



Testimony before the Subcommittee on Early Childhood, Elementary, and Secondary Education, Committee on Education and Labor, and the Subcommittee for Indigenous Peoples of the United States, Committee on Natural Resources, House of Representatives

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## HIGH-RISK

# Bureau of Indian Education Has Addressed Some Management Weaknesses, but Additional Work Is Needed on Others

Statement of Elizabeth Sirois, Assistant Director,  
Education, Workforce, and Income Security

# GAO Highlights

Highlights of [GAO-22-106104](#), a testimony before the Subcommittee on Early Childhood, Elementary, and Secondary Education, Committee on Education and Labor, and the Subcommittee for Indigenous Peoples of the United States, Committee on Natural Resources, House of Representatives

## Why GAO Did This Study

GAO's High-Risk List identifies government operations with vulnerabilities to fraud, waste, abuse, and mismanagement, or in need of transformation. GAO added the area *Improving Federal Management of Programs that Serve Tribes and their Members* to its February 2017 biennial update of high-risk areas. This area includes a component on BIE's administration of schools for American Indian students.

This testimony is based on GAO's [March 2021 High-Risk Report](#) and subsequent updates provided by BIE. This testimony provides examples of actions taken and progress made by BIE to address the five criteria GAO uses to determine whether to remove a high-risk designation. GAO also drew on findings from past reports and testimonies on BIE issues.

## What GAO Recommends

GAO has made 32 recommendations related to BIE's support and oversight of schools, and 10 of these have not been fully addressed. For GAO to remove this component from the High-Risk List, BIE needs to improve its capacity and monitoring and demonstrate progress in its administration of schools.

View [GAO-22-106104](#). For more information, contact Melissa Emrey-Arras at (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov).

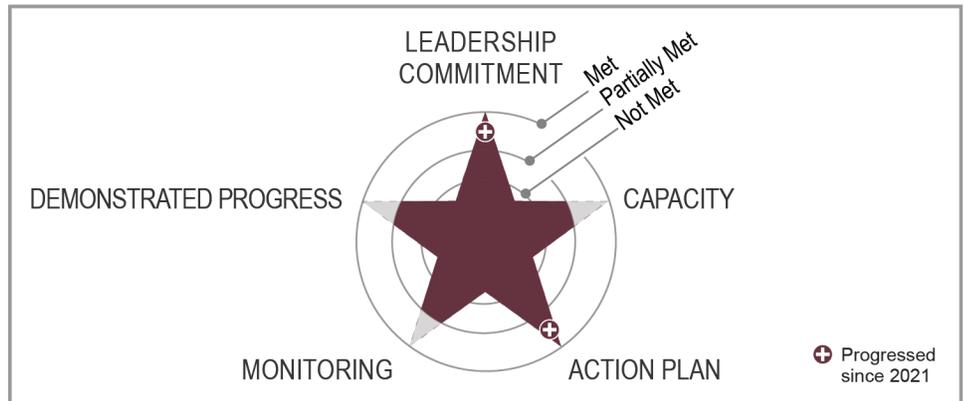
# HIGH-RISK

## Bureau of Indian Education Has Addressed Some Management Weaknesses, but Additional Work is Needed on Others

### What GAO Found

Since GAO last reported on the high-risk status of the Bureau of Indian Education's (BIE) administration of schools for American Indian students in March 2021, the agency has fully met two of the five criteria for removal from the High-Risk List. Specifically, BIE has fully met the criteria for leadership commitment and having an action plan. Senior leaders have demonstrated a strong commitment to addressing the issues GAO identified and have provided continued support to resolve these management weaknesses. In addition, BIE and other offices within the Department of the Interior (Interior) have developed action plans to address a range of management challenges including a September 2021 comprehensive, long-term capital asset plan to guide its school construction efforts and a January 2022 plan to build schools' capacity to ensure building safety, such as maintaining fire alarm and sprinkler systems.

