



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

**SELECTED FINANCIAL ACTIVITIES OF THE
PINON COMMUNITY SCHOOL BOARD**

**REPORT NO. 95-I-416
JANUARY 1995**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

FEB | 1995

MEMORANDUM

TO: The Secretary

FROM: Acting Inspector General

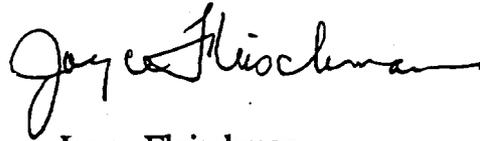
SUBJECT. SUMMARY: Final Audit Report for Your Information - "Selected Financial Activities of the **Pinon** Community School Board" (No. 95-1-416)

DISCUSSION: We concluded that the **Pinon** Community School Board complied with Federal regulations regarding the student count process for determining annual funding levels for dormitory operations. However, the funding process established by these regulations permitted the School Board to receive funding for its dormitory students that was based on a student count that exceeded student attendance during the subsequent school year and that exceeded the stated capacity. This funding process permitted school administrators to encourage children to stay in the **Pinon** Community School dormitory while attending special activities at **Pinon** during count week. As a result, during school years 1992-1993 and 1993-1994, the School Board received \$568,551 in funding for students who did not reside in the dormitory during the school year, which included \$253,339 for housing students who were in excess of the dormitory's capacity. We also found that because of inadequate control over its budgets and expenditures, the School Board incurred, from July 1992 through February 1994, a funding shortfall of at least \$62,647 on the contract for design of the new dormitory and, from July 1992 through December 1993, incorrectly applied \$64,546 of school operations funds for School Board administration.

We recommended that the Office of Indian Education continue to consult with interested parties to refine the process used to determine the amount of funds distributed to schools and that the Bureau of Indian Affairs ensure that the School Board complies with contract and grant standards for administrative and financial management systems and resolves the monetary issues relating to funding.

Based on the Bureau's response to the draft report, we considered three of the report's six recommendations resolved. We have requested the Bureau to respond

to the three unresolved recommendations, two of which have been revised based on the Bureau's response.

A handwritten signature in black ink that reads "Joyce Fleischman". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

Joyce Fleischman

Attachment



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Headquarters Audits
1550 Wilson Boulevard
Suite 401
Arlington, VA 22209

JAN 27 1995

Memorandum

To: Assistant Secretary for Indian Affairs

From: Acting Assistant Inspector General for Audits

Subject: Final Audit Report on Selected Financial Activities of the **Pinon** Community School Board (No. 95-I-416)

This report presents the results of our review of selected financial activities of the **Pinon** Community School Board, Inc. The School Board operates a kindergarten and dormitory for the Navajo Nation in **Pinon**, Arizona. This audit was requested by the Bureau of Indian Affairs Navajo Area Office because of possible mismanagement of Federal contract funds by the School Board. Accordingly, our audit objective was to determine whether contract and grant funds were used efficiently and economically and in accordance with applicable requirements. We expanded the scope of our audit to include an evaluation of the student count of dormitory students (used as a basis for funding) because of questionable practices used by the School Board in developing the counts.

Our review disclosed that the Bureau approved a funding level based on an inaccurate dormitory student count. Consequently, during July 1992 through January 1994, the **Pinon** Community School Board received \$568,551 in funding for students who did not actually reside in the dormitory during the school years. In addition, the School Board experienced a financial funding shortfall of at least \$62,647 for a dormitory construction project and misapplied education formula funds totaling \$64,546 for School Board activities.

To correct the identified problems, we recommended that (1) the Office of Indian Education continue to consult with interested parties to refine the process used to determine the amount of funds distributed to schools, (2) the Bureau ensure that the School Board complies with contract and grant standards for administrative and financial management systems, and (3) the Navajo Area Contracting Officer resolve the monetary issues relating to Indian School Equalization Program funding and administrative cost grant funding.

In its September 8, 1994, response (Appendix 3) to our draft report, the Bureau disagreed with the recommendations concerning student count, School Board costs, and lobbying costs (Nos. A.1, B.3, and B.4, respectively). Based on the response, we have revised Recommendations A. 1 and B.3 and have requested the Bureau to provide a response to the revised recommendations and to reconsider its response to Recommendation B.4, which is unresolved. The Bureau generally agreed with the

remaining recommendations. In addition, the School Board provided its comments to the Bureau on August 22, 1994 (Attachment to Appendix 3). Comments from both the Bureau and the School Board were considered and incorporated into the report as appropriate.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a response to this report by March 24, 1995. The response should provide the information requested in Appendix 7.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.


for
Marvin Pierce

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INTRODUCTION

BACKGROUND

The **Pinon** Community School Board is a private nonprofit corporation that operates a dormitory and a kindergarten for the Navajo Nation in **Pinon**, Arizona. The purpose of the dormitory is to provide housing for students who reside in isolated areas and/or who face social adjustment, transportation, and school attendance problems to facilitate a successful public school education.

During July 1992 through February 1994, the School Board received approximately \$2.65 million for operation of the dormitory and kindergarten programs from the Bureau of Indian Affairs. The funds were provided under the authority of Public Law 93-638, as amended, the Indian Self-Determination and Education Assistance Act of 1975, and Public Law 95-561, as amended, the Education Amendments of 1978.

In addition to funds for operations, the Bureau, on July 13, 1992, awarded a Public Law 93-638 contract to the School Board for the design and construction of a new \$16.6 million dormitory in the **Pinon** community. As of February 1994, the School Board had received about \$1.2 million under the contract and had expended about \$935,000. This new dormitory is intended to replace the current facility.

The Code of Federal Regulations (25 CFR 271 and 276) requires contract and grant **awardees** to establish sound management practices when administering programs and to maintain a system of record keeping that will provide accurate, current, and complete disclosure of financial status of Federal assistance.

Title XI of the Education Amendments of 1978 (Public Law 95-561) required the Bureau to allocate funds on a pro rata basis according to a formula that identified the funding necessary to sustain each school. The formula developed by the Bureau, called the Indian School Equalization Formula, is based primarily on an "average daily membership," which is an average of the actual membership in the school or dormitory. In order to be counted as members, students must be listed on the current roll of the school or dormitory during a specified count week, not listed as enrolled in any other school during the same period, and be in actual attendance at the school or dormitory at least 1 full day during the specified count week.

OBJECTIVE AND SCOPE

The audit objective was to determine whether the **Pinon** Community School Board used contract and grant funds efficiently and economically and in accordance with applicable requirements. During our audit survey, we found deficiencies in the student count process used to determine funding for the dormitory. Therefore, we revised our objective to include an evaluation of the student count methodology.

We conducted the audit during December 1993 through March 1994 at the **Pinon** Community School. The audit focused on selected financial activities of the **Pinon** Community School Board during July 1992 through February 1994 and included a review of contract and grant agreements, general ledger accounts, bank statements, canceled checks, vendor invoices, travel vouchers, and other related documents.

Our audit was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. As part of our audit, we evaluated the system of internal controls to the extent that we considered necessary to accomplish our objective. We identified internal control weaknesses in the areas of budget and cash management. The internal control weaknesses identified are discussed in the Findings and Recommendations section of this report. If implemented, the recommendations should improve the internal controls.

We reviewed the Secretary's Annual Statement and Report to the President and the Congress for fiscal year 1993, required by the Federal Managers' Financial Integrity Act of 1982, to determine whether any reported weaknesses were within the objective and scope of our audit. The report identified as a material control weakness the inability of the Bureau's Office of Indian Education Programs to monitor and evaluate education and training. Specifically, policies, procedures, and guidelines were not current; standards had not been completed; and the Office did not effectively monitor and evaluate policies and procedures. Corrective actions were planned for completion by January 1994. However, as of April 1994, four of the seven corrective actions had not been completed.

PRIOR AUDIT COVERAGE

Neither the Office of Inspector General nor the General Accounting Office has issued a report in the last 5 years concerning financial or administrative issues of the **Pinon** Community School. A financial audit as required by the Single Audit Act of 1984 had not been performed for the period that we reviewed.

FINDINGS AND RECOMMENDATIONS

A. DORMITORY FUNDING

The **Pinon** Community School Board received funding for its dormitory students based on a student count that was in excess of the average student attendance and that exceeded the stated capacity of the dormitory. Specifically, the School Board received funding for 141 dormitory residents during school year 1992-1993 and for 188 residents during school year 1993-1994, whereas an average of 74 and 100 students, respectively, actually stayed in the dormitory during these time frames. Also, the number of residents claimed by the School Board exceeded the 131 resident capacity of the dormitory. This condition occurred because the School administrators encouraged children (students) to stay in the dormitory while attending special activities at **Pinon** during count week. The Code of Federal Regulations does not preclude this activity. In addressing funding for students, the Code (25 CFR 39) requires that students be in actual attendance at the dormitory for 1 full day during a designated count week. As a result, during school years 1992-1993 and 1993-1994, the School Board received \$230,559 and \$337,992, respectively, in funding for students who did not reside in the dormitory during the school year, which included \$34,412 and \$218,927, respectively, for housing students in excess of the dormitory's capacity. Furthermore, the Bureau was aware that the stated dormitory enrollment exceeded the dormitory's capacity but did not adjust the funding for the dormitory.

