



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

TO: WORKING GROUP ON TRIBAL SCHOOLS FOR THE SPECIAL COMMITTEE ON
STATE-TRIBAL RELATIONS

FROM: Joyce L. Kiel, Senior Staff Attorney

RE: State Funding of Tribal Schools

DATE: March 17, 2005

This memorandum was prepared for the Working Group on Tribal Schools of the Joint Legislative Council's Special Committee on State-Tribal Relations. The committee heard presentations by John Wilhelmi, Program Attorney, Menominee Indian Tribe of Wisconsin, and Dr. Donna Powless, Administrator, Menominee Tribal School, recommending that: (a) state statutes be changed to provide the same benefits to tribal schools and tribal school pupils as the benefits provided to private schools and private school pupils; and (b) state funding be provided to tribal schools. With regard to the second recommendation, Mr. Wilhelmi suggested that the Minnesota program that provides state funding to tribal schools in Minnesota be considered as a model.

The ad hoc Working Group on Tribal Schools was designated to develop proposals for committee consideration and meets on March 18, 2005. Preliminary bill drafts were prepared to address the first recommendation. This memorandum was prepared to facilitate the Working Group's discussion about the second recommendation--state funding to tribal schools. This memorandum first provides background information about: (a) tribal schools in Wisconsin; (b) the Minnesota program that provides funding to tribal schools in Minnesota; and (c) funding of school districts in Wisconsin. The memorandum then raises some issues that may be discussed by the Working Group in developing its recommendations to the committee.

BACKGROUND INFORMATION

Tribal Schools in Wisconsin

Although Wisconsin statutes currently do not define a "tribal school," there currently are four schools operated by a federally recognized American Indian tribe or band in Wisconsin that are

commonly referred to as tribal schools.¹ They are the: Menominee Tribal School; Oneida Nation of Wisconsin Schools; Lac Courte Oreilles Tribal School; and Mashkiziibii (Bad River) Tribal School.² The first three have contracts with and are funded, in full or in part, by the Bureau of Indian Affairs (BIA). In contrast, the Mashkiziibii Tribal School does not have a contract with or receive grant funding from the BIA; it is funded by the Bad River Tribal Council. The BIA currently has a moratorium on entering into contracts or providing grants to any additional tribal schools, and the Mashkiziibii Tribal School was established after the moratorium went into effect.

Basic information about each tribal school is included in the following chart. Information received from the BIA about BIA funding is included in Attachments 1, 2, and 3 for the three BIA contract schools. According to tribal school staff, funds provided by the BIA must be spent for the exact purpose for which the money was provided, for example, moneys provided for transportation cannot be spent on instruction.

<i>Name of School</i>	<i>Grade Levels</i>	<i>Approximate Number of Pupils (2004-05 School Year)³</i>	<i>Approximate Number of Those Pupils Funded by BIA⁴</i>	<i>Total BIA Funding for 7/1/03 to 6/30/04⁵</i>
Lac Courte Oreilles Tribal School	K-12	310	270	\$4,888,120
Mashkiziibii (Bad River) Tribal School	Alternative High School 8-12	26	0	\$0 ⁶
Menominee Tribal School	K-8	218	210	\$3,659,684
Oneida Nation of Wisconsin Schools	K-8 and 9-12	410	390	\$5,777,828

¹Section 115.71, Stats., refers to a tribally-operated school as a component of the definition of “alternative school” in the statutes relating to the American Indian Language and Culture Education Program. (One of the preliminary bill drafts (WLC: 0158/1) proposes a definition of “tribal school.”)

² The Indian Community School of Milwaukee, Inc., is a federally tax-exempt 501 (c) (3) organization that is controlled by a board of directors. It meets the definition of a private school under Wisconsin Statutes.

³ The exact number of pupils varies throughout the school year. These numbers are approximations.

⁴ BIA provides funding only for pupils who are enrolled in a federally recognized American Indian tribe or who have at least 1/4 degree of Indian blood.