Status of the Bureau of Indian Education's Progress in Addressing High-Risk Management Weaknesses, as of June 2022



Source: GAO analysis. | GAO-22-106104

However, additional work is needed for BIE to fully address remaining management weaknesses before GAO can consider removing BIE's administration of schools from the High-Risk List. As with the 2021 high-risk rating, GAO continues to rate BIE's actions as partially meeting the remaining three high-risk criteria for capacity, monitoring and demonstrated progress. In terms of capacity, BIE continues to have an overall staff vacancy rate of about 33 percent. GAO maintains that high staff vacancy rates significantly inhibit BIE's ability to support and oversee schools. Monitoring has also been a struggle. For example, BIE has not fully implemented its program for risk-based monitoring of schools' use of federal education funds. In addition, BIE does not have a program for routinely monitoring and assessing technology assets at schools, which we found contributed to major delays in providing students with distance learning devices during pandemic-related school closures. Addressing these areas, including GAO's remaining 10 recommendations, will be central to demonstrating progress in BIE's management of schools.

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Chairman Sablan, Chair Leger Fernandez, Republican Leaders Owens and Obernolte, and Members of the Subcommittees:

Thank you for the opportunity today to discuss the status of the Bureau of Indian Education's (BIE) administration of schools for American Indian students on GAO's High-Risk List. In our 2017 High-Risk Report, we designated *Improving Federal Management of Programs that Serve Tribes and their Members* as a high-risk area. We designated this area high risk because our work has shown that federal agencies have ineffectively administered education and health care programs for tribes and their members, and inefficiently met their responsibility for managing the development of tribal energy resources.<sup>1</sup> This area includes three components—education, health care, and energy development. These components involve agencies in the Department of the Interior (Interior), which includes BIE, and the Department of Health and Human Services.

The education component of this area consists of BIE's support and oversight of 183 elementary and secondary schools located on or near reservations in 23 states. These schools serve about 46,000 American Indian students from primarily low-income, rural communities. About two-thirds of these schools are operated by tribes through grants or contracts with BIE, while the remaining third are operated by BIE. We included this component on the High-Risk List because our work has found significant management weaknesses in BIE's support and oversight of schools. These have included poor conditions at school facilities that endangered students and weak oversight of schools' use of federal funds. We have continued to express concerns about BIE's challenges in our subsequent High-Risk Reports, including the most recent one issued in March of 2021.<sup>2</sup>

We have made a total of 32 recommendations in seven separate products dating back to 2013 that relate to the high-risk status of BIE's

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<sup>1</sup>GAO, *HIGH-RISK SERIES: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, [GAO-17-317](#) (Washington, D.C.: Feb. 15, 2017).

<sup>2</sup>GAO, *HIGH-RISK SERIES: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#) (Washington, D.C.: March 2, 2021).

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administration of schools.<sup>3</sup> These recommendations involve a variety of management issues, including school safety, fiscal oversight, school construction, provision of special education services, and distance learning during the COVID-19 pandemic. Since 2017, BIE and related Interior offices have fully implemented 22 of these recommendations, including four on school safety and oversight of school spending that we had previously designated as priority recommendations in annual letters to the Secretary of the Interior. The other 10 recommendations remain open, including one priority recommendation on special education services. In addition to our prior work, we have ongoing work examining how BIE and the schools it supports have used their federal COVID-19 relief funds to respond to the pandemic and the extent to which BIE has provided schools with guidance and oversight regarding these funds.

My statement today draws from our March 2021 High-Risk Report. This statement also includes our evaluation of more recent information regarding BIE's progress in addressing the five criteria we use for determining whether to remove a high-risk designation (leadership commitment, capacity, action plan, monitoring, and demonstrated progress). We also draw on findings from other past reports and testimonies on BIE issues, including our April 2021 testimony examining BIE's support for schools' distance learning programs during the COVID-19 pandemic. We conducted our work by reviewing agency documentation and interviewing agency officials. To conduct our previously issued work on which this testimony draws, we reviewed relevant federal laws, regulations, and policies, and agency documentation, among other methods. More detailed information on the scope and methodology of our published work can be found in each of the reports cited in our High-Risk Series.<sup>4</sup>

