



The National Native American Boarding School Healing Coalition

January 31, 2023

Deb Haaland, citizen of the Pueblo of Laguna
Secretary of the Interior
U.S. Department of the Interior

**Re: Written Comments on NAGPRA Proposed Rulemaking,
National Park Service, RIN#1024–AE19**

Dear Secretary Haaland,

Greetings, and thank you for the opportunity to submit these written comments to support stronger implementation of repatriation and graves protection efforts through the Native American Graves Protection and Repatriation Act. The National Native American Boarding School Healing Coalition (NABS) has a specific mission that can be strengthened with express and appropriate provisions added to the NAGPRA proposed rulemaking.

As you are aware, NABS was created to develop and implement a national strategy to increase public awareness and cultivate healing for the profound trauma experienced by individuals, families, communities, American Indian, Native Hawaiian, and Alaska Native Nations as a result of assimilation and genocide of Indigenous Peoples through the use of missionization, forced education and boarding schools. An element for healing from the intergenerational trauma caused by these federal policies includes the return of our children who were buried at these boarding schools.

Considering the failure of some federal agencies, especially the Office of Army Cemeteries and the Carlisle Indian Industrial Boarding School, to comply with NAGPRA for the return of our children to lineal descendants or affiliated Tribal Nations, it is absolutely necessary to provide clear guidance that marked and unmarked gravesites that were a part of a non-Native internment – such as a boarding school cemetery – located on federal or Tribal lands, are protected under NAGPRA. The Act clearly provides a definition of “burial site” that includes “any natural or prepared physical location” where Native American relatives are buried; and provides a process that allows for the intentional removal of those gravesites. 25 U.S.C. § 3001(1) and § 3002(c).

The explanatory language provided in the proposed rulemaking is extremely helpful concerning Boarding School cemeteries, or other “modern” cemeteries, located on federal or Tribal lands. However, NABS does not feel like this is enough to clarify the compliance required considering that this requirement has been ignored by the Army and perhaps other federal agencies. Instead, we are asking for express language to be included in section 10.4 of the regulation, such as this: “Marked and unmarked burial



The National Native American Boarding School Healing Coalition

sites that were a part of a non-Native internment, such as a boarding school cemetery, located on federal or Tribal lands, are included in this part.”

In addition, the process of disinterring and bringing children home from boarding school cemeteries is overly complicated under this rulemaking. We strongly recommend a separate provision within the disposition process that applies to gravesites created by non-Native institutions (such as boarding schools) that would allow for a simpler form of return, since a disinterment would be requested when the lineal descendant or affiliated Tribe or NHO is known before the excavation. We suggest language of deference, as supported in the rulemaking, that would allow for the Tribal Nation to control the process and disinter their known relatives for the return journey home.

Furthermore, section 10.6 regarding excavation requires the “appropriate official” to evaluate the potential need for an excavation. There is no further clarity on what are the reasonable steps the official must make for this evaluation, leaving the decision as to whether or not there will be an excavation in federal agency hands when federal lands are involved. This does not agree with the “deference” language that Interior is promulgating elsewhere in the regulations.

Moreover, if the excavation is a disinterment of a child from a boarding school cemetery, then this provision leaves it up to the “appropriate official” – such as the head of the Office of Army Cemeteries – to make this determination without consultation with affiliated Tribes or NHOs, or lineal descendants.

Section 10.7 regarding disposition also creates more burden on the process of disposition, especially for disposition of children from boarding school cemeteries. Not only is a Plan of Action required that would address Tribal affiliation, but the federal agency in this step will also make a separate determination of cultural affiliation. For known Ancestors, this section creates a potential loophole that can delay and possibly ignore the return of known Ancestors. Again, this section should also use “deference” to Tribal Nations and NHOs to ensure that disposition will occur to the child’s descendants or Tribal Nation or NHO.

It is important to note that the priority of disposition in 10.7(a) will allow for boarding school repatriations, first by known lineal descendants, and next with the Indian Tribe or Native Hawaiian organization with the closest cultural affiliation (because the “Tribal lands” question may not be reasonable to determine affiliation in the case of children who have been relocated from their homelands). Information from institution or federal agency documentation will provide names and specific Tribal affiliation of children for these dispositions.



The National Native American Boarding School Healing Coalition

Finally, the Department of the Interior seeks to cut off the application of NAGPRA to only federally recognized Tribes listed as eligible to receive services from the Bureau of Indian Affairs in the definition of “Indian Tribe” at section 10.2. However, Congress did not restrict the definition of “Indian Tribe” to Interior’s BIA list; instead Congress defined the term broadly to include “any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians” (emphasis added).

Interior has recognized in its Federal Indian Boarding School Initiative Investigative Report that the federal government intentionally disrupted Tribal governance systems and that the boarding school system stole children from all Tribes in the United States – whether or not their Tribes Nation was “recognized,” or had been terminated. *See Report pp. 39-40.* We will not find justice and healing without applying NAGPRA equitably among the Native Peoples that were harmed by the taking of our Ancestors, including our children that were taken and buried at these institutions. To limit the application of “Indian Tribe” as proposed by Interior is contrary to the Act, and in advancing racial equity in agency actions and programs, in accordance with the Executive Order 13985.

Sincerely,

Deborah Parker
Chief Executive Officer
The National Native American Boarding School Healing Coalition