⁵ This does not include BIA moneys paid to a tribal school for the Infant and Toddler Program as the tribal school is a conduit for moneys to the tribe; the program is not a direct part of school operation. As a result, these figures are less than the total amounts shown in Attachments 1 to 3.

⁶ According to Dana Jackson, Director of Education, Bad River Tribe, the Bad River Tribal Council budget currently provides \$198,505 for the Mashkiziibii Tribal School.

Minnesota Program

Mr. Wilhelmi suggested that the Minnesota program be considered as a model for providing funding to tribal schools in Wisconsin. According to information in the Minnesota 2006-07 Biennial Budget document summarizing the Governor's proposed budget for the Minnesota Department of Education (http://www.budget.state.mn.us/budget/operating/200607/gov_rec/educ_dept.pdf), the tribal schools that have a contract with the BIA (tribal contract schools) are eligible for state funding under certain circumstances. [See Minn. Stats., 124D.83, provided as Attachment 4.] According to this budget document, the purpose of the program is to promote equal education opportunity for pupils enrolled in tribal contract schools by providing state funding to tribal contract schools based on the difference between the amount of BIA aid and the state per pupil aid. The statutory formula is discussed below.

To be eligible for this state aid, the tribal contract school must be located on a reservation and must plan, conduct, and administer an education program that complies with: (a) either specified Minnesota education laws or specified BIA regulations; and (b) all other Minnesota statutes governing school districts or their equivalent in federal regulations. The tribal contract schools also report student data on the Minnesota Automated Reporting Student System and have adopted graduation standards and state testing.

According to this budget document,⁷ state aid is calculated by:

1. Multiplying the formula allowance under Minn. Stats. s. 126C.10, subd. 2. (basic revenue of \$4,601), minus \$170, times the actual pupil units in the average daily membership and the number of pupils for the current school year.
2. Adding compensation revenue based on compensation revenue pupil units times the formula allowance minus \$300.
3. Subtracting the amount allotted to the school by the BIA through the BIA Indian School Equalization Program (excluding certain adjustments).
4. Dividing the result in item 3. by the sum of actual pupil units in the average daily membership plus the tribal contract compensation revenue pupil units.
5. Multiplying the sum of the actual pupil units in average daily membership plus the tribal contract compensation revenue pupil units by the lesser of \$1,500 or the result of item 4.

Thus, there is a \$1,500 per pupil maximum.⁸ In Minnesota state fiscal year (SFY) 2003, a total of \$1,604,100 was provided under this program. The estimate for SFY 2004 is \$1,457,400.

Funding of School Districts in Wisconsin

School districts in Wisconsin are funded by a combination of local, state, and federal funds. Most local funds are raised by levying a property tax.⁹ State aids paid directly to the school district

⁷ The actual formula as set forth in Attachment 4 is more complex.

⁸ Tribal contract schools that receive state aid also are eligible for early childhood family education revenue. [Minn. Stats. s. 124D.83.]

⁹ State school levy tax credits help reduce the school portion of property tax bills.

consist of: (a) general school aids (consisting mainly of equalization aid),¹⁰ which are unrestricted as to their use; and (b) categorical aids that partially fund specific program costs, such as special education or transportation. Equalization aid is paid to school districts based on a complicated formula that establishes different tiers and factors in the value of property in the school district, costs, and enrollment. Information about property values and extensive and uniform reporting by school districts to the Department of Public Instruction (DPI) is required, as well as accounting reports and auditing in order for DPI to make the aid calculations. Federal aids constitute a small part of school district revenues.

The most current information available on the DPI website indicates that: (a) the statewide average total revenue (from state, federal, local property tax, and other local funds combined) per pupil for the 2002-03 school year was \$10,223; (b) the statewide average revenue from state funds (which are included in the total revenue) per pupil for the 2002-03 school year was \$5,392; and (c) the statewide average cost per pupil for the 2002-03 school year was \$10,011.

ISSUES TO BE CONSIDERED BY THE WORKING GROUP

This section lists issues that may be useful for the Working Group to consider in developing its recommendations to the committee. The listing is not meant to be exclusive; the Working Group may consider other issues.