Student Count

During the count week for school year 1993-1994, more children than usual were at the dormitory attending special events. According to the **Pinon** Community School Board Business Manager, the school year 1993-1994 dormitory student count was "greatly increased" over that of the previous year because the School Board had the special events announced on the radio and had four persons actively recruit students to be in the dormitory during the count week. In addition, the Dormitory Manager stated that the dormitory provided special activities and games to attract families to **Pinon** during the count week, which was also **Pinon** Indian Week, and encouraged children to stay in the dormitory. **Pinon** Indian Week included a pow-wow, cultural events, and baking contests. Even dormitory staff were encouraged to have their children stay in the dormitory during the count week. We identified 10 children of staff members and one board member who were listed on the student enrollment sheet and were included in the count for Program funding. However, only 2 of the 10 students stayed in the dormitory after the count week.

The actions of the School Board were not in violation of the Code of Federal Regulations, which requires only that students be in actual attendance at the dormitory for at least 1 full day during the count week in order to be considered enrolled. However, the dormitory enrollment during count week was not representative of actual attendance throughout the year.

Funding Process

The funding process established by the Federal regulations permitted the School Board to receive funding for more students than it actually housed in the dormitory. During school year 1993-1994 (July 1993 through June 1994), the Bureau funded the School Board for 188 dormitory students. From the first day of classes (August 23, 1993) through the last day of our review (March 23, 1994), an average of only 100 students were residing in the dormitory. Consequently, the School Board qualified for and received funding totaling \$722,074 rather than funding totaling \$384,082 based on the dormitory's housing 100 students. Similarly, during school year 1992-1993 (July 1992 through June 1993), the School Board received funding for 141 dormitory students; however, an average of only 74 students resided in the dormitory. As a result, the School Board qualified for and received funding totaling \$485,207 rather than funding totaling \$254,648 based on the dormitory's housing 74 students.

Program funds obtained but not expended by the School Board were carried forward to the next school year. We did not attempt to quantify the amount of funds to be carried forward to the 1994-1995 school year because the School Board had not had its annual audit performed for the year ending June 30, 1993; had not maintained a check register; and had not performed bank reconciliations for over a year.

Bureau Oversight

The Bureau's oversight of the School's funding was not adequate. Section 102 of the contract between the Bureau and the **Pinon** Community School Board, Inc., stated that the authorized capacity of the dormitory was 131. Bureau officials stated that the funding should have been limited to the authorized capacity. However, the School Board received funding totaling \$253,339 (\$34,412 for school year 1992-1993 and \$218,927 for school year 1993-1994) for dormitory students in excess of the authorized capacity.

We found that the Bureau did not arbitrarily establish a dormitory capacity of 131 students but was considering the safety of the children by limiting the capacity. Although the **Chinle** Agency facilities safety officer initially advised the School Board that the dormitory could accommodate 212 students, the Acting Navajo Area Director, in an October 1, 1993, memorandum to the **Chinle** Agency Superintendent for Education, stated that authorizing 212 dormitory students would result in "overcrowded conditions" at the **Pinon** Community School. Furthermore, on October 14, 1993, the **Chinle** Agency Superintendent for Education issued a letter to the School Board reaffirming this position. However, the School Board did not address the Bureau's concerns for the overcrowding, and it certified 190 students during the last week of October 1993. In addition, the Director, Office of Indian Education Programs, issued a December 3, 1993, letter to the School Board stating that the School "is in violation of the contract" and the increase over the authorized capacity of 131 created a "fire safety hazard." The letter further stated:

In a meeting on October 19, 1993, with the school officials, the indication of additional fire drills to alleviate a potential hazard is insufficient to assure the safety of students. In fact, the school officials cannot guarantee or assure that lives will not be lost and that the situation could not become life threatening.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs:

1. Direct the Director, Office of Indian Education Programs, to continue to consult with tribes and members of the Congress to refine the process used to determine the amount of funds distributed to contract schools.
2. Quantify and resolve the excess funds at **Pinon** Community School.

Bureau of Indian Affairs Response

The September 8, 1994, response (Appendix 3) from the Assistant Secretary for Indian Affairs **nonconcurred** with Recommendation 1 and concurred with Recommendation 2.

Recommendation 1. Recommendation 1 in our draft report stated that the Bureau should develop and implement policies and procedures to ensure that the **Pinon** dormitory is funded only for the actual number of students residing in the dormitory. However, the Bureau stated that the recommendation was contrary to the Code of Federal Regulations (25 CFR 39.32), which states that funding is to be based on attendance during a specified count week.

Recommendation 2. The Bureau stated that the disposition of any unexpended balances will be determined as part of the closeout process identified in the contract between the Bureau and the **Pinon** Community School Board.

Office of Inspector General Comments

The Bureau's response was sufficient for us to consider Recommendation 2 resolved but not implemented. Accordingly, the recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. Further, based on the Bureau's response, we have changed Recommendation 1. Therefore, the Bureau is requested to respond to the revised recommendation (see Appendix 7).

Regarding Recommendation 1, the Bureau said that it was aware of the shortcomings in the current methodology of funding distribution and that it had initiated actions to change the process. The Bureau noted that it had "consulted [with tribes] on **two** separate occasions on proposed changes to count week and on

suggestions that more than one count week be used.” The Bureau further stated that during six other consultations concerning the Indian School Equalization Program, changes to count week were discussed and language was proposed with the fiscal year 1995 budget request which would have based funding on prior year student counts. The Bureau noted, however, that there was “no consensus” in this area among the tribes and the school boards and that both the U.S. House of Representatives and the U.S. Senate took “substantially different positions” on the proposed budget language.

B. FINANCIAL MANAGEMENT

The **Pinon** Community School Board did not effectively manage and account for contract funds. Specifically, the School Board did not ensure that it adhered to its budgets or that its expenditures were allowable and reasonable. The Code of Federal Regulations (25 CFR 276.7) establishes the standards for administrative and financial management systems and requires effective control and accountability over funds. However, the School Board and administrative officials did not implement fiscal and management controls over budgets and expenditures. Furthermore, the Bureau of Indian Affairs did not monitor School Board financial activities to ensure that expenditures were allowable and within spending limitations. As a result, during July 1992 through February 1994, the School Board incurred a funding shortfall of at least \$62,647 on the contract for design of the new dormitory, and during July 1992 through December 1993, the School Board misapplied education formula funds totaling \$64,546 for School Board activities.

Dormitory Design

The School Board exceeded the contract amount for architectural and engineering design work on the new dormitory project. The Code of Federal Regulations (25 CFR 271.46) requires contractors to maintain a record-keeping system that will provide accurate, current, and complete disclosure of financial status and correlation with budgets or allowable cost schedules. However, the administrative staff did not post expenditures for school year 1992-1993 (ending June 30, 1993) and the first half of school year 1993-1994 to the general ledger until February 1994. Furthermore, the School Board had not submitted expenditure documentation to the Bureau to support construction drawdowns during 1992 and 1993, and as of February 22, 1994, it had not submitted an annual Financial Status Report, due on September 30, 1993, to show the funding status for the contract.

Our review disclosed that as of February 1994, the School Board had only \$277,560 remaining in contract funds. However, the remaining liability for fixed labor fees related to architectural and engineering services was \$340,207, which resulted in a shortfall of \$62,647. Furthermore, if the School Board incurs all the remaining expenditures for non-design-related architectural and engineering fees as stated in the contract, the remaining liability would increase by an additional \$18,438. The shortfalls are attributed to expenditures in excess of budgets for travel, stipends, legal fees, and telephone calls. For example, during February 1992 through June 1993, School Board staff and one School Board member used a chartered flight service for seven trips to Albuquerque, New Mexico, and Phoenix, Arizona, to attend meetings. The total cost of the flights was \$8,108. Our review disclosed that these meetings were planned in advance and therefore may not have required the use of chartered flights. Furthermore, both Albuquerque and Phoenix are within a 5-hour drive from **Pinon**, and each round-trip mileage cost is about \$150. Commercial airline rates to these locations are also about \$150 for a round-trip.

School Board Expenses

The School Board inappropriately used Indian School Equalization Program funds to pay for School Board activities. The United States Code (25 U.S.C. 2008 (c) (2) (C)) limits costs for school board activities to the greater of \$5,000 or 1 percent of the Indian School Equalization Program funding, not to exceed \$15,000. Furthermore, the Department's Regional Solicitor in Albuquerque concluded in a September 30, 1994, Opinion that **Pinon** Community School, as a contract school, was not authorized to use education formula funds (Indian School Equalization Program funds) to fund school board activities but should instead use administrative cost grant funds. The opinion also stated, "If such misapplication of the funds is innocent the School should reimburse the government from its administrative cost grant funds as authorized by 25 U.S.C. subsection 450c(d)" (see Appendix 4).

During school year 1992-1993, the School Board received a total of \$778,800 in Indian School Equalization Program funding, of which the School Board spent \$38,693 for School Board activities and travel. In addition, we found that as of December 31, 1993, the School Board had already spent \$25,853 of school year 1993-1994 Program funds for its activities. Our review disclosed that the **Pinon** Community School was authorized administrative cost grant funds totaling \$259,942 during school year 1992-1993. (This included a \$40,540 carryover from school year 1991-1992.) However, the School Board did not include its activities in the budget for the administrative cost grant; therefore, no funds were available from the administrative cost grant for School Board activities. We believe that the Board thought that it could use Program funds for these expenses and that therefore the use of Indian School Equalization Program funds for School Board activities was unintentional.

Most of these School Board expenditures consisted of stipends and travel. For example, 15 School Board meetings were scheduled for the 1992-1993 school year. However, the School Board President received \$4,425 in stipends for 59 meetings during the school year. Furthermore, some of these stipends were used to pay for meetings and conferences that may have been unnecessary or could have been accomplished at a lower cost. For example:

- During March 29 through April 1, 1993, the Executive Director, the Business Manager, and two School Board members traveled to Washington, D. C., to attend hearings on the Bureau's education appropriations. The travelers stayed in three hotel rooms at a cost of \$279 per room per night and incurred hotel charges totaling \$3,166 for the trip.