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<sup>3</sup>GAO, *INDIAN EDUCATION: Schools Need More Assistance to Provide Distance Learning*, [GAO-21-492T](#) (Washington, D.C.: Apr 28, 2021); GAO, *INDIAN EDUCATION: Actions Needed to Ensure Students with Disabilities Receive Special Education Services*, [GAO-20-358](#) (Washington, D.C.: May 22, 2020); GAO, *INDIAN AFFAIRS: Further Actions Needed to Improve Oversight and Accountability for School Safety Inspections*, [GAO-17-421](#) (Washington, D.C.: May 24, 2017); GAO, *INDIAN AFFAIRS: Actions Needed to Better Manage Indian School Construction Projects*, [GAO-17-447](#) (Washington, D.C.: May 24, 2017); GAO, *INDIAN AFFAIRS: Key Actions Needed to Ensure Safety and Health at Indian School Facilities*, [GAO-16-313](#) (Washington, D.C.: Mar 10, 2016); GAO, *INDIAN AFFAIRS: Bureau of Indian Education Needs to Improve Oversight of School Spending*, [GAO-15-121](#) (Washington, D.C.: November 13, 2014); GAO, *INDIAN AFFAIRS: Better Management and Accountability Needed to Improve Indian Education*, [GAO-13-774](#) (Washington, D.C.: September 24, 2013).

<sup>4</sup>See GAO's High-Risk Series website: <https://www.gao.gov/high-risk-list>.

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We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

### BIE Schools and the Federal Government's Trust Responsibility

BIE's education programs for American Indian students derive from the federal government's trust responsibility to tribes, a responsibility established in treaties, federal statutes, court decisions, and executive actions. In 2016, the Indian Trust Asset Reform Act included congressional findings stating "through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians..."<sup>5</sup> In addition, "the fiduciary responsibilities of the United States to Indians also are founded in part on specific commitments made in treaties and agreements securing peace, in exchange for which Indians surrendered claims to vast tracts of land..."<sup>6</sup>

The federal government works with tribes toward the goal of ensuring that Interior-funded schools are of the highest quality and provide for the basic elementary and secondary educational needs of their student population, including meeting their unique educational and cultural needs.

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### High-Risk List

Since 1990, generally every 2 years at the start of a new Congress, we call attention to agencies and program areas that are high-risk due to their vulnerability to fraud, waste, abuse, and mismanagement or that are most in need of transformation. Our high-risk program is intended to help inform the congressional oversight agenda and to improve government performance. Since 1990, a total of 67 different areas have appeared on the High-Risk List.<sup>7</sup> Of these, 27 areas have been removed due to actions

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<sup>5</sup>Pub. L. No. 114-178, § 101(3), 130 Stat. 432 (2016) (codified at 25 U.S.C. § 5601(3)).

<sup>6</sup>25 U.S.C. § 5601(4).

<sup>7</sup>This includes GAO's high-risk designation of the Unemployment Insurance system on June 7, 2022. For more information, see: <https://www.gao.gov/press-release/gao-designates-unemployment-insurance-system-high-risk>.

that decreased risks.<sup>8</sup> On average, the high-risk areas that were removed from the list had been on it for 9 years.

Our experience with the High-Risk List has shown that the key elements needed to make progress in high-risk areas are top-level attention by administration and agency leaders grounded in the five criteria for removing high-risk designations, which we reported on in March 2022 (see fig. 1).<sup>9</sup>

**Figure 1: Criteria Essential to Addressing High-Risk Areas**



Source: GAO. | GAO-22-106104

<sup>8</sup>In addition, 2 high-risk areas have been consolidated, and 1 area was originally part of another area but subsequently made its own.

<sup>9</sup>GAO, *HIGH-RISK SERIES: Key Practices to Successfully Address High-Risk Areas and Remove Them from the List*, [GAO-22-105184](#) (Washington, D.C.: March 3, 2022).

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These five criteria form a road map for efforts to improve and ultimately address high-risk issues. The criteria and associated actions are not mutually exclusive. That is, actions taken under one criterion may be important to meeting other criteria as well. For example, top leadership can demonstrate its commitment by establishing a corrective action plan, including long-term priorities and goals to address the high-risk issue and by using data to gauge progress—actions that are also vital to addressing the action plan and monitoring criteria. Addressing some of the criteria leads to progress, and satisfying all of the criteria is central to removal from the list.

