



Montana Advisory Council on Indian Education

April 7, 2021

Agenda – Working Session

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Mission: To provide for more effective and meaningful participation by Indian people in planning, implementation, and administration of relevant educational services and programs under the authority of local school boards.

- Item 1: Call to order:** 9:00 a.m.
- ❖ Welcome - Jennifer Smith, Chairperson
 - ❖ Pledge of Allegiance
 - ❖ Roll Call
 - ❖ Introduction of New Members
- Item 2: Approval of Minutes** 9:15 a.m.
- ❖ February 10, 2021 Minutes
- Item 3: Old Business** 9:20 a.m.
- ❖ MACIE Members' Community Concerns - review
 - ❖ Language Committee Update – Jason Cummins
- Item 4: New Business** 10:20 a.m.
- ❖ Constitution Update – Membership
- Item 5: Public comment** 11:00 a.m.
- This is an opportunity for any member of the audience to bring to the attention of the Council questions or relevant comments concerning matters not on the agenda. Please note that the Council is bound by ethical practice, bylaws, and Montana statutes. The Council may not take any action on matters brought to the attention of the Council during the public comment portion of the meeting unless specific notice of that matter is included in a properly noticed agenda. Therefore, in the Open Agenda portion of the meeting, the Council will not discuss or take any action, but may refer a matter presented to a future agenda. The following criteria exist for the public comments.
- The public may not discuss items on the current agenda at this time.
 - The public may only discuss matters within jurisdiction of the Council.

- No action may be taken on a matter raised during the open agenda.
- The public may not comment in a boisterous, disorderly, hostile, or aggressive manner.
- Each member of the public may address the Council once.

Item 6: Adjournment

11:10 a.m.

Times are approximate.

The next MACIE meeting is scheduled for May 5, 2021.

**ITEM 2 MACIE AGENDA
WORKING SESSION
APPROVAL OF MINUTES**

- ❖ Handout 2.1
 - Draft February 10, 2021 minutes



MACIE MEETING
 February 10, 2021
 Draft Minutes
 Morning Session

Members Present

Joe Arrowtop	Montana Indian Education Association
Dawn Bishop-Moore	Indian Impact Schools of Montana
Norma Bixby	Northern Cheyenne Tribe
Jason Cummins	Class 7
Michael Dolson (Alternate)	Confederated Salish and Kootenai Tribes
Harold Dusty Bull	Blackfeet Tribe
Megan Gourneau	Fort Peck Tribes
Jordann Forster	Montana Federation of Public Employees
Melissa Hammett	Urban – Missoula
Iris Killeagle	Little Shell Tribe
Angela McLean	Montana University System
Lona Running Wolf	Office of Public Instruction
Voyd St. Pierre	Chippewa Cree Tribe
Jennifer Smith	Urban – Billings

Office of Public Instruction

Pat Armstrong	Joan Franke
Sage Golisano	Tauzha Grantham
Todd Hanson	Zach Hawkins
Stephanie Iron Shooter	
Christine Jackson	Mike Jetty
Julie Murgel	Sarah Swanson
Don Wetzel	

Guests

Ethan Blount	Mary Jo Bremner
Josh Bushman	Josh Fettig
Katriel Hamilton	Antone Manning

Members Absent

Yancey Beston	Montana Indian School Boards Caucus
Rodney Bird	Bureau of Indian Education
Ellie Bundy	Confederated Salish and Kootenai Tribes
Richard Littlebear	Tribal Colleges
Jeremy MacDonald	School Administrators of Montana

The Montana Advisory Council on Indian Education meeting was called to order at 9:03 by Chairperson Jennifer Smith. The Pledge of Allegiance was done, and roll call was taken. New members were introduced (throughout meeting when able to attend), and prior members – Mary Jo Bremner, Marcy Cobell, and Kaci Walette – were honored.

Ex-Officio Reports

➤ Superintendent Office

Sarah Swanson, Chief of Staff, gave the report for the Superintendent. She provided information regarding new staff. The State of Education speech that will be delivered on

Thursday. The legislative priorities of the Office of Public Instruction (OPI) are making sure base aid inflationary increase is fully funded (HB15), adding special education as a component for base aid inflationary increase (HB46), funding education for students in residential treatment (HB25, HB206), moving broadband for Montana e-grants program back to OPI from the Department of Commerce (HB181). OPI is also supporting bills on Career and Technical Education. OPI meets weekly with the tribal education caucus.

An overview of Senate Bill 40 from 2019 which required OPI to develop a photo repository of students was given.

The OPI is working on updating accreditation (Chapter 55), licensure (Chapter 57), and professional educator preparation programs (58).

Montana ESSA plan has work ongoing regarding targeted support and identification. An amendment was presented to the federal government which develops an exit criteria for comprehensive support and involvement for small schools. A strategic assessment waiver has also been submitted.

There is guidance regarding COVID-19 relief to schools. New funding, once the legislature appropriates it out to OPI, will be distributed to schools.

Browning and Crow Agency were awarded Indian Language Immersion Grants. Graduation boost grants were given to Brockton Browning, Lame Deer, Lodge Grass, Rocky Boy, and Wolf Point to improve and sustain graduation rates.

There will not be an Indian Education for All (IEFA) Rotunda Day this year.

Jason Cummins said a lot of the improvement efforts does not generally address culturally responsive teaching and addressing the root causes of the achievement gap.

➤ Montana University System – Angela McLean

The central application for applying to units in the University system has been launched for all Montana residents at no cost.

The i-graduate Montana application has been opened and is on the Office of the Commissioner of Higher Education (OCHE) website.

Two by two partnerships between University System schools and tribal schools is in place.

Minutes

The minutes of the December 9, 2020, meeting were reviewed. Jordann Forster motioned to approve the minutes as approved, and Norma Bixby seconded the motion. Passed by all.

Indian Education Reports

➤ Tribal Relations and Resiliency Unit – Don Wetzel

The unit has been busy presenting regarding tribal consultation and working with schools, students, and tribes.