- During April 14-18, 1993, the Executive Director, the Business Manager, all four School Board members, and two other employees traveled to Honolulu, Hawaii, to attend the annual meeting of the Association of Community Tribal Schools. The **Pinon** Community School paid a total of \$7,648 for travel costs associated with this trip.

- During July 8-10, 1993, the Executive Director, the Business Manager, all four School Board members, and two other employees attended a School Board retreat in Las Vegas, Nevada. The hotel bill for this retreat was **\$1,985**, which included a \$250 buffet dinner and \$309 for catering services. For the three days, School Board members also received a total of \$550 for mileage, \$476 for per diem, and \$900 for stipends. The purpose of the retreat was to develop the School's personnel policies and procedures.

We discussed these travel issues with the Bureau's Navajo Area Contracting Officer, who, on January 20, 1994, sent a letter to the School Board requiring it to obtain prior approval from the Bureau for all travel off reservation except to traditional border towns such as Flagstaff, Arizona, and Gallup, New Mexico. However, the School Board continued to incur off reservation travel costs. For example, on February 12-17, 1994, the School Board President and the Dormitory Manager attended the National Association for Year-Round Education Conference in San Diego, California. We questioned the need for their attending this conference, since **Pinon** Community School is primarily a dormitory and provides only kindergarten classes. Furthermore, no school districts on the Navajo Reservation have adopted year-round schooling.

Lobbying Costs

Our review disclosed that in September 1992, the Association of Navajo Community Controlled School Boards, Inc., of which **Pinon** Community School Board is a paying member, voted to share the costs of drafting legislative amendments to the bill for Reauthorization of Elementary and Secondary Education. The total cost of these legal services for 1993 was \$30,000, of which the **Pinon** Community School Board's share was \$1,589. In addition, during August 1992 through June 1993, the School Board used administrative cost grant funds to pay \$533 in legislative lobbying costs related to funding for Indian education and a new **Pinon** School dormitory construction project.

Title 25, Part 276, of the Code of Federal Regulations, entitled "Principles for Determining Costs Applicable to Grants," does not specifically disallow lobbying costs. However, this provision states that the costs of membership in civic, business, technical, and professional organizations are allowable if the expenditure is@ for membership in an organization that devotes a substantial part of its activities to influencing legislation. This provision also states that costs "must be necessary and reasonable for proper and efficient administration of the grant program" and "conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items."

In response to our request, the Department's Regional Solicitor in Albuquerque concluded in a May 12, 1994, opinion that the lobbying costs were unrelated to management of **Pinon's** educational program and were therefore unallowable (Appendix 5). The Solicitor stated:

Lobbying for new laws is not in furtherance of the program contracted but seeks to change the program. Such lobbying is outside the scope of administrative support of the contracted functions and is outside of the prudent management of the program.

On May 20, 1994, the Solicitor reaffirmed this opinion based on the Interior Appropriations Acts for fiscal years 1989 through 1994 (see Appendix 6). Specifically, the acts forbid the lobbying activities engaged in by **Pinon** Community School.

Fiscal and Management Controls

The Public Law 93-638 contract between the Bureau and the School Board requires the latter to maintain an accounting system that will provide accurate, current, and complete disclosure of financial status. Furthermore, the position description for the School Board's Business Manager requires the Business Manager to reconcile bank statements; administer a budget control system; and provide accounting services essential to the preparation, administration, supervision, and control of the budget. However, our review disclosed that the **Pinon** Community School administration had not maintained a check register, reconciled bank statements since February 1993, performed an analysis of budgeted and actual expenditures, completed an annual audit for the period July 1992 through June 1993, or ensured that travel policies and procedures were followed. Furthermore, quarterly financial status reports were not submitted to the Bureau in a timely manner. Some reports were over 6 months late, resulting in a temporary suspension of funding by the Bureau. These problems were compounded in that the School Board maintained only one bank account for all Federally funded programs. Consequently, the Business Manager had difficulty in determining what funds were available for each program during the school year. In addition, our review disclosed that from February 3 through September 1, 1993, the **Pinon** Community School incurred \$525 of bank overdraft charges.

The Policies and Procedures Manual for the **Pinon** Community School requires employees to submit a travel expense form, which details expenses incurred within 14 days after travel is completed. However, the Business Manager told us that the Business Office does not require travelers to prepare a travel expense form upon completion of travel to offset travel advances. We believe that this control weakness contributed to employees at the **Pinon** Community School not complying with travel policies and procedures. For example, on November 4, 1993, the Business Office issued an employee a \$78 travel advance to attend a seminar in Albuquerque on November 18, 1993. However, the employee did not attend the seminar and was not required to submit a travel expense form to the Business Office. Furthermore, on March 1, 1993, the Business Office issued the same employee a \$486 travel advance for lodging at a seminar in Las Vegas. However, the employee said that the check had been misplaced. Therefore, the Business Office issued the employee a new check on March 8, 1993, which was cashed, but did not stop payment on the

misplaced check. The employee cashed the previously misplaced check on November 1, 1993. As of May 2, the employee was in the process of repaying the \$486 and the \$78. Furthermore, at the May 16, 1994, exit conference, the Business Manager stated that he had dismissed the employee.

Recommendations

We recommend that the Assistant Secretary for Indian Affairs:

1. Direct the **Chinle** Agency Superintendent for Education and the Facilities Management and Construction Center Contracting Officer for the dormitory design and construction contract to review School Board expenditures and budgets periodically to ensure that School Board expenditures, specifically travel and stipends, are reasonable, justified, and within spending limitations.

2. Ensure that the School Board complies with contract and grant standards for administrative and financial management systems. Specifically, the School Board should maintain current accounting records, perform a financial audit for school year 1992-1993, maintain a check register, reconcile bank statements, administer a budget control system for each program, and require travelers to prepare travel expense forms upon completion of travel.

3. Resolve the \$64,546 of misapplied funds for School Board administrative expenditures.

4. Require the **Pinon** Community School Board to repay the Government for the \$2,122 of unallowable lobbying costs (distribution of the \$30,000 in lobbying costs among member schools of the Association of Navajo Community Controlled School Boards, Inc., is presented in Appendix 2). The Bureau should also determine whether recovery of funds from the other member schools is appropriate.

Bureau of Indian Affairs Response

The September 8, 1994, response (Appendix 3) from the Assistant Secretary for Indian Affairs concurred with Recommendation 1, partially concurred with Recommendation 2, and **nonconcurred** with Recommendations 3 and 4.

Recommendation 1. The Bureau cited Section 281 of the contract for the operation of the dormitory and kindergarten, which describes those travel expenses that are allowed. The Bureau also stated that it will review all costs related to the **Pinon** dormitory construction contract to ensure that the expenditures are reasonable, justified, and allocable to the contract.

Recommendation 2. The Bureau partially concurred with the recommendation, stating that many tribes and tribal organizations with whom it has contracts have “internal control problems” similar to those experienced by the **Pinon**

Community School Board. The Bureau noted that the action the Office of Inspector General “normally recommends” is to treat these organizations as “high risk” grantees rather than to decline to renew the contracts. However, the Bureau stated that our office had not “formally notified” the Bureau that the **Pinon** Community School Board should be considered a high risk grantee.

Recommendation 3. The Bureau did not concur with the recommendation, stating that the limitation found in the United States Code (25 USC 2008 (c)(2)(C)) applies only to Bureau-operated schools, not to contract schools,

Recommendation 4. The Bureau did not concur with this recommendation, stating that there is a need for consistent treatment regarding the allowability of lobbying costs.

Office of Inspector General Comments

The Bureau’s response was sufficient for us to consider Recommendation 2 resolved and implemented and Recommendation 1 resolved but not implemented. Accordingly, the unimplemented recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. However, based on the Bureau’s response, Recommendations 3 and 4 are unresolved (see Appendix 7).

Recommendation 3. Regarding limitations on school board expenses, the Department’s Regional Solicitor’s Office in Albuquerque concluded in a September 30, 1994, opinion (Appendix 4) that **Pinon** Community School, as a contract school, is not authorized to use education formula funds (Indian School Equalization Program funds) to fund school board activities. The opinion also stated that the School should use its administrative cost grant funds to reimburse the misapplied education formula funds to the Government. Therefore, we changed Recommendation 3 from our draft report to reflect the Solicitor’s opinion, and the Bureau is requested to provide a response to the new recommendation,

Recommendation 4. As noted in the May 20, 1994, Regional Solicitor’s opinion (Appendix 6), the Interior Appropriations Acts for fiscal years 1989 through 1994 prohibit lobbying activities. Therefore, the Bureau is requested to reconsider its response to this recommendation.

Pinon Community School Board Comments

The August 22, 1994, response (Attachment to Appendix 3) from the President, **Pinon** Community School, Inc., disagreed with our conclusion that School Board expenditures for travel and stipends included trips and meetings which appeared to be unreasonable and unnecessary and that lobbying costs were unallowable. The School Board stated that “little, if any, action on its project gets done” unless representatives of the school “physically” visit the Bureau. The School Board also

stated that charter air transportation was allowed in the contract because of the School's remote location. Further, it was "essential" that the Acting Executive Director's time away from the dormitory "be minimized." Regarding our examples of School Board travel, the School Board stated that accommodations in Washington, D. C., "are scarce" and "more expensive than anyone would like"; that the Association of Community Tribal Schools, not the School Board, selected Honolulu as the location of the annual meeting; and that holding the School Board retreat in Las Vegas did not violate any law, regulation, or cost principle and was held to coincide with the Association of Navajo Community Controlled School Boards Executive Board meeting. Finally, regarding the lobbying costs, the School Board stated that its share of the costs of drafting legislation should be categorized as "technical assistance" and that the use of administrative cost grant funds to pay legislative lobbying costs related to funding for Indian education and the new dormitory were "well within [the School Board's] responsibilities to seek to improve the program and facilities" for the students.