When legislative and agency actions, including those in response to our recommendations, result in our finding significant progress toward resolving a high-risk problem, we will remove the high-risk designation. However, fully implementing our recommendations alone will not result in the removal of the designation, because the condition that led to the recommendations is symptomatic of systemic management weaknesses. In cases in which we remove the high-risk designation, we continue to closely monitor the areas. If significant problems again arise, we will consider reapplying the high-risk designation.

When an agency has met all five of the criteria, we can remove the agency from the High-Risk List. We rate agency progress toward meeting the criteria using the following definitions:

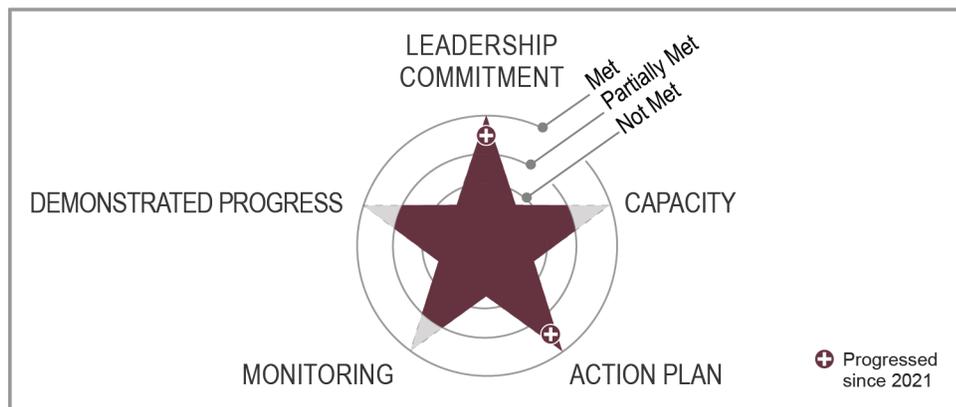
- **Met.** Actions have been taken that meet the criterion. There are no significant actions that need to be taken to further address this criterion.
- **Partially met.** Some, but not all, actions necessary to meet the criterion have been taken.
- **Not met.** Few, if any, actions toward meeting the criterion have been taken.

In the case of BIE's administration of schools, if the agency meets all five of the criteria, we will remove this component from the GAO's high-risk area *Improving Federal Management of Programs that Serve Tribes and Their Members*.

## BIE Has Addressed Some High-Risk Management Weaknesses, but Work Is Incomplete on Others

Since our last update in the 2021 High-Risk Report, we have determined that BIE has met two of the five criteria for removing its administration of schools from GAO’s high-risk area *Improving Federal Management of Programs that Serve Tribes and their Members*. However, the agency has only partially met the remaining three criteria, as was the case in our 2021 report (see fig. 2). Additional work is needed for BIE to fully address these three criteria and related management weaknesses.

**Figure 2. Status of the Bureau of Indian Education’s Progress in Addressing High-Risk Management Weaknesses, as of June 2022**



Source: GAO analysis. | GAO-22-106104

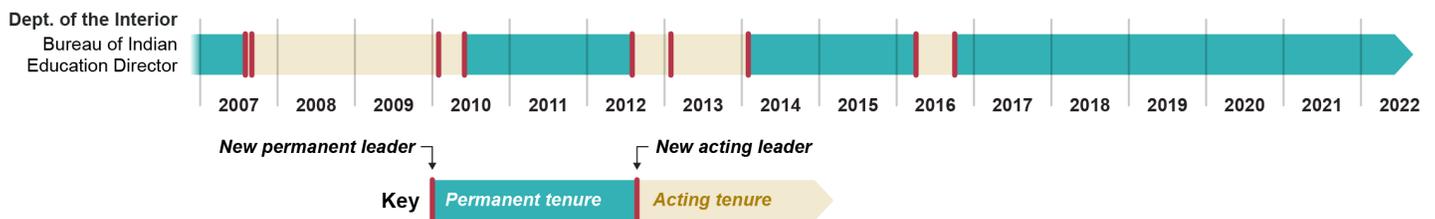
The following examples show actions that BIE, with support from Interior leaders and offices, took to meet two of our criteria for removal from the High-Risk List—leadership commitment and action plan.

**Leadership commitment.** To meet this criterion for removal of a high-risk designation, an agency needs to have demonstrated strong and sustained commitment and top leadership support to address management weaknesses.

