

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0028-25

SPONSOR: George H. Tolth

TITLE: An Action Relating to the Naabik'iyáti' Committee; Responding to the United States Department of Education's "Dear Colleague" Letter Dated February 14, 2025; Reaffirming the Political Classification of the Navajo Nation and its Citizens; Urging the United States to Honor and Uphold its Treaty and Trust Obligations

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0028-25

DATE: March 7, 2025

TITLE OF RESOLUTION: AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE; RESPONDING TO THE UNITED STATES DEPARTMENT OF EDUCATION'S "DEAR COLLEAGUE" LETTER DATED FEBRUARY 14, 2025; REAFFIRMING THE POLITICAL CLASSIFICATION OF THE NAVAJO NATION AND ITS CITIZENS; URGING THE UNITED STATES TO HONOR AND UPHOLD ITS TREATY AND TRUST OBLIGATIONS

PURPOSE: This proposed resolution will provide the Navajo Nation's response to the February 14, 2025, "Dear Colleague" letter issued by the Department of Education.

FINAL AUTHORITY: Naabik'íyáti' Committee

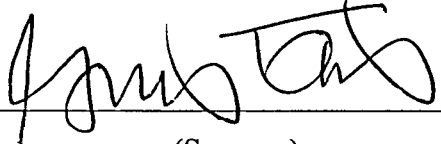
VOTING REQUIREMENT: Simple Majority

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD:
Website Posting Time/Date:
Posting End Date: 03-15-25
Eligible for Action: 03-16-25

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 25th NAVAJO NATION COUNCIL – Third Year, 2025

3 INTRODUCED BY

4 
5 _____
6 (Sponsor)

7
8
9 TRACKING NO. 0028-25

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11 AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE;
12 RESPONDING TO THE UNITED STATES DEPARTMENT OF EDUCATION'S
13 "DEAR COLLEAGUE" LETTER DATED FEBRUARY 14, 2025; REAFFIRMING
14 THE POLITICAL CLASSIFICATION OF THE NAVAJO NATION AND ITS
15 CITIZENS; URGING THE UNITED STATES TO HONOR AND UPHOLD ITS
16 TREATY AND TRUST OBLIGATIONS

17
18 WHEREAS:

- 19
20 A. The Navajo Nation established the Naabik'iyáti' Committee as Navajo Nation
21 Council standing committee and as such empowered the Naabik'iyáti' Committee to
22 coordinate all requests for information, appearances and testimony relating to
23 proposed county, state and federal legislation impacting the Navajo Nation. 2 N.N.C.
24 §§ 700(A), 701(A)(6).
- 25 B. The Navajo Nation has a government-to-government relationship with the United
26 States of America.
- 27 C. On February 14, 2025, the United States Department of Education (the
28 "Department") issued a "Dear Colleague" letter, attached as **Exhibit A**, to education
29 institutions and entities across the United States in which it outlined its interpretation
30 of Title IV of the Civil Rights Act, the Equal Protection Clause of the U.S.

1 Constitution, and other relevant authorities and advised that relying on race, color, or
2 national origin for education programs and entrance into academic institutions is a
3 violation of federal law.

4 D. As a result, the Department of Education informed that it will “will vigorously
5 enforce the law on equal terms as to all preschool, elementary, secondary, and
6 postsecondary educational institutions, as well as state educational agencies, that
7 receive financial assistance.”

8 E. The letter does not mention that federal funds that are provided to Indian Tribes and
9 Tribal Organizations are not based on race, but through a political classification as a
10 government.

11 F. Education programs that serve Navajo and other American Indian and Alaskan Native
12 students do not fall under the category of race, color, or national origin as doing so
13 would undermine tribal sovereignty and the unique legal relationship between Indian
14 Tribes and the United States.

15 G. The U.S. Supreme Court in *Morton v. Mancari*, 417 U.S. 525 (1974), upheld a hiring
16 preference for Indian at the Bureau of Indian Affairs reasoning that because the
17 challenged statute defined “Indian” as a person belonging to a “federally recognized
18 tribe,” the classification was not directed towards a “racial group” but was instead
19 political in nature.

20 H. It is imperative to recognize the United States’ long-standing trust and treaty
21 obligations. Treaties with Indian nations are the “supreme law of the land” as
22 recognized by the U.S. Constitution. U.S. Const. art VI. Cl.2.