Office of Inspector General Comments

The basic cost principles concerning the eligibility of expenditures for Federal participation are that the costs are allowable under the program, allocable to the program, and reasonable. We concluded that the School Board could manage its funds more effectively if it adhered to its budgets. Specifically, the School Board could ensure that its costs are paid with administrative cost grant funds, that lobbying costs are not paid with Federal funds, and that the number of stipends paid and the number of travelers and the destinations are reasonable. However, we do not believe it is reasonable for Federal funds to be used to pay for meetings that were not provided for in the budget or for travel expenses for excess numbers of personnel to attend meetings. Incurred expenditures in excess of the budget negotiated between a contracting officer and the School Board should, in our opinion, be paid with School Board funds.

CLASSIFICATION OF MONETARY AMOUNTS

Finding	Funds To Be Put To Better Use	Questioned Costs
Dormitory Funding	\$253,339	
Financial Management:		
School Board Expenses		\$64,546
Lobbying Costs	<u> </u>	<u>2,122</u>
Total	<u>\$253,339</u>	<u>\$66,668</u>

**DISTRIBUTION OF LOBBYING SERVICES COSTS AMONG
MEMBER SCHOOLS OF THE ASSOCIATION OF NAVAJO
COMMUNITY CONTROLLED SCHOOL BOARDS, INC.**

<u>School</u>	<u>Amount</u>
Alamo Navajo School	\$2,807
Black Mesa School	755
Borrego Pass School	1,312
Canoncito School	603
Leupp Schools	3,992
Little Singer School	657
Pinon Dormitory	1,589
Ramah Navajo School	3,573
Rock Point School	3,277
Rough Rock School	7,754
Shiprock Alternative School	1,241
Shiprock Alternative Kindergarten	747
Shiprock Dormitory	1,503
Tohatchi Special Education	<u>1 9 0</u>
Total	<u>\$30,000</u>



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

SEP 08 1994

Memorandum

To: Assistant Inspector General for Audits

From: Ada E. Deer *Ada E. Deer*
Assistant Secretary - Indian Affairs

Subject: Draft Audit Report on Selected Financial Activities of the Pinon Community School Board (Assignment No. C-IN-BIA-005-94)

We have reviewed the draft audit report. Before addressing the specific recommendations, we suggest several changes in wording to improve the accuracy of the statements in the report.

Introduction

In the second paragraph on page 2, a statement is made that the funds are allocated “on a pro rata basis according to a formula that identified the funding necessary to sustain each school.” This is inaccurate, as the formula is used to allocate available resources equitably among the schools based upon the characteristics of their student population. The formula is not used to determine “funding necessary to sustain each school.” Some have suggested that a weighted student unit value of \$3,500 would be required to provide appropriate levels of support, which is approximately thirteen percent more than the current level of support.

Student Count

On page 5 a statement is made that the “School Board inappropriately increased its student count and that the Bureau conducted an inadequate certification of the student count.” No where in the audit is it stated that the students claimed were not in residence during the count week. The certification required by regulation is solely for the period of the count week, not for any time subsequent to the count week. Therefore, since the audit provides no evidence that the students were not in attendance during the count week, the section of the report should be revised.

The last sentence on page 5 indicates that “the School Board received \$230,559 and \$337,992, respectively, in funding for students who did not reside in the dormitory. As provided for in the regulations, the “September ADM will be used to determine the final

allotments for the school year. ” We agree that the school reported students over the capacity of the dormitory and that the Bureau was guilty of an administrative oversight in not limiting funding for residential students to the authorized capacity of 131 students. The funding differences, however, would be substantially below those referenced in the report. For example, in school year 1992-93, the school claimed 141 students. The funding for the ten students in excess of the authorized capacity would range from \$35,200 to \$39,100. Likewise, for the school year 1993-94, Pinon was funded for 188 students, or 57 over the authorized capacity. The funding difference associated with these 57 students would have been between \$233,600 and \$258,100.

The first paragraph on page 6 contains the following sentence: “The Code (25 CFR 39.34) also states that another week may be substituted for the specified count week if it can be established that to use the specified count week would result in ‘grossly inaccurate’ student counts.” There is an extremely important qualification in the Code which is that only the school board can request the use of a different count week; there is no option for the Bureau of Indian Affairs (Bureau) to direct the use of a count week other than that specified in regulation, i.e., the last week in September.

The second paragraph contains the statement that: “The Bureau did not consider the dormitory’s attendance either before or after the count week because the Bureau’s funding distribution method bases the entire year’s funding on attendance during the count week alone.”

This statement gives the impression that the “funding distribution method” is subject to administrative discretion, which it is not. The distribution of funds is governed by regulations. By law, the Bureau is required to consult with tribes and school boards on any proposed changes to regulations. The Bureau is not unaware of the shortcomings in the current methodology. During the past two years, the Bureau has consulted on two separate occasions on proposed changes to the count week and on suggestions that more than one count week be used. The Bureau has also consulted on six other occasions concerning the Indian School Equalization Program (ISEP) during which changes to the count week were discussed. In addition, language was proposed with the FY 1995 budget request which would have based funding on prior year student counts. The fact is that there is no consensus in this area among tribes and school boards, and even the U.S. House of Representatives and the U.S. Senate have taken substantially different positions in their action on the FY 1995 budget request.

Bureau Certification

On page 8, the report states that the auditors informed the Chinle Agency Superintendent that the average attendance at the dormitory was far less than the student count of 188, however, the funding level for the dormitory was not adjusted. As noted above, regulations require that the September count week be used as the basis for final allotments. There is no provision in law or regulation to adjust the funding downward for students who leave the school or upward for students transferring to the school. While one may question this from a policy perspective, the fact is that neither the school nor the Superintendent violated either

law or regulation so there is no basis upon which the Bureau could have reduced the funding.

Excess Funds

As noted earlier, the report's estimate of the amount of excess funds is grossly overstated based on current law and regulation. The report assumes that some unidentified portion of the funds will be carried over to the 1994-95 school year. The contract with the School Board for fiscal year 1992 has a final close out date of September 30, 1994, and the determination as to the amount of "excess funds," if any, will be made subsequent to that date.

The report also states that the School Board has "not had its annual audit performed for the year ending June 30, 1993." The School Board has retained the services of Irwin Newberry and Parris, a CPA firm in Gallup, New Mexico. We are advised that the Office of the Inspector General should receive the required audit report by October 15, 1994.

School Board Expenses

On page 13, the report incorrectly cites 25 U.S.C. §2008 as placing limitations on the amount of Indian School Equalization program funding that the **Pinon** School Board could spend on school board activities. A careful reading of the entire section shows that when the law applies to both Bureau-operated and contract schools, the words "Bureau and contract school" or "Bureau or contract school" are used. Unlike other portions of §2008, the limitation on spending for school board activities applies o& to Bureau-operated schools. Therefore, we request that this entire section of the report be deleted.

Recommendations and Response

Recommendation A. 1. Direct the Chinle Agency Superintendent for Education to develop and implement policies and procedures to ensure that the **Pinon** dormitory is funded only for the actual number of students residing in the dormitory. These procedures should include a periodic review of the actual attendance at the **Pinon** dormitory to verify student counts.

Response: The Bureau does not concur. The recommendation is contrary to existing regulations found at 25 CFR §39.32.

Recommendation A. 2. Determine the disposition of the excess funds at **Pinon** Community School.

Response: The Bureau concurs. The disposition of any unexpended balances will be determined as part of the regular close-out process identified in the contract between the Bureau and the **Pinon** School Board. The responsible contracting officer is Mr. James Harjo and the estimated completion date is January 1, 1995.

Recommendation B. 1. Direct the Chinle Agency Superintendent for Education and the Facilities Management and Construction Center Contracting Officer for the dormitory design

and construction contract to review School Board expenditures and budgets periodically to ensure that School Board expenditures, specifically travel and stipends, are reasonable, justified, and within spending limitations.

Response: The Bureau concurs. Section 281 of the School Board's contract specifically cites 25 CFR §276, Appendix A, Part II, B. 28. which states:

Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status or official business incident to a contract program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-Federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class accommodations are not reasonably available.

Additionally, all costs related to the Pinon Dormitory construction contract will be reviewed to ensure that the expenditures are reasonable, justified and allocable to the contract. The reviews will be performed prior to the approval of each project payment request from the Pinon School Board. The responsible official is Lloyd Spotted Wolf, Contracting Officer and Technical Project Manager for the Pinon Dormitory project.

Recommendation B. 2. Ensure that the School Board complies with contract and grant standards for administrative and financial management systems prior to awarding any additional contracts and/or grants to the School Board. Specifically, the School Board should maintain current accounting records, perform a financial audit for school year 1992-1993, maintain a check register, reconcile bank statements, administer a budget control system for each program, and require travelers to prepare travel expense forms upon completion of travel.

Response: The Bureau partially concurs. A number of tribes and tribal organizations with whom the Bureau contracts have internal control problems similar to those experienced by the School Board. As opposed to declining to renew contracts with contractors in these situations, the action normally recommended by the Inspector General is that the Bureau treat these organizations as "high risk" grantees. The additional controls placed on high risk grantees include:

- (1) Requiring payment on a reimbursable basis;
- (2) Withholding the authority to proceed to the next phase of evidence of acceptable performance within a given funding period;
- (3) Requiring additional, more detailed reports;
- (4) Requiring additional project monitoring;

- (5) Requiring the grantee or subgrantee to obtain technical or managerial assistance; or
- (6) Establishing additional prior approvals.