➤ American Indian Student Achievement – Pat Armstrong

Pat Armstrong gave a report on the Indian Language Immersion Program grant. There are two schools that are currently receiving this, Browning Public Schools (\$29,650) and Crow Agency School (\$18,819). Fifty percent of the content must be taught in the Native language. Any school district whose population is at least ten percent American Indian would be able to apply for this grant.

Jason Cummins indicated that students who are in the immersion classroom the English Literacy scores are 27% higher than those in the English only classrooms. Pat Armstrong indicated that in Browning those in the dual language classrooms were the only ones who tested out of being limited English proficient.

Megan Gourneau asked about cultural curriculum as this. Mr. Armstrong talked about Heart Butte's social-emotional framework. Other cultural programs that were discussed were Browning (Matthew Johnson), Heart Butte (Shannon Augare), and Great Falls (Jordann Forster).

➤ Indian Education for All Unit – Zach Hawkins

Zach Hawkins talked about the grants to schools and getting money to schools on and near reservations so they would be able to develop tribally specific curriculum and initiatives that would become sustainable. The Indian Education for All (IEFA) Unit would ask MACIE on who is able to do that and also let schools know about this grant opportunity. IEFA in reservation schools does need to include information on other tribes besides the local tribe.

Jennifer Smith asked about Rotunda Day and asked if the IEFA unit would like a statement from MACIE. Mr. Hawkins indicated that advocating for having a Rotunda Day of some sort would be appreciated. Chairperson Smith said MACIE members should send her anything that want to add to the statement to her.

Informational Presentation

➤ Youth Advisory Council Updates (after Tribal Relations and Resiliency Unit presentation)

Riley Werk from Fort Belknap and students (Ethan Blount, Josh Bushman, Josh Fettig, Katriel Hamilton, Antone Manning) from Nakona Dakota Oyate (Fort Peck). Represented the state youth advisory team and their particular councils. They talked about what they are doing to get youth to become leaders and how to help students and others during COVID-19.

Lunch break was taken at 11:50.

Afternoon Session

In attendance: (members) Joe Arrowtop, Dawn Bishop-Moore, Norma Bixby, Dugan Coburn, Jason Cummins, Michael Dolson, Harold Dusty Bull, Jordann Forster, Megan Gourneau, Melissa Hammett, Iris Kill Eagle, Jennifer Smith, Lona Running Wolf; (OPI) Pat Armstrong, Joan Franke, Todd Hanson; (guests) Mary Jo Bremner

Old Business

➤ Operational Supports – Todd Hanson

Todd Hanson operational supports regarding strategic practice, specifically regarding how to operationalize the guiding principles and the draft goals. reviewed the draft goals that have been developed. Mr. Hanson's recommendation based on training already provided is the council have formal action to immediately adopt these goals and mobilize the strategic partners in response to those goals.

Jordann Forster motioned for MACIE adopt the strategic practice of organizing and guiding principles that file into the goals that have previously been discussed. Megan Gourneau seconded the motion. Passed by all.

Goal 1: MACIE will advocate for and alongside communities, families, parents, and school systems that serve NA/AI student populations with the intent of recognizing the impact of historical trauma while promoting efforts to ensure safe, secure, and stable educational environments where students and parents feel welcome and supported.

Goal 2: MACIE will encourage the adoption of school-based programing which addresses the presence of systemic racism and the associated disparate discipline of NA/AI students in public schools, with the intent of supporting efforts focused on exploring the impact these conditions have upon student achievement.

Goal 3: MACIE will act as an advocate for the meaningful integration of culture and indigenous language in Montana schools by promoting the adoption of culturally relevant curriculum and instruction in support of the expression of NA/AI student self-identity and self-actualization.

Goal 4: MACIE supports community programs that are focused on providing equitable access for NA/AI students to technological resources and internet connectivity within rural communities and school systems in response to the growing demand for the integration of virtual teaching and learning.

➤ Language Committee Statement Update – Jason Cummins

The law firm (Rosette) is working on a legal summary concerning the protection of indigenous languages in public schools, covering both federal and state laws. Dr. Cummins had reached out

to tribal representatives to find out tribal language protections. Some have the protection and some only have allowances for the Class 7. As soon as the summary is done, Jason Cummins will send it out to MACIE members.

The other MACIE members on the committee are Jeremy MacDonald and Lona Running Wolf. OPI support staff are Todd Hanson, Pat Armstrong, and Don Wetzel.

New Business

➤ Election of Officers

Chairperson Smith called for nominations for vice-chairperson, the position of which is currently vacant.

Joe Arrowtop nominated Jason Cummins. Dugan Coburn nominated Jordann Forster. Ms. Forster rescinded her nomination.

Joe Arrowtop moved that nominations be closed.

Jordann moved to have Jason Cummins elected as vice-president and Dugan Coburn seconded the motion. Jason Cummins was elected by all.

Chairperson Smith asked for nominations for secretary.

Iris Kill Eagle nominated Dawn Bishop-Moore and Norma Bixby seconded

Norma Bixby moved that nominations be closed. Dawn Bishop-Moore was elected by all.

➤ Research Project

Lona Running Wolf stated the first part of the research project is completed and two reports have been written, the full version and the ten-page summary. She asked that MACIE members read the reports and let her know any questions that would need to be asked during the second, survey portion of the project.

The last part of the research project will be interviewing individuals regarding cultural strategies that work.

➤ Meeting Change Proposal – Jennifer Smith

Jennifer Smith proposed splitting MACIE meetings. Her proposal was for one month to have reports—ex-officio, OPI Indian Education administrative. The next month would focus on business (action items).

There was discussion about what happens when the council goes back to in-person meetings. Lona Running Wolf said that when there are in-person meetings, there will still be the option for attending digitally.

There was consensus on split meetings—business one month and informational presentations the next month, with two in-person meetings (April and October). This will start in two months.

➤ **Committee Formation**

Todd Hanson said committees could stay same as those in the constitution. Change could also be changed if that is what is decided. Jennifer Smith asked if committees need to be created. Mr. Hanson said the committee structure does not mean the committees need to be active or that other committees can be created as needed.

The committees will stay the same. Todd Hanson will do a briefing statement on what each committee would entail to send out to MACIE members. Once this is sent out then MACIE members need to let Joan Franke know which committee would like to be on.