23 I. For Indian tribes like the Navajo Nation, the political relationship with the federal
24 government is enshrined in bilateral treaties authorized by the Treaty Clause of the
25 U.S. Constitution, agreements by definition between sovereigns, and not “races.” U.S.
26 Const. art VI. Cl.2.

27 J. Federal funding for education of Navajo children is a fulfillment of treaty promises to
28 provide for the welfare of tribal sovereigns and their children 25 U.S.C. 1901(2)
29 (finding that “Congress, through . . . treaties . . . has assumed the responsibility for the
30 protection and preservation of Indian tribes and their resources,” and that “there is no

1 resources more vital to the continued existence and integrity of Indian tribes than
2 their children, and that the U.S. has direct interest, as trustee, in protecting Indian
3 children.”

4 K. The duty to uphold treaty obligations with Indian tribes demonstrates the
5 government’s compelling interest in providing federal funds and services. For the
6 Navajo Nation, the U.S. has entered into two treaties promising to protect Navajo
7 people and their children.

8 L. In the Treaty of 1849, the U.S. promised to “so legislate and act as to secure the
9 permanent prosperity and happiness of said Indians.” Treaty with the Navajo art. XI,
10 Sept. 9, 1849, 9 Stat. 974.

11 M. In the Treaty of 1868, the U.S. promised to secure the education and welfare of
12 Navajo children. Treaty with the Navajo art. VI, June 1, 1868, 10 Stat. 655.

13 N. To the Navajo Nation, federal funding is a direct fulfillment of treaty obligations to
14 promote the care and education of Navajo children and the preservation of the Navajo
15 Nation’s prosperity, through continuing the culture of the Navajo Nation through its
16 ongoing connection to its children. The repeated promises made for the welfare of
17 tribal children manifest a trust obligation not only to tribal nations as a whole, but
18 also to individual Indian children.

19 O. The U.S. Constitution specifically identifies Indian tribes as unique, and the U.S.
20 Supreme Court has time and again affirmed the principle that U.S. actions that deliver
21 on trust and treaty obligations to Indian tribes, tribal citizens, and tribal communities
22 do not run afoul of the U.S. Constitution’s equal protection requirements. The federal
23 government’s trust responsibility to Indian tribes is a legally enforceable fiduciary
24 obligation on the part of the U.S. government to protect tribal lands, rights, and
25 resources. It also includes fulfilling federal treaty obligations and other agreements
26 with Indian tribes. The Trust obligations include providing basic services such as
27 education, health care, and social services. The agencies charged with the trust
28 obligation to assist tribes in the operation of schools and education is the Department
29 of Education and the Department of Interior.

30

1 P. Through the treaty and trust obligations, consultation is required between the federal
2 government and Indian tribes. The Department of Education promulgated a
3 consultation policy titled, *U.S. Department of Education Consultation and*
4 *Coordination with American Indians and Alaskan Tribal Governments* (“Consultation
5 Policy”) which requires the Department to provide written notification to Indian
6 tribes of proposed program change or initiatives that may potentially impact Indian
7 Tribes. The Consultation Policy also provides consultation to be achieved in various
8 manners, including but not limited to, face-to-face meetings at the local, regional and
9 national levels, roundtables, and teleconferences.

10 Q. The Dear Colleague Letter dated February 14, 2025, has caused widespread concern
11 for students and educators across the Navajo Nation.

12
13 **THEREFORE, BE IT RESOLVED:**

14 A. The Navajo Nation hereby requests for tribal consultation in which the Department of
15 Education can provide additional information to Navajo leadership concerning the
16 potential impacts on the Navajo Nation and its citizens.

17 B. The Navajo Nation hereby requests the Department of Education to ensure all
18 Department of Education employees are informed about the unique political status of
19 Indian tribes and that such is not considered a racial classification that would fall
20 under the framework of Diversity, Equity, and Inclusion (DEI) initiatives.

21 C. The Navajo Nation hereby reaffirms the Treaty of 1849 and Treaty of 1868 and urges
22 the United States and its agencies to uphold all treaty and trust obligations to protect
23 the rights, lands, and resources of the Navajo Nation and its citizens.

24 D. The Naabik’iyáti’ Committee hereby authorizes the Navajo Nation President, and the
25 Navajo Nation Speaker to take all steps necessary to advocate for the Navajo Nation’s
26 position with respect to this resolution.