- The new Assistant Secretary-Indian Affairs, who provides direction, oversight and support to BIE, has committed to supporting BIE efforts to address management weaknesses. For example, the Assistant Secretary stated in January 2022 that he and his leadership team are focused on addressing the issues we have identified in our reports, including those we identified in our 2021 High-Risk Report. He added that his office is also committed to ensuring that BIE addresses all of our open recommendations through quarterly progress reporting to his office.

- BIE has fully implemented four of the five recommendations we have made since 2014 that we designated as a priority in annual letters to the Secretary of the Interior. For example, after we reported in 2021 that Interior had still not identified an office responsible for implementing our 2016 priority recommendation on assisting schools with their building safety issues, BIE took responsibility and fully implemented the recommendation.<sup>10</sup>
- In 2019, the BIE Director created a leadership position and office to oversee BIE’s performance in meeting its strategic goals and addressing the management weaknesses identified in our reports. Since the creation of this office, we have held regular meetings with its personnel to discuss the agency’s progress in addressing management weaknesses and implementing our recommendations.
- We have previously testified that to fully meet the leadership commitment criterion, agencies need stable, permanent leadership.<sup>11</sup> BIE has demonstrated this in recent years. Specifically, the current BIE Director has been in place since 2016 and is the longest serving since 2000.<sup>12</sup> Our past work found frequent turnover in this position prior to 2016, and we noted that such turnover had exacerbated challenges BIE faced in ensuring administration support for schools (see fig. 3).

**Figure 3: Turnover in the Bureau of Indian Education Director Position from 2007 to June 2022**



Source: GAO analysis of information from the Department of the Interior. | GAO-22-106104

<sup>10</sup> [GAO-21-119SP](#); [GAO-16-313](#).

<sup>11</sup>GAO, *HIGH-RISK: Progress Made but Continued Attention Needed to Address Management Weaknesses at Federal Agencies Serving Indian Tribes*, [GAO-19-445T](#) (Washington, D.C.: Mar 12, 2019).

<sup>12</sup>BIE, formerly known as the Office of Indian Education Programs when it was part of the Bureau of Indian Affairs, was renamed and established as a separate bureau within Interior in 2006.

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**Action plan.** To meet this criterion, an agency needs to have a corrective action plan that defines the root causes of problems, identifies solutions, and provides for substantially completing corrective measures in the near term, including steps necessary to implement the solutions we recommended.

- In January 2022, BIE developed and implemented a plan to build schools' capacity to promptly address facility safety issues, which we recommended in 2016.<sup>13</sup> In particular, BIE's plan identifies a timetable and offices responsible for providing technical training to schools on a wide variety of safety-related areas, from maintaining fire alarm and sprinkler systems to monthly safety check procedures.
- In September 2021, Interior developed a comprehensive long-term capital asset plan to inform how it allocates school facility funds, which we recommended in May 2017.<sup>14</sup> Specifically, Interior established a process for completing comprehensive condition assessments to identify deficiencies in its facilities and for regularly assessing facilities, including schools, on a 3-year schedule.
- In response to a recommendation in our May 2020 report, BIE developed a plan in 2021 to clarify Interior requirements and a monitoring process to ensure that responsible offices annually verify that every eligible BIE student receives special education and related services, as required by federal regulations.<sup>15</sup>
- In April 2019, Indian Affairs developed a plan to assess the safety training needs of all its employees, including BIE staff responsible for inspecting schools, as we recommended in 2017.<sup>16</sup> The plan includes regular monitoring by Indian Affairs to ensure personnel comply with Interior's safety training requirements and to hold individuals accountable for these requirements.
- In 2018, BIE developed a comprehensive plan that established written procedures and risk-based criteria for overseeing schools' spending of federal program funds, which we recommended in 2014.<sup>17</sup>

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<sup>13</sup>[GAO-16-313](#).

<sup>14</sup>[GAO-17-447](#).

<sup>15</sup>See 25 C.F.R. §§ 39.404(c) and 39.405. For our May 2020 report, see [GAO-20-358](#).

<sup>16</sup>[GAO-17-421](#).

<sup>17</sup>[GAO-15-121](#).