Public Comment

Jennifer Smith asked for public comment. No public comment.

Next Regularly Scheduled Meeting

It was decided to have the next (business) meeting on April 7 starting 9:00 a.m.

The MACIE meeting was adjourned at 2:13 p.m.

ITEM 3 MACIE AGENDA WORKING SESSION OLD BUSINESS

❖ **MACIE Members' Community Concerns - Review**

- Handout 3.1
 - Concerns listing

❖ **Language Committee Update**

- Handout 3.2
 - Position Paper and Legal Summary

MACIE Member concerns

- Suicide – II
- Parental Involvement
- Students being able to make it to school
- Roots of the achievement gap that are not being addressed
- Disparate discipline (MACIE must address ACLU report)
- Language/Culture in public schools and curriculum
- Teach at least one of the native American languages that is prevalent in the locale of the K-12 School
- Culturally relevant teacher training (more IEFA in teacher prep)
- Cross-cultural instruction for ALL staff members
- Unstable housing/family situation
- Social Distancing
- Virtual Teaching
- Overcoming historical trauma
- Culturally relevant curriculum - II
- Community support for the value of education in modern society
- Community support
- Teachers knowing about historical trauma and how to deal with it
- Fiscal responsibility/entrepreneurship
- How to address systemic racism
- Cultural history (Where you came from, where your at today and where do you want to be in the near and long term future)
- Positive parental involvement



MACIE POSITION STATEMENT
On Native American Language Protections

As each tribal nation within Montana is working to protect and revitalize its own unique Indigenous language, it is our goal to proactively inform and educate those school district Boards of Trustees, Administrators, teachers and staff who serve Native American students, families and communities within the state about the legal language protections that exist for the Native American languages.

At the intersection between Indian Law and School law many educators and school leaders find themselves uninformed and unprepared; whether this be in regard to the exercise of tribal sovereignty, culture, history, spirituality, regalia and graduations or other related issues. We see it best to address these issues in a preventative manner in order to mitigate any and all unwanted and unnecessary situations from happening, and from continuing to happen, in order to better prepare educators and school leaders.

Educators would be well served to be informed on the issues of Federal and State Legal protections as to not cause unnecessary problems for school districts or themselves professionally by attempting to restrict Native American languages by incorrectly continuing the unspoken practices of language restrictions which stem from historical assimilative efforts towards Native American students.

We, the members of the Montana Advisory Council on Indian Education (MACIE) recommend and advise that the Office of Public Instruction and Board of Public Education address this lack of awareness by informing and preparing educators in the area of the legal protections of Native American languages as well as the other issues previously mentioned that are present in the intersection of school law and Indian law by:

- providing professional development for Trustees, Superintendents, Principals, and staff;
- addressing these specific issues in teacher and principal preparation programs;
- providing support around developing school-based policy and procedures and that;
- this emphasis is reflected in a review and possible revision to current licensure requirement as well as accreditation.

Attached you will find a legal summary explaining the legal protections of Native American languages.

Thank You

MACIE

TO: Montana Advisory Council on Indian Education
FROM: Rosette, LLP
DATE: February 26, 2021
RE: Protections for the usage of Native American languages in schools.

I. INTRODUCTION AND BACKGROUND

“But for all its breadth, English cannot substitute for Native American languages, because these languages are based on entirely different histories, spiritual beliefs, scientific and natural-world understandings, and political and legal ideas. In essence they are based on different realities. Native languages capture concepts that do not exist in English. . . And they express the ideas on which Native American cultures are anchored. In other words, a native language does not just *reflect* a culture; in a functional sense it *is* the culture.” - Last Word, Cultural Survival Quarterly Magazine.¹

The preservation of the Native American language generation to generation is critical to preserving the Native American culture and identity and cannot be underscored. However, too often tribes or their citizens find the use of their native language being prohibited or discriminated against in public schools. But the use of Native American languages on school grounds is protected speech under the United States Constitution, United States common law, and also under Federal and Montana-specific statutes.

This memorandum is a high-level overview of the legal protections that may be applicable when public schools attempt to ban or prohibit use of native languages in public schools.

II. USE OF NATIVE AMERICAN LANGUAGES IS PROTECTED BY CONSTITUTIONAL LAW

¹ Mark Cherrington, *The Last Word*, June 2007 (Retrieved at <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/last-word#:~:text=They%20are%20the%20sole%20vehicles,sense%20it%20is%20the%20culture>).

The United States Constitution, unlike the governing laws of some other countries, specifically lacks a designation of official language. Instead, in the United States, the unique focus on freedom of expression means linguistic freedom of expression as demonstrated by case law. Time and time again, those state, or even proposed federal laws, that attempt to preclude other languages, so-called “English-only laws,” have been found unconstitutional either under the 14th Amendment and/or 5th Amendment Equal Protection Clauses or the 1st Amendment’s freedom of speech clause. The lawsuits challenging “English-only laws” are often brought under 42 U.S.C. Section 1983, which provides an individual the right to sue state government employees and others acting “under color of state law” for civil rights violations.²

In the 1920s, after World War I, many states enacted laws trying to prohibit the teaching or learning of languages other than English. These laws were resoundingly rejected by the Supreme Court as violating substantive due process rights implicit in the 14th Amendment (which applies to states) and the 5th Amendments (which applies to the federal government) of the United States Constitution. Later courts have found the right to teach and learn foreign languages as protected by the First Amendment. Thus, it should go without saying that if one cannot be deprived the right to teach or learn a foreign language, they cannot be prohibited from or discriminated against for simply using the language on school property (without a sound reason) as such would also amount to a violation of the freedoms under the 14th, 5th, and 1st Amendments.

The United States Supreme Court first recognized a substantive due process right to linguistic freedom in *Meyer v. Nebraska*. At issue in *Meyer*, was a Nebraska law banning the teaching of languages other than English in any public or private school before students reached the eighth grade. The Court found the law violated the “liberty” guarantees of the 14th

² Section 1983 does not provide civil rights; it is a means to enforce civil rights that already exist.

