

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0060-25_

SPONSOR: Vince R. James

TITLE: An Action Relating to an Emergency for the Navajo Nation Council; Opposing the Arizona State Superintendent of Public Instruction Tom Horne's Guidance Issued to Arizona Schools Regarding Diversity, Equity and Inclusion Programs and Objecting to Any Threats of Withholding Funds Made to Arizona Schools

Date posted: April 21, 2025 at 6:51PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0060-25

DATE: April 21, 2025

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; OPPOSING THE ARIZONA STATE SUPERINTENDENT OF PUBLIC INSTRUCTION TOM HORNE'S GUIDANCE ISSUED TO ARIZONA SCHOOLS REGARDING DIVERSITY, EQUITY, AND INCLUSION PROGRAMS AND OBJECTING TO ANY THREATS OF WITHHOLDING FUNDS MADE TO ARIZONA SCHOOLS

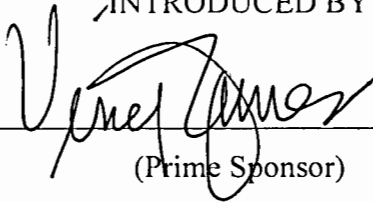
PURPOSE: This proposed resolution opposes Arizona State Superintendent Tom Horne's guidance to Arizona schools regarding DEI programs and the requirement for certification that schools will comply with the USDOE's DEI policy.

FINAL AUTHORITY: Navajo Nation Council
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.

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
25th NAVAJO NATION COUNCIL – Third Year, 2025

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0060-25

AN ACTION
RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL;
OPPOSING THE ARIZONA STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION TOM HORNE’S GUIDANCE ISSUED TO ARIZONA SCHOOLS
REGARDING DIVERSITY, EQUITY, AND INCLUSION PROGRAMS AND
OBJECTING TO ANY THREATS OF WITHHOLDING FUNDS MADE TO
ARIZONA SCHOOLS

WHEREAS:

- A. The Navajo Nation Council is the governing body of the Navajo Nation and as such determines the position of the Navajo Nation. 2 N.N.C. § 102(A).
- B. Matters constituting an emergency shall be limited to cessations of direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such emergency matters must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council. 2 N.N.C. § 164(A) (16).
- C. The Navajo Nation has a government-to-government relationship with the State of Arizona.
- D. This resolution is offered as an emergency due to the recent threats to Arizona schools concerning the withholding of funds to schools that do not comply with the Arizona State Superintendent of Public Instruction’s guidance concerning Diversity, Equity, and

1 Inclusion (DEI) programs. Such actions have the potential to create a direct threat to the
2 sovereignty of the Navajo Nation and education services to Navajo students.

3 E. On April 3, 2025, Arizona State Superintendent of Public Instruction Tom Horne, issued
4 guidance from the United States Department of Education (USDOE) concerning civil
5 rights law and avoiding the use of DEI programs. The Superintendent warned Arizona
6 schools that failure to comply with the USDOE could result in the loss of federal funding.
7 See Communication from Superintendent Tom Horne's Office on April 3, 2025, attached
8 as **Exhibit A**.

9 F. The Superintendent forwarded the USDOE certification letter in which Arizona schools
10 must attest that they will comply with the federal guidance concerning DEI. See USDOE
11 Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial
12 Assistance and Request for Certification under Title VI and *SFFA v. Harvard* attached
13 as **Exhibit B**.

14 G. In the Navajo Treaty of 1849, the Navajo were "lawfully placed under the exclusive
15 jurisdiction and protection of the Government of the said United States, and that they are
16 now, and will forever remain, under the aforesaid jurisdiction and protection" and the
17 United States agreed to "legislate and act as to secure the permanent prosperity and
18 happiness of said Indians." 9 Stat. 974.

19 H. In the Treaty of 1868, the Navajo were also promised the education of their children,
20 agricultural resources, and the initial boundaries of the Navajo Reservation. 15 Stat. 667.

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

25 J. The U.S. Supreme Court in *Morton v. Mancari*, 417 U.S. 525 (1974), upheld a hiring
26 preference for Indians at the Bureau of Indian Affairs reasoning that because the
27 challenged statute defined "Indian" as a person belonging to a "federally recognized
28 tribe," the classification was not directed towards a "racial group" but was instead
29 political in nature.
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- 1 K. It is imperative to recognize the United States' long-standing trust and treaty obligations.
2 Treaties with Indian nations are the "supreme law of the land" as recognized by the U.S.
3 Constitution. U.S. Const. art VI. Cl.2.
- 4 L. For Indian tribes like the Navajo Nation, the political relationship with the federal
5 government is enshrined in bilateral treaties authorized by the Treaty Clause of the U.S.
6 Constitution, agreements by definition between sovereigns, and not "races." U.S. Const.
7 art VI. Cl.2.
- 8 M. Federal funding for education of Navajo children is a fulfillment of treaty promises to
9 provide for the welfare of tribal sovereigns and their children 25 U.S.C. 1901(2) (finding
10 that "Congress, through . . . treaties . . . has assumed the responsibility for the protection
11 and preservation of Indian tribes and their resources," and that "there is no resources
12 more vital to the continued existence and integrity of Indian tribes than their children,
13 and that the U.S. has direct interest, as trustee, in protecting Indian children.")
- 14 N. The State of Arizona nor the Arizona State Superintendent of Public Instruction have
15 authority to withhold any funding that is intended to fulfil the federal government's treaty
16 or trust responsibilities to the Navajo Nation or for the education of Navajo students.
- 17 O. Furthermore, public schools across the State of Arizona and the Navajo Nation, including
18 Ganado Unified School District, Window Rock School District, Chinle Unified School
19 District, Red Mesa Unified School District, Kayenta Unified School District, Tuba City
20 Unified School District, and other school districts in Apache, Navajo, and Coconino
21 counties, serve a majority of Native American students. See Navajo Nation Chapter and
22 Agency Council Resolutions Opposing USDOE and Arizona Superintendent's Guidance
23 attached as **Exhibit C**
- 24 P. Many of these public schools operate programs that provide Navajo and other Native
25 American students with culturally relevant curricula and instruction, Navajo and Native
26 American language and history integration, equity-based academic support and student
27 services, and inclusive practices for English Language Learners and students with
28 disabilities. As noted by the previous Superintendent of Public Instruction, Kathy
29 Hoffman, "[The] history, culture and language [of the twenty-two sovereign tribal
30

1 nations in Arizona] are a vital part of Arizona’s past, present, and future.” Arizona Tribal
2 Consultation Guide, November 2022.
3

4 **NOW, THEREFORE, BE IT RESOLVED:**

- 5 A. The Navajo Nation hereby reaffirms its government-to-government relationship with the
6 State of Arizona, and the Treaties of 1849 and 1868 between the Navajo Nation and the
7 United States.
- 8 B. The Navajo Nation opposes Arizona State Superintendent Tom Horne’s guidance to
9 Arizona schools regarding DEI programs and the requirement for certification that
10 schools will comply with the USDOE’s DEI policy.
- 11 C. The Navajo Nation vehemently opposes Arizona State Superintendent of Public
12 Instruction Tom Horne’s threats or actions to withhold any federal funding that is
13 intended to fulfill the United States’ treaty or trust responsibilities to the Navajo Nation
14 or for the education of Navajo students.
- 15 D. The Navajo Nation hereby authorizes the Navajo Nation President, Navajo Nation Vice-
16 President and the Speaker of the Navajo Nation Council to take all steps necessary to
17 advocate for the Navajo Nation's position consistent with the above positions.
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