It should be noted, however, that the OIG has not formally notified the Bureau that it considers the School Board to be a high risk grantee. If and when such formal notification is received, the responsible contracting officers will be Mr. James Harjo (school operations contract) and Mr. Lloyd Spotted Wolf (facility construction contract).

Recommendation B. 3. Review the \$46,125 of excess administrative expenses incurred by the School Board and determine the amount that should be returned or otherwise resolved.

Response: The Bureau does not concur. As noted in the body of this memorandum, the limitation found in 25 USC §2008 (C)(2)(C) applies only to Bureau-operated schools, not to contract schools.

Recommendation B. 4. Require the Pinon Community School Board to repay the Government for the \$2,122 of unallowable lobbying costs. (Appendix 2 provides a breakdown of the total costs of \$30,000 for legal fees among the member schools of the Association of Navajo Community Controlled School Boards, Inc. The Bureau should determine whether recovery of funds from the other member schools is appropriate.)

Response: The Bureau does not concur. The OIG is currently auditing Department of the Interior contractors and grantees on their compliance with lobbying restrictions. In scheduling the entrance conference for the Bureau, the auditor-in-charge stated that Indian tribes are exempt from the anti-lobbying provisions. We would suggest that the OIG needs to develop a consistent position on this question.

We have also attached the School Board's response to the draft audit report. Additional details are provided in their response which merit attention and we request that the full School Board response be printed in the final audit report.

Attachment

PINON COMMUNITY SCHOOL, INC.

Post Office Box 159, Pinon, Arizona 86510

(602) 725-3234/3236 FAX (602) 725-3232

August 22, 1994

Honorable Ada Deer
Assistant Secretary, Indian Affairs
Department of the Interior
Washington, D.C. 20240

Re: Draft Audit Report -- C-IN-BIA-005-94

Dear Ms. Assistant Secretary:

The Inspector General filed a Draft Audit Report on the Pinon Community School with you on June 20, 1994, but this draft was not supplied to us until the Navajo Area Director did so by memo dated July 27. We received it on August 1, but no deadline for submitting our comments was noted. After speaking with your office on August 12, we received permission to submit written comments to you by August 22. Thank you for your consideration in granting this request.

We will offer our comments in accord with the sections of the draft report.

A. DORMITORY FUNDING

In this section, the auditors make several charges against the School Board with regard to funding for students enrolled at the Pinon dorm during school year 1992-93 and school year 1993-94. We respond to these below.

Number of Students Counted. The auditors state that Pinon exceeded the 131 capacity level stated in the contract. It is true that we admitted more students than the 131 level stated in our contract, but we did not violate any regulations by doing so. Our dorm is intended to provide lodging for children with transportation, social or other problems that make them need a boarding facility in order to be able to attend school.

It should be noted that the 131 capacity set out in our contract has no meaningful historical significance. Our dorm buildings are more than 50 years old, so any capacity they were initially designed to serve is no longer known. No capacity

limitation was included in our prior 3-year contract. (It was inserted in this contract by the contracting office, not by the School Board.) Furthermore, the resolutions Pinon received from the Navajo Nation expressly stated that the School Board should determine how many children it can serve, as it is the better judge of its facilities capabilities.

Because it wants to enable as many children as possible to be able to attend school, the School Board does not like to turn away any child who seeks admission to the dorm in order to attend Pinon Public School.

The School Board corresponded and met with OIEP officials about its admission of students in excess of 131 in SY93-94. Of course, the primary concern of all was whether it was safe to house this many students in the dorm. At the beginning of the school year, the School Board arranged for the Chinle Agency Facilities Safety Officer to inspect the premises; he advised the School Board that the dorm could accommodate 212 children. Mr. Rousseau from the Navajo Area office later wrote a 'memo that said no more than 131 children could be accommodated, but he did so without visiting the premises or consulting with the School Board. In addition, the space limitations he used did not check out.

OIEP certified Pinon's SY93-94 dorm student count at 188 students. This was done after the customary OIEP audit of the count submitted by the School Board. Under the regulations (25 CFR Part 39) , each student counted for the dorm must meet these criteria:

- listed on the Pinon rolls during count week
- not be listed on any other dorm's rolls during count week
- be in actual attendance at the Pinon dorm at least one full day during count week
- be an eligible Indian student (per 25 USC §2008(f))

OIEP's auditors certified the Pinon student and WSU count for SY93-94. Thus, under the Indian School Equalization Formula, the School Board was entitled to receive funding for all certified WSUs. OIEP properly supplied these funds under the regulations.

Substitute Count Week. The official student count for the BIA school system has been the last full week in September for many years. On page 6, the draft audit implies that BIA should have taken steps to use another count week for Pinon and criticizes it for not doing so. In support of this assertion, the auditors cite 25 CFR 39.34.

This suggestion and criticism are not well based. As a reading of that provision reveals, the substitution of a different count week comes about if a school petitions for one. It is not something BIA does on its own motion. It is clear that the intent

of this provision is to enable a school that expects unusual absences during count week (due to tribal ceremonial days, for example) , to petition for a different week when a more reasonable number of its student enrollment is expected to be present.

The auditors, however, imply the BIA should have scheduled a different count week for Pinon on grounds that the number of children that would be expected to be enrolled in the dorm that week would be too high, not too low, and, further, that BIA should have predicted this. This does not make sense. In addition, it misperceives the mission of the dorm and the ISEF program: to enable and encourage children to attend school, and to provide funding for school and dorm operations. The auditors' emphasis seems more focused on penalizing a school for encouraging children to enroll.

"Excess Funds". On page 9, the auditors introduce the term "excess funds". This seems to be the difference between the ISEF funding received (higher) for the dorm program and the amount the auditors believe should have been provided (lower) for what the auditors describe as the "average" number of students in the dorm throughout the year. The auditors say the amount of "excess funds" for SY92-93 was \$230,559, and for SY93-94 was \$337,992.

The School Board strongly objects to the implication that it received any funds to which it was not legally entitled. BIA properly paid and the School Board properly received funding pursuant to the ISEF statute and regulations.

We must also protest the auditors' position on practical grounds. At the beginning of a school year, a School Board *has to* make its plans in accord with the number of students it has to serve at that time, not some subsequent estimate of a possible decline in enrollment. It would be irresponsible for a School Board to plan for a smaller number of children than actually enroll during the early weeks of the year, as it would in effect be encouraging dropouts.

Ideally, all schools should want to minimize drop-outs, as their mission is to educate. The Pinon School Board hopes that the administration of the Pinon Public School, where the dorm students are educated, takes all necessary steps to encourage children to stay in school. But this is not something over which the Pinon Dorm has any control, *because it does not run the* educational program for the dorm students.

Students who drop out of the Pinon Public School lose their dormitory eligibility. Over 25 students who enrolled in our Dorm in SY93-94 left the public school. They may have transferred to other schools, their families may have moved out of the area, etc. Of course there is no way we can anticipate such events.

Use of an "average" number of students in the dorm to

determine funding is also wrong for another reason: Student situations are subject to change during the year. The Pinon Dorm is located in a part of the Navajo Reservation that is very vulnerable to weather extremes. During some months of the year, motor vehicle transportation to/from some remote homes is possible; in other months it is not. Students often stay in the dorm during the bad weather months so they can get to school (located one mile from dorm) , while when the weather is clear and the bus can get through (or parents can drive them to school) , they can live at home with their families. Would the auditors want the School Board to turn away these students who need housing only for parts of the school year?

The auditors did not report that over 40 students enrolled at the Pinon Dorm after count week. Under the regulations, we did not get additional funding for these students. We are not complaining about this, just acknowledging that this is the way the system works.

"Recruitment of students for count week". The auditors assert that the School Board and its staff recruited students to enroll in the dorm merely for count week. The School Board categorically denies that its efforts to enroll children in the dorm -- which means they would also be enrolled in school -- was limited to attendance during the count week. The School Board endeavors to encourage Navajo children to seek an education for the full school year, and operates a dormitory to reach children who need a place to stay in order to do so.

The School Board acknowledges that 10 children of staff and board members enrolled in the dorm in SY93-94. These children represented 5% of the total dorm enrollment. The School Board will make a special effort to assure that children who enroll in the dorm need to do so in order to attend school.

On page 9, the auditors conclude that the School Board received a total of \$568,551 in so-called "excess Program funding" over a two-year period, and state that --

" [W]e believe that the potential exists for these funds to be subject to waste and abuse because they were not identified to any specific need. Consequently, the excess money appeared to be a discretionary fund for the School Board's use. "

This is a wholly unsubstantiated statement and nothing more than bald speculation. It sounds as though the auditors are accusing the School Board of using carry-over funding for something other than program enhancing purposes. There is no evidence whatsoever that any carry-over funds are now or ever have been used as "a discretionary fund" by the School Board or that there is any likelihood this will occur.

In fact, the School Board's carry-over from SY92-93 was approximately \$127,000 (amount will be confirmed with precision in the soon-to-be-completed single audit.) Contrary to the auditors' assertion, these funds were identified for specific program purposes. About \$30,000 was used to buy much-needed furniture for the dorm, as well as recreational supplies for the children. The remainder was carried-over into SY93-94 and, under the "FIFO" principle, was the first funding spent in SY93-94.

School Year 93-94 has now been completed, and the School Board estimates the carry-over to be about \$140,000. Note that this represents the aggregate carry-over for the two-year period. Once this amount is identified with greater precision (after outstanding vendor invoices, etc. are paid), the School Board will determine how best to utilize these funds for a program-related purpose. Of course the FIFO principle applies to these funds, too.