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- In 2018, BIE established a strategic plan, which defines 5-year goals for addressing mission challenges and improving its management and oversight of BIE schools, which we recommended in 2013.<sup>18</sup> In particular, the plan includes a strategy for developing and establishing a system for tracking millstones and actions, including implementing our recommendations.

The following examples show actions that BIE and related Interior offices have taken to make progress on the remaining three criteria for removal from the High-Risk List, which we determined the agency has partially met—a rating that remains unchanged since our 2021 report.

**Capacity.** To meet this criterion, an agency needs to demonstrate that it has the capacity (i.e., people and other resources) to resolve its management weaknesses.

BIE made some progress in identifying capacity and resources to implement some of our recommendations, but it continues to face workforce challenges.

- As we reported in our 2021 high-risk update, BIE completed a strategic workforce plan to address our prior recommendations. The plan includes human capital information to help the agency determine an adequate number of qualified staff in the appropriate offices needed to effectively oversee programs supporting BIE schools. The plan also includes human capital strategies—such as relocation incentives, student loan repayment, and streamlining candidate background checks—to help fill vacant positions.

However, as of May 2022, BIE’s overall staff vacancy rate is about 33 percent. This is the same vacancy rate we reported in our 2021 High-Risk Report. Furthermore, BIE’s School Operations Division, which provides vital administrative support to schools, has a vacancy rate now of about 45 percent. We believe that high staff vacancy rates significantly inhibit BIE’s capacity to support and oversee schools.

**Monitoring.** To meet this criterion, an agency needs to demonstrate that it has instituted a program has been instituted to monitor and independently validate the effectiveness and sustainability of corrective measures.

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<sup>18</sup>[GAO-13-774](#).

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- Since BIE took over responsibility for all school inspections in fiscal year 2019, it has taken steps to routinely monitor its safety inspection process for schools, including assessing the performance of inspectors and holding them accountable for the agency's required performance standards for producing high quality, timely inspection reports for schools.

However, BIE has not taken sufficient steps to address other monitoring deficiencies. For example, it has not fully implemented its program for high-risk monitoring of schools' use of federal education funds, as we recommended in May 2020.<sup>19</sup> Further, BIE does not have a program for routinely monitoring and assessing technology assets at schools, which we found contributed to major delays in providing students with distance learning devices during pandemic-related school closures.<sup>20</sup>

**Demonstrated progress.** To meet this criterion, an agency needs to demonstrate progress in implementing corrective measures and in resolving the high-risk area.

- Since our March 2021 High-Risk Report, BIE and related Interior offices have fully implemented three recommendations on school construction and safety.

However, significant work remains to address our 10 outstanding recommendations in other key areas, including two new recommendations on distance learning that we added in April 2021, as well as seven prior recommendations on special education, and one prior recommendation on school construction. Continued progress in addressing management weaknesses will depend on the sustained support of senior agency leaders.

In conclusion, we believe that BIE has demonstrated leadership commitment and formulated corrective action plans to address key management weaknesses in supporting and overseeing schools. However, it will need sustained focus and concerted actions to meet our three remaining criteria for us to consider removing the administration of BIE schools component from GAO's high-risk area *Improving Federal Management of Programs that Serve Tribes and Their Members*. Among the most significant continuing challenges is for BIE to ensure and

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<sup>19</sup>[GAO-20-358](#).

<sup>20</sup>[GAO-21-492T](#).

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demonstrate that it has sufficient capacity to address the deficiencies in supporting and overseeing BIE schools.

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Chairman Sablan, Chair Leger Fernandez, Republican Leaders Owens and Obernolte, and Members of the Subcommittees, this completes my prepared statement. I would be pleased to respond to any questions that you may have.

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## GAO Contact and Staff Acknowledgments

If you or your staff have any questions, please contact Melissa Emrey-Arras at (617) 788-0534 or [emreyarrasm@gao.gov](mailto:emreyarrasm@gao.gov) or Elizabeth Sirois at (202) 512-8989 or [siroise@gao.gov](mailto:siroise@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Key contributors to this statement include Edward Bodine (Analyst in Charge), James Bennett, William Colvin, Alison Knowles, Jon Muchin, Tracie Sanchez, and Kathleen van Gelder.

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Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548

---

## Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
Washington, DC 20548