Amendment's due process clause. "Liberty" denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free [people].³ And this liberty cannot be interfered with, "under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."⁴ The Court went on to hold that the "[m]ere knowledge of [a foreign] language cannot reasonably be regarded as harmful."⁵ The Court struck down similar statutes enacted in Iowa and Ohio utilizing the same reasoning in *Bartels v. State of Iowa*.⁶

While each state is governed by the equal protections guaranteed under the 14th Amendment, the federal government and agencies set up by Congress must abide by the equal protections guaranteed under the 5th Amendment. In *Farrington v. Tokushige*, the Supreme Court applied this reasoning to the Federal government and agencies set up by Congress for the government of Territory of Hawaii, utilizing the 5th Amendment's Equal Protection Clause.⁷ The Court determined that a legislative act and certain regulations adopted by the department of public instruction thereunder were unconstitutional, because in sum, they required any school that taught in languages other than English and Hawaiian to pay for special permits and fees. This case can be utilized to evidence that under the 5th Amendment, the federal government and agencies set up by Congress cannot deprive a person of their 5th Amendment liberties.

³ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

⁴ *Id.* at 400.

⁵ *Id.*

⁶ *Bartels v. Iowa*, 262 U.S. 404, 411 (1923).

⁷ *Farrington v. Tokushige*, 273 U.S. 284, 299 (1927).

In 1969, the Supreme Court found the right to teach and learn foreign languages to be a penumbral right protected by the First Amendment.⁸ The First Amendment states in part, "Congress shall make no law ... abridging the freedom of speech."⁹ For over two centuries, courts have held that these ten words carry an immense amount of weight.¹⁰ The Supreme Court has found that a person's freedom of a speech is "protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."¹¹ Therefore, even when someone speaks in a manner that may upset another individual, that speech is still protected unless it produces a "clear and present danger of a serious substantive evil," which would offend all notions of human decency.¹²

In *Tinker v. Des Moines Independent Community School Dist.*, the Supreme Court held students had a right to freedom of expression under the First Amendment absent a demonstration of any facts which might reasonably have led school authorities to forecast *substantial disruption* of, or material interference with, school activities or any showing that disturbances or disorders on school premises.¹³ And so was born the chief test used when analyzing whether a student's 1st Amendment rights have been violated – the “substantial disruption test.” However, an exception to this test is school-sponsored speech.

The Supreme Court has held “educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”¹⁴ This type of rational/reasonable basis standard is very deferential to school officials.

⁸ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969).

⁹ U.S. Const. amend. I.

¹⁰ *Cox v. State of La.*, 379 U.S. 536, 551-52 (1965).

¹¹ *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

¹² *Id.*

¹³ *Tinker*, 393 U.S. at 508.

¹⁴ *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).

The Supreme Court has even found that disassociating “the school with any position other than neutrality on matters of political controversy” is a legitimate pedagogical concern.¹⁵ As such, often times when students are speaking through mechanism such as class newspaper, student council bulletin boards and flyers, band and orchestra concerts, yearbooks, and/or school plays, those may be considered to have the school’s blessing, so schools have authority to regulate the content if it is not politically neutral.

Thus, a key question in student-speech cases is whether the student expression in question is “student-initiated” or “school-sponsored.” If the speech is student-initiated, the “substantial disruption test” governs, and if it is school-sponsored, the rational basis test governs.

In *Ruiz v. Hull*, state employees and a public-school teacher brought an action to challenge the constitutionality of a constitutional amendment to the Arizona Constitution requiring state and local governments to act only in English. The Arizona Supreme Court held that the amendment violated the First Amendment and the Equal Protection Clause of Fourteenth Amendment.¹⁶ The Court held that the amendment was too broad because, among other things, it prohibited public employees from using non-English to communicate while performing duties. The Court used the absurd example that “by its express language, [the amendment] prohibits a public school teacher [] and a monolingual Spanish-speaking parent from speaking in Spanish about a child's education.”¹⁷ Similarly, in *Alaskans for a Common Language, Inc. v. Kritz*, the Alaska Supreme Court declared an initiative adopting English as the state's official language and requiring its sole use in “all government functions and actions” as a violation of state constitutional free speech rights¹⁸ (which closely aligns with U.S. Constitutional free speech rights).

¹⁵ *Id.* at 272.

¹⁶ *Ruiz v. Hull*, 957 P.2d 984, 991 (Ariz. 1998).

¹⁷ *Id.*

¹⁸ *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 187 (Alaska 2007).

Based on this history, it would go without saying that in most circumstances, a school cannot completely ban or prohibit teachers or students from simply using their native language as such could be a violation of the United States Constitution and/or state constitutions. However, each scenario requires a case-by-case analysis.

III. THE USE OF NATIVE AMERICAN LANGUAGES IS PROTECTED BY FEDERAL STATUTE

The United States Congress has also recognized the needs of non-English speakers and enacted statutes specifically protecting language rights in education, and broadly protecting employees from language discrimination in the workplace. In certain situations, these federal statutes, such as Title VI and VII of the Civil Rights Act of 1964, and the Native American Languages Act (“NALA”), can be utilized to protect Native American languages.

Civil Rights Act of 1964, Title VI

Title VI provides “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination *under any program or activity receiving Federal financial assistance.*” However, Title VI only provides a private litigant a private cause of action to sue for *intentional* discrimination, not for “disparate-impact discrimination” (often referred to as unintentional discrimination resulting in unfair outcomes).¹⁹ This means that “Title VI reach[es] only instances of intentional discrimination” and that “actions having an unjustifiable disparate impact on minorities could be redressed [only] through agency regulations designed to implement the purposes of Title VI.”²⁰

¹⁹ *Alexander v. Sandoval*, 532 U.S. 275, 285 (2001) (stating that “[i]t is clear now that the disparate-impact regulations [Section 602] do not simply apply § 601—since they indeed forbid conduct that § 601 permits—and therefore clear that the private right of action to enforce § 601 does not include a private right to enforce these regulations [602 regulations].”)

²⁰ *Id.* at 293.