1. Amount of Payment. Mr. Wilhelmi suggested that the Minnesota program be used as a model. As noted above, the general approach under the Minnesota statutes is to determine the amount of basic revenue that would be provided if a tribal school were a public school, make certain adjustments, subtract most of the BIA funding to that school, and pay the difference, up to a \$1,500 per pupil maximum.

However, the actual Minnesota formula for this program is more complicated. Moreover, Wisconsin's school aid formula is not identical to Minnesota's school aid formula. In Wisconsin, general equalization aid is paid to school districts based on a complicated formula. Property values in a school district significantly affect the amount of state aid. While a statewide per pupil average of general equalization aid can be calculated, the actual amount of state aid per pupil varies greatly between school district. Because the state funding formula for school districts in Wisconsin differs from that in Minnesota, it would not be possible to exactly replicate the Minnesota program for funding tribal contract schools.

An alternative is to specify an amount to pay to a tribal school per pupil, rather than basing the amount on the state equalization aid formula or the amount paid by BIA. Another alternative would be to specify a formula rather than a specific amount, for example, the statewide average amount of equalization aid per pupil in the prior school year or the statewide average amount of total revenue per pupil in the prior school year minus the amount (or certain amounts) paid by BIA (with or without a maximum payment).

Exact total per pupil revenues from BIA cannot be calculated for a specific year with the information provided in the above table due to the disparity in school years for the data. The BIA funding data is for school year 2003-04, and the approximate number of pupils data is for school year 2004-05. Nevertheless, assuming that there was not a significant difference in the number of pupils from school years 2003-04 to 2004-05, it appears that the average total per pupil revenue from BIA for

¹⁰ This is sometimes referred to as equalization aid, but it also includes integration aid and special adjustment aids.

the three tribal contract schools is significantly more than the average total per pupil revenue from all sources to school districts. (Dividing the numbers in the table yields an average BIA payment per pupil as follows: Lac Courte Oreilles Tribal School--\$15,768; Menominee Tribal School--\$16,787; and Oneida Nation of Wisconsin Schools--\$14,092.¹¹) In comparison, the average total per pupil revenue from *all* sources to school districts for the 2002-03 school year was \$10, 223, with the average per pupil from *state* funds constituting \$5,392 of that total. This may be a factor in evaluating the appropriate amount of state funding to be provided to tribal schools.

2. Conditions for Eligibility of Schools. The Minnesota program permits only a school with a BIA contract or grant to be eligible for state aid. If a similar requirement were applied in Wisconsin, three of the tribal schools would qualify, but the Mashkiziibii Tribal School and any new schools would not qualify until BIA lifts the moratorium. Which tribal schools in Wisconsin should qualify? If a school that does not receive funding from BIA is included, how would this affect the funding?

Also, the Minnesota program requires the tribal schools to comply with state education laws or BIA regulations in order to be eligible for funding. Should a similar requirement be applied in Wisconsin? If so, how would compliance be monitored?

3. Source of Revenue from which Payment is to Be Made. If state funding is provided to tribal schools, a source of revenue must be identified. Alternatives include: (a) general purpose revenue (GPR); (b) tribal gaming revenue paid to the state; or (c) some other segregated source of revenue. If GPR is selected, should it be paid from the same appropriation that pays equalization aids to the school districts (in which case it would affect the amount of aids paid to school districts) or as a separate appropriation? Should it be a sum sufficient amount (in which all payments are paid) or a sum certain amount (in which proration between the tribal schools would occur if the appropriation is not sufficient to pay the amount calculated).

4. Payment Issues. With what frequency should payments be made? Examples include: once per year, twice per year, quarterly, or some other alternative. What documentation should be required about the number of pupils if the number of pupils is a factor in determining the amount of payment? When should the number of pupils be determined?

Again, other issues and alternative solutions may be discussed by the Working Group.

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Attachments

¹¹ Again, these numbers are approximations only due to the disparity in years.