § 2018. The 14-day notification period and two public webinars on EO 14191 do not constitute meaningful consultation. Tribal nations were not provided with a concrete policy proposal or implementation plan for review. True consultation requires in-depth discussions that consider the unique challenges and needs of each tribe, rather than a rushed, superficial engagement. Moreover, holding two, two-hour webinars for tribes across the entire country to be heard isn't consultation by any definition.

Further, the BIE should hold listening sessions with students and families potentially impacted by these policies. The BIE's lack of communication about this proposed change has led to confusion and worry among our families whose children attend BIE schools. Our tribal legislative council recently held a listening session regarding EO 14191, which was attended by approximately 150 community members who voiced their concerns about possible diversion of funds from BIE schools and the integral role that these schools play in the community. Not one person supported the BIE schools alternatives. This is clearly a matter of deep concern for our community. The community members who would be most impacted by such a policy should have had a detailed proposal to evaluate and a real opportunity to participate, meaningfully, in the decision-making process before any proposal would move forward.

Federal Education Policy Should Strengthen, Not Undermine, BIE Schools

To meet its stated goals of improving the quality of education available to Native American students, rather than diverting funding away from BIE schools, the federal government should prioritize full and adequate funding of existing BIE schools. Chronic underfunding is the primary factor driving the systemic issues and educational disparities we see in our BIE schools today. This common-sense request has been communicated to the federal government by tribal leaders, educators, and other advocates for decades.

Just last month, the Nation's Vice Chairwoman Carla Johnson appeared before the U.S. House Appropriations Subcommittee on Interior, Environment and Related Agencies, emphasizing the urgent need for funding to repair and replace our deteriorating BIE school facilities. Our Santa Rosa Ranch School and Tohono O'odham High School are currently listed in poor condition in the BIE's Facility Condition Index, and the Santa Rosa Day School is listed first on BIE's replacement list but will not be fully funded until 2028 because funding only supports one school replacement per year. The poor condition of our BIE school facilities has been documented for decades. That is why we requested that the Subcommittee provide at least $310.2 million in FY 2026 for BIE facilities to ensure a safe learning and working environment for our children and staff.

In conclusion, our Tohono O'odham families deserve quality education options, but school voucher programs would not meaningfully create additional school choice—it would divert funds away from our on-reservation BIE schools, fragment our communities, undermine tribal sovereignty, and diminish educational opportunities for the most vulnerable students. The Nation urges the Administration to abandon efforts to implement a school-choice voucher system that weakens BIE schools. Instead, we encourage robust federal investment in the BIE to fulfill the government's trust obligations and support self-determination.

We appreciate the opportunity to submit these comments and look forward to engaging in a meaningful dialogue on strengthening education for Native students.

Sincerely,

Verlon Jose
Chairman, Tohono O'odham Nation