As such, a lawsuit can be brought under Title VI if an individual can establish a “prima facie case”²¹ of discrimination at which point the burden shifts to the school or district to show a legitimate non-discriminatory reason for the actions.²² The burden then shifts back to the plaintiff to demonstrate the school or district’s proffered reason is merely pretextual, meaning that it is unworthy of credence.²³ While the burden to prove prima facie intentional discrimination is high, one way to prove this is through direct evidence of an existing policy which itself constitutes discrimination.²⁴ For example, a policy that explicitly requires students of one race be disciplined differently from students of another race is prima facie evidence of intentional discrimination.

But plaintiffs must also show a prima facie case of “adverse action.” This means the actions by the school or employer must have a negative impact on the person bringing the complaint. As an example, discipline or termination of an employee would amount to adverse action.²⁵ And while federal courts have held that an English-only practice at a school is enough to prove defendants acted *intentionally* under Title VI, that alone, is not enough to establish a prima facie case of “adverse action” against student plaintiffs.²⁶ When it comes to proving “adverse action,” whether or not English is a plaintiff’s first language and/or preferred language and whether or not the school is private versus public plays a significant role in establishing a prima facie case of “adverse action.”²⁷ This is because, in general, courts will give more latitude to private schools and their power over students than public schools and the government’s authority over adults.

²¹ Prima facie case means based on the first impression; accepted as correct until proved otherwise.

²² *Silva v. St. Anne Catholic Sch.*, 595 F.Supp.2d 1171, 1182 (D. Kan. 2009).

²³ *Id.*

²⁴ *Id.*

²⁵ As an example, discipline or termination of an employee would amount to adverse action *See, E.E.O.C. v. BCI Coca-Cola Bottling Co. of Los Angeles*, 450 F.3d 476, 484 (10th Cir. 2006).

²⁶ *Silva v. St. Anne Catholic Sch.*, 595 F.Supp.2d 1171, 1183 (D. Kan. 2009).

²⁷ *Id. at 1183.*

For example, a case brought in the District of Hawaii demonstrates the difference of deference that is afforded to the government when dealing with children verse adults, because this case involved a federally funded driver license exam taken by adults in a public setting instead of students in a private school setting. In *Faith Action for Community Equity v. Hawaii*, the plaintiffs, who were adults, sued the state over a driver’s license exam that was once provided in seven different languages, but now only offered in English. While this case eventually settled, the State’s preliminary motion to dismiss the case was rejected after the Judge found that *at minimum* a question of fact existed as to whether the State intentionally discriminated against people based on national origin when they stopped providing translated written driver’s license exams.²⁸

When Native students or employees of any program or activity receiving Federal financial assistance are discriminated against based on their use of Native American Language, Title VI *may* provide an avenue of recourse, but only when there is prima facie evidence of intentional discrimination and the plaintiffs suffered negative actions directly by that intentional discrimination.

Civil Rights Act of 1964, Title VII

Title VII prohibits discrimination in employment based on race, color, sex, or national origin. Thus, it prohibits employers from enacting restrictive language policies (written or unwritten) because an individual's primary language is closely tied to his or her cultural and ethnic identity and these policies are thus, considered discriminatory based on national origin.²⁹ As such, Title

²⁸ *Faith Action for Cmty. Equity v. Hawaii*, No. CIV. 13-00450 SOM, 2015 WL 751134, at *8 (D. Haw. Feb. 23, 2015)

²⁹ *Gutierrez v. Mun. Court*, 838 F.2d 1031, 1039 (9th Cir. 1988), *remanded with directions to vacate as moot*, 490 U.S. 1016 (1989), *vacated as moot*, 873 F.2d 1342 (9th Cir. 1989); *see also Garcia v. Spun Steak Co.*, 13 F.3d 296, 298 (9th Cir. 1993) (Reinhardt, J., dissenting from denial of rehearing en banc) (observing that even for a bilingual individual, "native language remains an important manifestation of his ethnic identity and a means of affirming links to his original culture").

VII could be utilized by educators who are being discriminated against for speaking Native American Languages on school property - their place of work.

Lawsuits alleging national origin discrimination based on English-only workplace rules have increased over the years as the U.S. Equal Employment Opportunity Commission (“EEOC”) has made “[c]ases involving English-only rules, restrictive language policies, and language or accent discrimination [] litigation priorities.”³⁰

For instance, a federal court in Texas held that a rule enforced by an employer banning the speaking of languages other than English at all times in the workplace was discrimination based on national origin and as such violated Title VII.³¹ In deciding the case, the Court relied on expert testimony from a linguist who testified that “code switching,” an unconscious habit where persons who are bilingual switch from one language to another during casual conversation, renders it extremely difficult to completely suppress one's primary language.³² “The judge also rejected the idea that the policy and its enforcement promoted harmony, or was needed to improve communication, stating, ‘Quite the opposite...the policy served to create a disruption in the workplace and feelings of alienation and inadequacy by . . . proven performers.’”³³ The EEOC once again brought this case and ultimately commented on it, stating “[t]his significant ruling serves to remind us that language differences must not make employees the target of mean-spirited or even well-intended language policies when there is no real business necessity or justification for such policies.”³⁴

³⁰ U.S. Equal Employment Opportunity Commission: Press Release: <https://www.eeoc.gov/newsroom/court-speaks-english-only-rule-unlawful-awards-eeoc-700000-hispanic-workers-0> (Sept. 19, 2000) (“Charges alleging national origin discrimination based on English-only rules have skyrocketed from 77 charge filings in FY 1996 to 365 charge filings thus far in FY 2000.”).

³¹ *E.E.O.C. v. Premier Operator Services, Inc.*, 113 F.Supp.2d 1066 (N.D. Tex. 2000).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

In a similar case, Albertsons, a grocery market, allegedly had an unwritten rule that Hispanic workers could not speak Spanish anywhere on the premises, even while on break, and were at times verbally harassed for violating the “No Spanish” policy.³⁵ Accordingly the EEOC brought a lawsuit for violation of Title VII which resulted in a settlement for \$210,000 to affected class members along with “injunctive relief aimed at preventing workplace national origin discrimination in the future” and requirements that Albertsons submit reports to the EEOC and keep records necessary to demonstrate its compliance.³⁶

As with other workplace policies, a restrictive language policy violates Title VII if it is adopted for discriminatory reasons, such as bias against employees of a particular national origin.³⁷ Therefore, it would be unlawful disparate treatment to implement an English-only rule in order to avoid hearing foreign languages in the workplace, to generate a reason to discipline or terminate people who whose first language is not English speakers, or to create a hostile work environment for certain non-English speaking workers. Evidence of disparate treatment includes failure to consider whether there are actually legitimate business reasons for the policy. It goes without saying, the weaker the business reason, the more difficult it may be to justify the policy under Title VII.