It should also be noted that for several months of SY93-94, the Executive Director position was filled at different times by two other staff persons in an "acting" capacity. Thus, the salary that would have otherwise been paid to an Executive Director was not incurred. The staffers who discharged these functions were paid the salary for the positions they then held -- Homeliving Specialist, and later the Business Manager. (Recently, the then-Business Manager was appointed Executive Director and a new Business Manager was hired.) This staffing circumstance contributed to the amount of the expected SY93-94 carry-over.

Additional school operations funds were "saved" because 25% of the salaries of the then-Business Manager (now Executive Director), current Business Manager, Support Services Coordinator and Executive Secretary has been charged to the new dorm construction budget because of the work they do on that project.

Thus, the auditors' suggestion that the School Board has some sizeable discretionary fund is totally inaccurate. We ask that the auditors remove this unfounded allegation from the final audit report.

Single Audit. The auditors state on page 9-10 that "the School Board had not had its annual audit performed for the year ending June 30, 1993." Please note that the School Board's contract (Sec. 203) provides that the single audit report is due 13 months following the end of the fiscal year. The 13th month is October, 1994. Thus, this audit is not late.

In any event, the School Board's auditor commenced the audit in question in May, 1994, and it is nearing completion. The auditor will then begin the audit for the subsequent fiscal year.

The School Board does indeed maintain a check register; it is in computer, not manual form and is up-to-date. We

acknowledge tardiness in reconciling our bank statement, but this activity is now up-to-date. (The auditors referred to these activities on page 10 of the draft report.)

B. FINANCIAL MANAGEMENT

General Ledger. On page 12, the auditors assert that expenditures for SY1992-1993 and part of SY1993-94 were not posted to the general ledger until February, 1994. This is erroneous. It is the administrative staff's practice to record expenditures in its computerized general ledger as they are incurred.

When the IG's auditors were at Pinon, the Business Manager was making adjustments to the general ledger expenditure records, as some were not properly classified to the school operations program as distinct from the construction effort. These adjustments for SY1992-93 were being made within the time period allowed for conducting the annual audit. (See above.) This adjustment activity was not the initial posting of these expenditures.

We ask the auditors to remove this erroneous statement from the final report.

Financial Reports Regarding Dormitory Design Budget. The audit report states that the School Board did not submit the documentation required to support drawdowns from the design budget. Actually, the School Board was submitting financial reports in the customary form, but, as it turned out, this format was different from that required by the Facilities Management and Construction Center (FMCC) . School Board staff have been working with FMCC staff (particularly Delphie Montoya) to assure that it is now supplying information, including expenses documentation, in the desired format.

In May, 1994, the School Board made what it believes is a qualifying report to FMCC for the period ending June, 1993. Ms. Montoya has not indicated to the School Board that she found any problems with this report. FMCC is permitting Pinon to draw down design budget funds.

The School Board staff is going forward to prepare subsequent design budget reports in the proper format, and expects to submit them in September.

Travel, stipends, legal fees, and telephone expenses i n dormitortoy design budget. At page 12, the audit report asserts that these items in the design budget have been overspent. It is accurate that the budget for travel, stipends, and legal fees have been exceeded; it is not true the telephone budget has been exceeded. Some comments about these budget items are in order.

-- The budget amounts for travel and stipends has been

exceeded because the School Board has found, from hard-earned experience, that unless its representatives physically go to the FMCC offices, little, if any, action on its project gets done. FMCC has considerable oversight and approval authority over the steps in our new dorm construction project; if their review and approval are not timely performed, our project is further delayed. It is recognized throughout the Bureau that FMCC is shorthanded.

-- The staff shortages at FMCC--also contributed significantly to the need for Pinon to incur legal fees. Very often in the course of this project, we have had to have our attorney do work that was unanticipated, and the Contracting Officer's Representative often tells us to assign additional tasks to our attorney. We do this because we want to get the work done.

-- It is also worth noting that the budget FMCC allowed for legal work is merely 24 hours for approximately a 24-month period. As experience has demonstrated, this allowance was terribly underestimated by FMCC. In fact, the School Board had estimated a higher number of attorney hours would be needed, but FMCC steadfastly refused to adopt our estimate. As a result of FMCC's mis-calculation, our budget for this item is exceeded.

Charter Air Transportation. The auditors complain about the use of charter travel, and suggest that automobile travel should have been used because it is more economical.

Charter air transportation was expressly allowed in our contract in recognition of our very remote location. While it is true that auto transportation would be more economical in terms of budget, the tremendous time loss of auto trips to Phoenix and Albuquerque must be considered. When the Business Manager was serving as Acting Executive Director as well as working on the construction project, he did not have the luxury of spending 5-6 hours (one way) of auto travel time to attend construction meetings, even if they were scheduled in advance. It was essential that his time away from the dormitory be minimized; thus charter air transportation was the only alternative. The charter aircraft departure point is 30 miles from the school (on Black Mesa) .

School Board Expenses. On page 13, the auditors assert that the School Board exceeded statutory spending limitations for school board expenses. This is incorrect. The provision cited by the auditors -- 25 USC §2008(c)(2)(C) -- establishes limits on the amount which Bureau schools may spend for meeting expenses and memberships in organizations engaged in activities on behalf of Indian education. This limitation does not apply to contract schools such as Pinon. The definitions of these two terms at 25 USC 52019 demonstrate that the term "Bureau school" refers only to schools directly operated by BIA, and a "contract School" is one operated under an ISDA contract.

The statute does not place these limitations on expenses of contract and grant schools because the responsibilities of these latter schools greatly exceed those of Bureau school boards. Contract and grant school boards are responsible for all facets of school operations such as curriculum policy development; personnel; financial management; administration; etc. By contrast, Bureau schools are operated by federal employees; their School Boards have very limited authorities and responsibilities.

The auditors devote two-pages to school board expenses which they label as "unreasonable or unnecessary", but they do not describe the standard against which they measure these expenses. They state that "many" of the meetings and conferences attended by board members and staff "could have been conducted by telephone or at a lower cost location or even at Pinon. " They do not tell us which ones they are, however. And presumably they are merely expressing their own personal opinions about the ones they criticize.

We have the following comments to offer regarding the particular meetings they singled out for criticism:

-- Certainly the trip to Washington, D.C. to attend key congressional hearings could not have been "conducted by telephone, or at a lower cost location or even at Pinon." If their complaint is about the cost of hotel rooms in Washington, D.C., we share this complaint, but can do nothing about it. Hotel accommodations in that city are scarce and certainly more expensive than anyone would like.

-- The auditors next mention the 1993 annual meeting of the Association of Community Tribal Schools (ACTS) held in Honolulu, Hawaii. Pinon did not select this location, ACTS did. As noted, four board members and four staff -- a total of eight people -- participated in this 4-day meeting at a total cost of \$7,648. This works out to a total of \$956 per person. By no one's measure can this be characterized as extravagant.

-- The auditors question the School Board retreat held in Las Vegas, and state that that they "believe that the retreat could have been conducted at a lower cost. " They do not, however, assert that any law, regulation or cost principle was violated. In fact, the School Board decided on this location and scheduling for its retreat to coincide with the Association of Navajo Community Controlled School Boards' Executive Board meeting there. This enabled us to achieve two purposes for one transportation expense.

-- The auditors are very critical of the School Board President's participation in 59 meetings *during* the 1992-93 school year. They make no effort, however, to describe the reasons for these meetings or their locations. Rather, they just summarily criticize them as "unreasonably or unnecessary" . The facts are these:

● More than 40 of these meetings were held either at Pinon or other locations on the Navajo Reservation, not at exotic or frivolous locations. Those held at other Reservation locations were for meetings with BIA; other contract and grant schools; the Navajo Nation President; and the school board's attorneys.

● Eight were trips to Albuquerque, primarily for construction meetings with FMCC. As noted above, if we did not go to meet with FMCC people, little progress was made on our construction documents. We combined one of these FMCC meetings with our participation in the 1992 National Indian Education Association Conference held in Albuquerque.

● Nine were trips to Phoenix to meet with construction architects.

● There were three other destinations : Seattle (National School Board association meeting) ; the Las Vegas retreat/Navajo school board association executive board meeting noted above); and Gallup, NM for a school board association meeting) .

"Lobbying costs". The auditors assert that \$1,589 in membership fees the School Board paid to the Association of Navajo Community Controlled School Boards should be disallowed as "lobbying costs" . We disagree.

As the auditors acknowledge, the cost principles in 25 CFR Part 276 allow the use of contract funds for memberships fees in civic, business, technical and professional organizations. (See item no. 19 in the principles.) The auditors imply that the the Association would fall into the category of entities that "devote a substantial part of its activities to influencing legislation", but they do so provide any basis for this apparent conclusion.

In fact, the Association's mission is multi-faceted. It undertakes training and technical assistance for members of school boards operated under contracts and grants from the federal government; helps new school board members to learn about their duties and responsibilities for school operations, personnel, facilities management, etc.; gathers and disseminates information about educational programs of interest to tribal schools; keeps abreast of federal developments that affect BIA-funded schools; and advocates for improvements in Indian education.

The Association's participation in reauthorization of the Elementary & Secondary Education Act was expressly solicited by two Committees of Congress with jurisdiction over the legislation -- the House Education and Labor Committee and the Senate Committee on Indian Affairs. In fact, both panels held hearings that were limited to Indian/Alaska Native/Native Hawaiian

education issues, and both committees specifically asked the Association to present testimony and legislative suggestions.

Under these circumstances, where the input of the Association was solicited by Congress, the Association's input to do so would be more appropriately described as "technical assistance". These Committees sought the Association's participation because they wanted input directly from users of the BIA system. Obviously it is within the province of Congress to seek information from persons and entities directly affected by the laws under review.