Title VII also prohibits an employer from enforcing a policy in a discriminatory manner by, for example, imposing more severe discipline on employees of one national origin who violate the policy than on others of another origin for comparable violations. Finally, penalizing employees

³⁵ See EEOC v. Albertsons Companies, Inc., et. al., Case No. 3:18-cv-00852-MMA-BGS; “Feds sue an Albertsons that banned Hispanic employees from speaking Spanish, even on breaks” <https://www.washingtonpost.com/news/post-nation/wp/2018/05/04/albertsons-no-spanish-rule-hispanic-employees-eoc-file-lawsuit-over-language-policy/>.

³⁶ See “Albertsons to Pay \$210,000 to Settle EEOC National Origin Discrimination Lawsuit”

<https://www.eeoc.gov/newsroom/albertsons-pay-210000-settle-eeoc-national-origin-discrimination-lawsuit>

³⁷ See *Lopez v. Flight Servs. & Sys. Inc.*, 881 F.Supp.2d 431, 440 (W.D. N.Y. 2012) (holding that an employer "may not forbid employees from speaking their native tongues if the reason is because of discriminatory animus toward the employee's national origin").

for minor, inadvertent infractions that do not undermine workplace safety or efficiency may be evidence of intentional discrimination.³⁸

The EEOC's policy on English-only rules is set out in its Guidelines on Discrimination Because of National Origin (Part 29, Code of Federal Regulations, Section 1606.1). These long-standing, originally issued in 1980, provide that rules requiring employees to speak English in the workplace at all times presumptively violate Title VII:

A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees *at all times*, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment. Therefore, the Commission will presume that such a rule violates title VII and will closely scrutinize it.

(emphasis added). If one believes they have been discriminated against based on language use or limited English proficiency, they should contact the EEOC's Office of Equal Employment Opportunity and Diversity Programs.³⁹

Native American Languages Act

Specific as to Native American languages, the United States has codified its duty to protect Native American Languages in NALA. NALA's purpose is "to establish as a policy of the United States the importance of preserving, protecting, and promoting Native American languages."⁴⁰ In

³⁸ See generally *Spun Steak Co.*, 998 F.2d at 1489 (9th Cir. 1993) ("Likewise, we can envision a case in which such rules are enforced in such a draconian manner that the enforcement itself amounts to harassment. In evaluating such a claim, however, a court must look to the totality of the circumstances in the particular factual context in which the claim arises.").

³⁹ U.S. Equal Employment Opportunity Commission: Contact EEOC, <https://www.eeoc.gov/contact-eeoc>, (Retrieved on Feb. 26, 2021).

⁴⁰ 25 U.S.C. § 2901; *Studevart v. Holder*, No. 1:09CV115, 2010 WL 3210961, at *3 (N.D. W. Va. 2010).

enacting NALA, Congress found that "acts of suppression and extermination directed against Native American languages ... are in conflict with the United States policy of self-determination for Native Americans."⁴¹ Section 2904 of NALA provides that the "right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs."⁴²

While there is very little case law interpreting NALA, so far it has been found that, apart from section 2904, NALA does not create any "affirmative duties on the states but merely evidences a federal policy to 'encourage' states to support Native American languages."⁴³ Federal courts have also found that NALA does not create a private cause of action against states for failure to *promote* native languages, but arguably left open the question of whether or not it prohibits states from barring the use of native languages in schools.⁴⁴ So at the current juncture, unfortunately, NALA does not bring much teeth when it comes to enforcing this duty upon school districts, but future litigation may prove otherwise.

IV. MONTANA LAW AND THE USE OF NATIVE AMERICAN LANGUAGES

Based purely upon the Montana Constitution and statutes, the State of Montana has established a foundation that places importance on Native American culture and language, and a clear stance that local education agencies should work with Tribes and tribal organizations to achieve recognition of this goal.

⁴¹ 25 U.S.C. § 2901(8).

⁴² 25 U.S.C. § 2904.

⁴³ *Office of Hawaiian Affairs v. Dep't of Educ.*, 951 F. Supp. 1484, 1495 (D. Haw. 1996).

⁴⁴*Id.*; *See also, Sturdevant*, 2010 WL 3210961 at *3) (stating that "[t]he NALA, however, does not create a private cause of action. Under its clear language, its purpose was to establish as a policy of the United States the importance of preserving, protecting, and promoting Native American languages. *See* 25 U.S.C. § 2903. This statute, therefore, does not afford Sturdevant any privately enforceable rights of protection.").

Pursuant to the Montana Constitution, “[t]he state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.” Art. X(1)(2). Despite a State statute that makes English the “official and primary language of state and local governments,”⁴⁵ that same statute also notes “[t]his section is not intended to violate the federal or state constitutional right to freedom of speech of government officers and employees acting in the course and scope of their employment” and “[t]his section does not prohibit a government officer or employee acting in the course and scope of employment from using a language other than English, including use in a government document or record, if the employee chooses, or prohibit the teaching of other languages in a school for general educational purposes or as secondary languages.”⁴⁶ Further, the statute concludes by noting it “is not intended to limit the use of any other language by a tribal government” and “[a] school district and a tribe, by mutual agreement, may provide for the instruction of students that recognizes the cultural identity of Native American children and promotes the use of a common language for communication.”⁴⁷

Because of Montana’s “English as the official and primary language” statute cannot be used to limit other languages in violation of an individuals’ constitutionally guaranteed freedom of speech, the statute is likely constitutional. Should the State or a school district inappropriately attempt to ban other languages, they would wind up violating not only federal constitutional and statutory rights discussed above, but also Montana’s “English as the official and primary language” statute.

⁴⁵ Mont. Code Ann. § 1-1-510(1).

⁴⁶ Mont. Code Ann. § 1-1-510(3).

⁴⁷ Mont. Code Ann. § 1-1-510(4).

Moreover, the Montana statute promotes working with local tribes to make sure these objectives are accomplished. It specifically sets out that school districts and tribes should reach agreements for the instruction of students “that recognizes the cultural identity of Native American children and promotes the use of a common language for communication.” The Montana Legislature has also enacted various applicable laws including statutes on Indian Language Preservation Programs⁴⁸ and Indian Language Immersion Programs wherein school districts are encouraged to create language immersion programs and “in doing so. . . collaborate with other schools districts, the Montana digital academy, tribal governments, and tribal colleges.”⁴⁹ The intent of the Montana Legislature could not be clearer, as explicitly supplied in the “Indian Education for All” section of Montana’s Education Code:

- (1) It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.
- (2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:
 - (a) every Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and
 - (b) every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.
- (3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

⁴⁸ Mont. Code Ann. § 20-9-537.

⁴⁹ Mont. Code Ann. § 20-7-1404(1)(a)

As such, when Montanan school districts discriminate against Native students and refuse to work with tribes to educate Native students in a culturally responsive manner, they are going against not only federal laws but the fundamental policies and laws of their own State. In such instance, students, parents, and educators should reach out to state and federal agencies in order to discuss the discrimination and find an amicable solution. When possible, it is also helpful to get the support and involvement of a federally recognized tribe, as it elevates the complaint to a government-to-government issue. A good resource for organizations, teachers, or parents in determining who to reach out to is the “Tribal Nations in Montana: a Handbook for Legislators.”⁵⁰.

Additionally, the Biden Presidential Administration has recently underscored a need for recognition, dialogue, and agreements with tribal nations as to federal policy:

It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. . . History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations. To this end, Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications.⁵¹

As such, now more than ever, is a good time to reach out to school districts and attempt to navigate agreements regarding the use and preservation of Native languages.

While there has not been any litigation specifically relating to the ban or restriction of Native American language, at least one case against a school district for discrimination against Native

⁵⁰ *Tribal Nations in Montana: A Handbook for Legislators*, (Retrieved at <https://uat.leg.mt.gov/content/For-Legislators/Publications/tribal-nations-handbook-october2016.pdf>).

⁵¹ The White House, *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*, (Retrieved at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>) (Jan. 26, 2021).

American tribal members in Montana has gained recent attention. When tribal members of the Assiniboine and Sioux Tribes felt that Native students were being discriminated against by the Wolf Point Montana School Districts, they filed a complaint with federal agencies under Title VI asking both the U.S. Department of Justice and the U.S. Department of Education to intervene citing unequal treatment of Native students. Although not central to the complaint, one allegation was that, despite the school district being “located on a reservation and having a majority-Native enrollment” the district did “not offer any courses on tribal heritage or language” and tribal members’ efforts to incorporate cultural education were opposed by the school administration.⁵² The complaint was backed by the ACLU of Montana and currently the U.S. Department of Education is currently investigating the ACLU's formal complaint⁵³ and the Department’s Office of Civil Rights is investigating the school both for a denial of rights and over "discipline."

Nonetheless, this is a perfect example of how tribes, tribal educators, and/or students can utilize both state and federal agencies to fight discrimination against Native American language use in public schools.

V. CONCLUSION

Federal laws provide a legal basis for fighting discrimination against Native American languages, and while there is always room for improvement, Montana law seemingly provides protections above and beyond many other states. As such, if pervasive discrimination against Native American language is occurring at a school district, action should be taken to enforce these

⁵²ACLU of Montana, *Discriminatin Against Native Students in Wolf Point, Montana District Schools*, (Retrieved at https://www.aclumontana.org/sites/default/files/field_documents/fort_peck_reservation_title_vi_doj_complaint.pdf) (June 2017) (citing Interview by Melina Angelos Healey with Annette Linder in Wolf Point, Mont. (July 18, 2016) and Interview by Rebecca Gerome with Ruth Jackson in Wolf Point, Mont. (Sept. 29, 2015).

⁵³ The USDOE opened up the complaint on April 14, 2019..

laws to help give them teeth. It is the purpose of this document to educate those as to prevent such discrimination.

**ITEM 4 MACIE AGENDA
WORKING SESSION
NEW BUSINESS**

- ❖ **Constitution Update - Membership**
 - Handout 4.1
 - Constitution

MONTANA ADVISORY COUNCIL ON INDIAN EDUCATION

CONSTITUTION AND BYLAWS

PREAMBLE

The Montana Advisory Council on Indian Education was established by the Board of Public Education and the Office of Public Instruction to function in an advisory capacity for the education of American Indian students in Montana.

The Montana Advisory Council on Indian Education shall be a strong voice for collaborative efforts among tribal, state, and federal organizations, institutions, groups, and agencies for the express purpose of promoting high quality and equitable educational opportunities for all American Indian students in Montana. This includes, but is not limited to, culture, language, and Indian Education for All.

ARTICLE 1

Name of Organization

The name of the organization shall be Montana Advisory Council on Indian Education (MACIE).

ARTICLE II

Purpose

The purpose of MACIE shall be:

1. Advise the Board of Public Education (BPE) and the Superintendent of Public Instruction (OPI) in matters affecting the education of American Indian students, including accreditation, certification, and teacher training;
2. Promote equal educational opportunities and improve the quality of education provided to American Indian students throughout the State of Montana;
3. Advise, monitor, evaluate, and advocate for the implementation of Indian Education for All as defined in Article X, section 1(2) of the Montana Constitution and MCA 20-1-501 for all educational agencies; and
4. Carry out the goals and responsibilities of MACIE, report to BPE and OPI, and complete an annual progress review.

ARTICLE III

Goals

The Goals of the MACIE are:

1. Communication, Collaboration, and Advocacy

Share information concerning respective constituents' needs and issues by presenting matters to the MACIE attention for discussion and action. Relay information regarding outcomes and actionable items to constituents.