The draft audit report also states that the School Board used \$533 in grant funds for "legislative lobbying costs related to funding for Indian education and a new Pinon dormitory construction project." Since the report does not identify these expenses, we are unable to provide a direct response. This deficiency should be cured; otherwise, this portion of the audit report should be deleted.

We would note, however, that if the auditors are accurate that the expenses to which they refer were related to "funding for Indian education and a new Pinon dormitory construction project", we believe that such matters are well within our responsibilities to seek to improve the program and facilities for Indian children in the Pinon Community. Frankly, if we have the opportunity to improve opportunities and conditions for these children, we would be irresponsible for not pursuing them. We would also note that every year the House Interior Appropriations Subcommittee invites testimony from Indian tribes and tribal organizations regarding BIA and IHS proposed budgets, and devotes two (sometimes three) days to receiving oral testimony from these representatives. They obviously want to know the views of Indian people about these budget matters, otherwise they would not seek testimony or hold hearings.

As the head of the Bureau of Indian Affairs, you know that BIA is often asked to give its views and suggestions to Congress when Congress reviews existing laws or proposed legislation and proposed budgets. Doubtless the Bureau's input was sought during the Elementary & Secondary Education Act reauthorization effort, just as input was sought from the Association. And, of course, the Bureau testifies every year on its proposed budget. To properly discharge its legislative function, Congress needs to have access to both the operator of a program (such as BIA), and the consumer of that program (such as BIA-funded schools), in order to evaluate the program's effectiveness.

We strongly disagree with the superficial and shortsighted evaluation attributed to the Interior Solicitor on page 17 of the draft audit report. The Solicitor supposedly said that "lobbying costs" were not allowable because "lobbying for new laws is not in furtherance of the program contracted but seeks to

change the program. " He (or she) further asserted that such activity is "outside the prudent management of the program."

This position defies both common sense and logic. One of the most basic rights and responsibilities of anyone connected with a public service program is to seek ways to make it better. This applies to schools for Indian children just as to any other public service entity. Members of BIA-funded school boards are Indian people whose job it is to advance-the educational opportunities of Indian children. - If they have ideas for improvement of that system, they should have the right to share these ideas with Congress, particularly when Congress expressly requests them. To deny them the opportunity to do so would be to impair the Congressional oversight function.

And to assert that working to improve a program "is outside the prudent management of the program" is absurd. School Board Members cannot be asked to check at the door all thoughts about a program -- or enhancement of that program -- which are not contained within the pages of the contract document. If they did, they would not be doing their jobs.

Furthermore, if the Solicitor's view were the rule, the Secretary of the Interior would be in the contradictory position of asking tribal school boards to violate this rule every time he undertakes consultation with these entities as *required by law*. The BIA education statute specifically requires the Secretary to consult with tribal school boards (including contract and grant school boards) , and to give them "the opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau." See 25 USC §2010(b) .

Ms. Deer, we hope you will not endorse the objectionable policy contained in this Solicitor statement. It sounds as if the Interior Department is attempting to muzzle this School Board from any communication with Congress, either directly, or through its school board association, even when input is invited. Indian people have a unique trust relationship with the United States, including the Congress, and en-joy First Amendment rights to the same extent as other Americans. This relationship and these rights must not be suppressed, as suggested by this Solicitor statement. You know better than most how important it is for Indian people to be able to communicate with all facets of its Trustee, the United States.

Finally, the audit report states (page 17) in a conclusory fashion that the Solicitor "reaffirmed" his position "based on the Interior Appropriations Acts for fiscal years 1989 through 1994." It provided no citation to what provisions of those laws were referred to, again denying us the chance to make a meaningful response. Either this failure should be corrected, or this portion of the draft report should be deleted.

Fiscal and Management Controls. The auditors make several erroneous statements in this section (which begins on p. 17) to which we respond.

-- Maintenance of check register. The auditors incorrectly say that our Business Office does not maintain a check register. Our check register was, during the time of the audit, and continues to be maintained by computer. All checks written and recorded in this computer program. Perhaps the auditors' comment is directed to the fact that we do not maintain a check register by hand. To do so would be duplicative.

-- Reconciliation of bank statements. We agree with the auditors' statement that we were behind in reconciling our bank statements when they were here for the audit. This reconciliation activity is now up-to-date, and is maintained on a current basis.

-- Analysis of budgeted and actual expenditures. We acknowledge that portions of our initial budget were subsequently exceeded, but the overall budget was not overspent. The business staff reports to the School Board about this.

-- Audit for 1992-93. As noted above, this audit is nearing completion. It is due 13 months after the close of the fiscal year.

-- Quarterly financial status reports. We acknowledge that we were behind on filing our reports for the 3rd and 4th quarters of 1993 with BIA. These reports were filed by mid-February, 1994. Our reports are now up-to-date.

-- Single Bank Account. The auditors are critical of us because we maintain one bank account for all of our federal programs, rather than a separate account for each one. We previously had individual bank accounts for our facilities, residential, substance abuse prevention and administrative programs and the general fund (which holds the non-federal monies such as student activity funds, bank interest, etc.)

We found, however, that having multiple accounts was much more difficult administratively, particularly with regard to employees whose paychecks are apportioned to different programs. For example, portions of our Support Services Coordinator's time (and salary) are often charged to different programs to which he provides services such as facilities, administrative, construction, etc. One account has proved to be much easier to maintain. It is incorrect that our Business Manager has difficulty telling how much money is available for each program.

-- Overdrafts. We acknowledge that \$525 in overdrafts were accumulated in 1993. These occurred because at that time

only two administrative officials (Executive Director and Business Manager) were authorized to transfer funds from our savings account to our checking account. Delays in making transfers occurred during this period because these two administrators were often away from pinon at the same time working on the new dorm construction contract.

This administrative process has been streamlined by working out an arrangement with our bank -to cover checks received before our savings-to-checkin, transfers have been accomplished.

-- Travel expenses policy. We believe the auditors have misunderstood our Policy Manual provision on vouchers for travel expenses. We do not require a traveling employee to produce receipts if the amount claimed for reimbursement is \$26.00 per day or less. If the amount claimed exceeds \$26.00 per day, however, then receipts for the excess amount are required. The setting of the \$26.00/day amount was done to eliminate the administrative work it would take to process such a small reimbursement amount.

We disagree with the auditors' claim that some "weakness" in our system leads to employees "not complying with travel policies and procedures." (page 18) In fact that statement does not seem to have anything to do with the situation they describe regarding the employee who received a \$78 travel advance to attend a seminar. It is true that the employee did not attend the seminar, and it is also true that she was not required to submit a travel expense form. The reason is that *the employee returned the \$78 advance when she returned to Pinon.* Since she claimed no reimbursement and returned the travel advance, there was no need for a travel voucher.

This same employee received a \$486 advance for another trip, but then reported the check had been misplaced. A replacement check was was issued. Several months later, the first check was cashed. When the Business Office discovered this, it took steps to collect reimbursement from the employee. The full amount of that first check was recovered. Rather than demonstrate a 'weakness" in our system, in our view, these incidents describe the school administration's ability to quickly act in response to transgressions.

CONCLUSION

This draft audit report correctly reports some deficiencies in the Pinon Community School Board's performance, most of which have been corrected, and in the case of our SY92-93 audit, it is nearly completed.

Primarily, however, this draft audit report is filled with unsupported, conclusory criticisms, superficial evaluations, and personal opinions of the auditors. It displays little

-14-

knowledge or appreciation of the tasks and responsibilities of the Pinon School Board, and erroneously interprets and applies the law.

It is unfortunate that the substantial time and expense the I.G. auditors devoted to the Pinon audit did not produce a more reliable or constructive product. Instead, the School Board and its staff had to spend untold hours working with the auditors and responding to this draft report, all to very little beneficial purpose,

We have, however, received some encouraging news about our performance lately that you should know about. The Chinle Agency education superintendent who has been providing technical assistance to us to resolve the management findings in our SY91-92 audit told us last week that he considered 18 of these "closed", and praised our performance. We continue to work on the remaining four items and hope to have them closed soon. The input provided by the superintendent has been constructive and will help us to improve. We are grateful to him and to our contracting officer whose idea it was that the superintendent supply this assistance.

Thank you again for allowing us time to comment on this draft audit report. We would appreciate you sharing with us the comments you file with the I.G. as well as a copy of the final report the I.G. issues.

Sincerely yours,


Mary James
President

Cc: John Tippeconnic, Director
Office of Indian Education Programs

Thomas Hemstreet, Audit Coordinator
Navajo Area Office



United States Department Of the Interior



OFFICE OF THE SOLICITOR
Regional Office, Southwest Region
2400 Louisiana Blvd., N.E.
Building One, Suite 200
Albuquerque, New Mexico 87110

September 30, 1994

MEMORANDUM

TO: Regional Audit Manager, Office of the Inspector General,
Central Region, Albuquerque, New Mexico, ATTN: Leonard
A. Lussier, Regional Audit Supervisor

FROM: Regional Solicitor, Southwest Region

SUBJECT: Audit of Pinon Community School Financial Assignment No.
C-FN-BIA-005-94

By memorandum dated September 13, 1994, you requested a legal opinion concerning the applicability of 25 U.S.C. 2008 (c) (2) (C) to Indian Self Determination Contract Schools such as Pinon Community School. The question posed is whether Pinon Community School can exceed the maximum amount allowed by the formula 1% of funds allocated pursuant to 25 U.S.C. 2008(a). The real question is whether Pinon Community School is entitled to any funding authorized by subparagraph 2008(c)(2)(C), For the following reasons it is my opinion that Pinon Community School as a contract school is not authorize to use education formula funds (Indian School Equalization Program funds) to fund school board activities. In lieu thereof are funds available pursuant to 25 U.S.C. 2008a.