Encourage collaboration by acting as liaisons between OPI and BPE and member organizations in support of Indian education in Montana. Seek participation of Indian people, tribes, and tribal organizations in the educational process.

Ensure Native representation and participation in all matters pertaining to Indian education.

2. Student Success

Explore and promote successful data-driven, research-based innovative strategies, resources, and programs that focus on increasing Indian student achievement.

3. Legislative, Fiscal, and Policy Advocacy

Provide input and recommendations to OPI and BPE regarding fiscal allocations designated for Indian education purposes.

Monitor and advocate legislation, which potentially affects Indian students.

BYLAWS OF MONTANA ADVISORY COUNCIL ON INDIAN EDUCATION

ARTICLE 1

Membership

BPE and OPI will jointly make appointments to MACIE based on nominations from Indian tribes, Indian organizations, major education organizations in which Indians participate, and schools where American Indian students and adults attend.

NOTE: Participation on MACIE is voluntary and tribes and organizations invited to participate may decline.

Each of the eight Montana tribal councils shall be invited to select one person to represent its tribe. MACIE will seek participation from three urban areas, Great Falls, Billings, and Missoula, one per area.

Other nominations will be sought from organizations or constituencies that have been identified as playing a key role in the education of American Indians in Montana. These are:

- Montana Federation of Public Employees (MFPE)
- School Administrators of Montana (SAM)
- Indian Impact Schools of Montana (IISM) Board
- Montana School Boards Association (MTSBA) Indian School Board Caucus
- Montana Indian Education Association (MIEA) Board
- Class 7 Teachers
- Urban school district Indian Education Departments

Voting

MACIE will be comprised of 17 voting members consisting of:

- 8 representatives from each Montana tribe
- 3 representatives from urban school district Indian Education Departments
- 1 representative from Montana Federation of Public Employees (MFPE)
- 1 representative from School Administrators of Montana (SAM)
- 1 representative from Indian Impact Schools of Montana (IISM)
- 1 representative from Montana School Boards Association (MTSBA) Indian School Board Caucus
- 1 representative from Montana Indian Education Association
- 1 representative from Class 7 teachers

MACIE shall be comprised of six ex-officio (non-voting) members consisting of:

- 1 representative from Office of Public Instruction
- 1 representative from Board of Public Education
- 1 representative from Montana University System
- 1 representative from Bureau of Indian Education Schools
- 1 representative from Tribal Head Starts
- 1 representative from Tribal Colleges

ARTICLE 2

Officers

MACIE officers shall consist of a chairperson, vice-chairperson, and secretary elected by MACIE.

ARTICLE 3

Removal from MACIE

MACIE members will automatically lose membership with two consecutive unexcused absences from regularly or specially noticed and convened meetings as per Article 10, Section 3. An unexcused absence is one in which a member fails to provide prior notice of absence. In the event of a removal, the MACIE member will be notified and MACIE will request the tribe/organization recommend a new representative.

ARTICLE 4

Amending the Constitution

An amendment to the Constitution and Bylaws may be adopted at a regular or special meeting by an approval of no less than nine (9) of the MACIE voting members. Advance notice of the agenda containing a proposal to amend shall be distributed to all MACIE members at least 15 days in advance of the meeting.

However, if a member tribe/organization has an official change of name, this may be made without a vote of the members upon notification from the member tribe/organization.

ARTICLE 5

Rules of Order

Robert's Rules of Order Revised shall be used as a guideline on all procedural questions not otherwise specifically stated in the Constitution and Bylaws of MACIE.

ARTICLE 6

Terms and Duties of Officers

- Section 1. Chairperson, vice-chairperson, and secretary shall be elected from and by MACIE at the summer meeting and shall serve for two years. Chairperson and vice-chairperson will be elected in separate years, with the secretary being elected with the chairperson.
- Section 2. The chairperson shall preside at all meetings of MACIE. The chairperson shall be an ex-officio member of all committees. The chairperson or designee will represent and present reports for MACIE at all BPE meetings and other meetings that are deemed important by MACIE.
- Section 3. The vice-chairperson shall assume all duties of the chairperson in the chairperson's absence.

Section 4. The secretary or designee shall edit all minutes of MACIE meetings and shall provide proper notice of all meetings scheduled. Regular quarterly meetings shall receive 15-days notice. The secretary shall perform such other duties as prescribed by MACIE.

ARTICLE 7

Terms of Members of MACIE

The membership of MACIE will consist of delegate members nominated by their tribe/organization until replaced, unless said member violates Article 3 of MACIE bylaws. Membership will be reaffirmed every five years.

Vacated positions will be filled by each tribe/organization within a reasonable time period.

ARTICLE 8

Duties of Members

MACIE members will be responsible for carrying out the purposes and goals of the Constitution. Members shall bring information to MACIE from their constituents for consideration and report to their constituents.

OPI ex-officio member shall assist MACIE in its efforts to achieve its goals.

ARTICLE 9

Committees and Appointments

Each member will be assigned to an appropriate working committee(s). Special and/or ad hoc committees may be established as necessary. Standing committees are: Communication, Collaboration, and Advocacy; Student Success; and Legislative, Fiscal, and Policy.

The Executive Committee shall consist of the three officers and three voting members appointed by the Chairperson. The Executive Committee shall:

1. Call Executive meetings as deemed necessary;
2. Have the authority to make emergency decisions on behalf of MACIE; and
3. Report back to MACIE and seek reaffirmation of decisions.

ARTICLE 10

Meetings

Regular MACIE meetings shall be convened quarterly. Special meetings may be called at the discretion of MACIE or the executive committee.

- Section 1. A quorum for all MACIE meetings shall consist of six (6) voting members in attendance.
- Section 2. A quorum for all Executive Committee meetings shall consist of four (4) members.
- Section 3. Regular MACIE members will select an alternate representative to serve in their absence. Said alternates shall enjoy all the rights and privileges for the regular and special MACIE meetings. A response shall be returned prior to the meeting date to indicate whether the delegate, the alternate, or no one will be representing the tribe/organization at the meeting.

Approved with Changes
May 8, 2019