This subparagraph 25 U.S.C. 2008(c) (2) (C) states:

From the funds allotted in accordance with the formula established under subsection (a) of this section for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of--

- (i) \$5,000, or
- (ii) the lesser of--
 - (1) \$15,000 or
 - (II) 1 percent of such allotted funds,

for school board activities for such school, including but not limited to, and notwithstanding any other provision of law, meeting expenses and the cost of membership in, and support of, organizations engaged in activities on behalf of Indian education.

Subsection 2008(a) requires the Secretary to establish, by regulation, a formula for determining the minimum annual amount of

funds necessary to sustain each Bureau or contract school. 25 U.S.C. 2019 states:

§ 2019. Definition

For the purpose of this chapter--

(3) the term "Bureau funded school" means--

(A) a Bureau school;

(B) a contract school; or

(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988 [25 U.S.C.A. § 2501 et seq.];

(4) the term "Bureau school" means a Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending a school other than a Bureau school;

(5) the term "contract school" means an elementary or secondary school or a dormitory which receives financial assistance for its operation under a contract or agreement with the Bureau under section 450f, 450h(a) or 458d of this title.

Subparagraph 2008 (c) (2) (C) allows the local school board of each Bureau school to reserve an amount, determined by a formula defined in 2008(c)(2)(C)(i) and (ii) for school board activities. Since subparagraph 2008(c) (2) (C) only refers to Bureau schools, and since Pinon Community School is a contract school, pursuant the definitions of Bureau school and contract school found in 25 U.S.C. 2019, Pinon community School is not eligible to spend any funds generated by the formula described in 25 U.S.C. 2008. Since 25 U.S.C. 2008(c)(2)(C) is a specific exception to the expenditure purpose of the formula funds, it must be construed strictly.

If Congress intended contract schools to spend formula funds on school board activities, Congress would have used the terms "Bureau and contract school" or "Bureau funded school." Congress did not use these terms.

There is further evidence that Congress only intended that Bureau schools are the only schools permitted to "use formula funds for school board expenses. The statutory note at the end of 25 U.S.C. 2008 states:

1990 Amendment

Subsec. (c) (2) . Pub. 1. 101-301, § 5 (d) (1) (D) , (E) redesignated par. (3) as (2) and struck out former par. (2) which had directed that all Bureau and contract schools receiving funds under this section had to receive an equal amount as an allowance for local school

board training and activities including, notwithstanding any other provision of law, meeting expenses and the cost of membership in or support of organizations engaged in activities on behalf-of Indian education.

The wording stricken by **Pub.L. 101-301** is **similar** to the wording at the end of subparagraph 2008(c)(2)(C). The repealed statutory language pertained to "**all** Bureau and contract schools." The present statutory language only pertains to Bureau schools.

It is my **opinion** that the **Pinon Community** School Board lacked authority to expend any funds for school board **activities** from funds allocated under the school formula. All funds expended by Pinon Community School pursuant to subparagraph 25 U.S.C. 2008(c) (2) (C) are misapplied funds. If such misapplication of the funds **is** innocent the School should reimburse the government from **its** administrative cost grant funds as authorized by 25 U.S.C. subsection 450c(d). If the misapplication of the funds is determined to be willful, the matter should be investigated for violation of 25 U.S.C. 450d.

If you need any further assistance in this matter, please contact me.

For the Regional Solicitor


Thomas O'Hare
Attorney-Advisor



United States Department of the Interior



OFFICE OF THE SOLICITOR
Regional Office, Southwest Region
Albuquerque, New Mexico
2400 Louisiana Blvd. , N. E.
Building One, Suite 200
Albuquerque, New Mexico 87110-4316

REFERENCE NO.

May 12, 1994

MEMORANDUM:

TO: Regional Audit Manager, **Central** Region, **Office** of the
Inspector General, Albuquerque, New Mexico,
ATTN: Regional Audit Supervisor

FROM: Regional Solicitor, Southwest Region

SUBJECT: Audit of **Pinon** Community School Finance Activities
(Assignment No. C-IN-BIA-005-94)

By memorandum dated **April 8, 1994** you asked for our opinion on whether lobbying costs as defined in 48 CFR Section 31.205-22 are allowable costs pursuant to 25 U.S.C. 2008a Administrative Cost Grants and Indian Self-Determination Contract indirect cost standard for operation Bureau funded schools and dormitories.

The cost standards found at 48 CFR Part 31 are not applicable to Indian Self Determination Contracts. See 25 U.S.C. 450j.

The applicable cost standards are found at 25 CFR Part 276, Appendix A and 25 U.S.C. 2008a.

The lobbying costs incurred by Pinon Community School and other contract and grant schools amounted to \$30,000.00. The costs were to pay for **legal** services to draft legislative amendments for reauthorization of education laws. The Association of Navajo Community Controlled School **Boards, Inc. (Association)**, of which Pinon Community School (**Pinon**) is a member, voted to **employ a law** firm to perform the lobbying activities. Pinon's annual dues to the Association is \$1,000.00 a year. Pinon's share of the lobbying cost was \$1,589.00. In addition, Pinon used over \$500.00 of administrative cost grant funds for lobbying to influence legislation on funding for Indian education and a new Pinon dormitory construction project.

The lobbying services were performed by a law firm. Part II of Appendix Standards for Selected Items of Cost, cost standard 16 Legal Expenses states in part: "the cost of legal expenses required in the administration of grant programs is allowable." Lobbying or influencing legislation is not a legal expense envisioned by the cost standard. Lobbying is not an act of

administration of the contract. You also raise an issue concerning the expenditure of funds to lobby for funding construction of new facilities. The Pinon's contract is for operation of the residential dorm program. The use of \$500.00 of its funds to seek construction of a new building is outside the scope of its contract and" is not a legal expense incurred for the administration of the contracted program. As a result, payment of these costs as legal expenses is not authorized. cost standard 19 Membership, subscriptions and Professional Activities

a. Memberships. The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) The benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(Emphasis added)

Pinon's annual dues are \$1000.00 per year in the Association while its share of support for the lobbying effort was \$1,589.00. It is a reasonable finding that the effort to influence legislation is a substantial part of the activities of the Association and its therefore unallowable based upon the amount of funds expended.

Pursuant to 25 U.S.C. 2008a the purpose of an administrative cost grant is to pay administrative and indirect costs incurred in operating contract schools in order to:

(A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice, and

(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

The administrative cost grant relates to support services which the government would not charge to the direct education budget. Such services include personnel, acquisition, property and supply, finance, disbursements, audit and legal services. Construction of new facilities is not a support function in furtherance of the

direct educational program. Lobbying for new laws is not in furtherance of the program contracted, but seeks to change the program. Such lobbying is outside the scope of administrative support of the contracted functions and is outside of the prudent management of the program. While there are many desirable and positive activities which indirect costs could be expended for, a prudent management practice will exclude them if they are not related directly to the day to day operations of the contracted program. Therefore, the use of an administrative cost grant for lobbying purposes is unrelated to management of Pinon's educational program and is unallowable.

If you need any further assistance, please advise.

For the Regional Solicitor



Thomas O'Hare
Attorney-Advisor



REFERENCE NO.

United States Department of the Interior



OFFICE OF THE SOLICITOR
Regional Office, Southwest Region
Albuquerque, New Mexico

2400 Louisiana Blvd., N.E.
Building One, Suite 200
Albuquerque, New Mexico 87110-4316

May 20, 1994

MEMORANDUM

TO: Regional Audit Manager, Central Region, Office of
Inspector, Denver Colorado, ATTN: Regional Audit
Supervisor, Albuquerque, New Mexico

FROM: Regional Solicitor, Southwest Region

SUBJECT: Audit Pinon Community School Finance Activities

By memorandum dated May 12, 1994, I responded to your April 8, 1994 request" for an opinion regarding lobbying activities paid for by Pinon Community School with Federal Funds. The lobbying costs were paid to the Association of Navajo Community Controlled School Board, Inc. and to Pinon's lawyer. I found the lobbying costs to be unallowable under applicable federal law cited in my May 12, 1994 opinion. I reaffirm this opinion.

I have recently uncovered additional authority in support of this view.

The following prohibition appears in the Interior Appropriations for FY-89 through FY-94 (Pub. L. 100-446; Pub. L. 101-121; Pub. L. 101-512; Pub. L. 102-154, Pub. L. 102-381; Pub. L. 103-138)

No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete.

This provision forbids the activities engaged in by Pinon Community School. Such lobbying costs are unallowable and paying for lobbying services with federal funds, is contrary to law.

For the Regional Solicitor

Thomas O'Hare
Thomas O'Hare
Attorney-Advisor

STATUS OF AUDIT REPORT RECOMMENDATIONS

<u>Finding/ Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
A.1 and B.3	Unresolved.	Provide a response to the revised recommendations. If concurrence is indicated, provide an action plan that includes target dates and titles of officials responsible for implementation. If nonconcurrence is indicated, provide reasons for the nonconcurrence.
A.2 and B.1	Resolved; not implemented.	No further response to the Office of Inspector General is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.
B.2	Implemented.	No further response is required.
B.4	Unresolved.	Reconsider the recommendation. If concurrence is indicated, provide an action plan that includes the target date and the title of the official responsible for implementation. If nonconcurrence is indicated, provide the reasons for nonconcurrence.

ILLEGAL OR WASTEFUL ACTIVITIES
SHOULD BE REPORTED TO
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North Pacific Region

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