



NATIVE AMERICAN
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JUSTICE

Tribal Governance in Education: Who, What and How?

10th American Indian / Indigenous Teacher Education Conference
Honoring Our Communities

Northern Arizona University College of Education
Flagstaff, AZ
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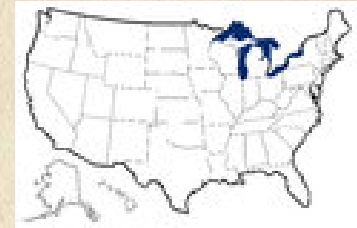
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www.narf.org



K-12 Native Student Population

- Total population of American Indians & Alaska Natives in United States today is about @ 3 million
- Total AI / AN K-12 student population nationwide is about @ 650,000
- Only 1.2 % of K-12 students nationwide, but in 5 states, > 10%:
Alaska, Oklahoma, Montana, New Mexico & South Dakota
- Over 90% AI /AN K-12 students attend state public schools;
less than 10% attend BIE-funded schools



<http://www.ncai.org/about-tribes/demographics>

<http://www.niea.org/our-story/history/information-on-native-students/>



3 Separate Sovereigns

- Federal
- State
- Tribal



United States v. Bryant, 136 S.Ct. 1954 (2016)



What is a Sovereign ?

Generally, an independent political community,
whose members are bound together
by being subjected to a central authority
whose commands those members must obey

Black's Law Dictionary (11th ed. 2019)





Share Education Governance

The court concludes that all three governments – federal, state and tribal – each have a duty to educate Native children

*Meyers v. Board of Education
of San Juan School District,
(D. Utah 1995)*





What is Education Governance ?

- Authority
 - Requirements & procedures
 - Administration & enforcement
 - Goals & expectations



How is Education Governed ?

- Laws, regulations & policies
 - Agencies, entities & officials
 - Funding & resources
 - Culture & traditions



Federal & State Governance

➤ US Constitution generally leaves public education to states



➤ 1965 Elementary & Secondary Education Act brings in federal requirements for resources

➤ Federal role in public education has grown



Historical Federal Indian Education Laws & Policies

➤ Treaty Era (1770s – 1871)

- Nation-to-Nation “negotiated” legal contracts
- Education provisions
 - In exchange for land & peace
 - US often contracted with churches to fulfill



➤ Early 1800s education laws

- Some appropriations
- Passive-assimilationist



Historical Federal Indian Education Laws & Policies

- Allotment & Assimilation Era (1871-1934)
 - Unilateral & active-assimilationist laws
 - Education as a means to assimilate & destroy
 - Federal Indian boarding schools
 - Increase in state public school systems
 - Extreme education laws
 - Rations withheld for school non-attendance
 - Unconsented Indian youth reform schools





Historical Federal Indian Education Laws & Policies

- New Deal Era (1920s & 1930s)
 - By 1912 most Native kids are in public schools
 - It was thought they would assimilate better
 - 1928 *Meriam Report*
 - 1934 Johnson O'Malley Act
 - In education, federal role reduced,
state role increased
& tribal role ignored

The Meriam Report
The Problem of Indian Administration



Historical Federal Indian Education Laws & Policies

- Termination Era (1940s & 1950s)
 - Abolition or transfer of federal role for Indians
 - Over 100 tribes lost gov't-to-gov't relations
 - More federal Indian schools closed
 - JOM & Impact Aid subsidized state public schools





Present Federal Indian Education Laws & Policies

- Self-Determination Era (1960s & 1970s)
 - Many new federal programs recognized tribes
 - 1963 Vocational Education Act
 - 1965 Elementary & Secondary Education Act
 - 1965 Head Start program
 - 1966 Adult Education Act
 - 1969 *Kennedy Report*
 - recommended increased Indian control
& increased role of tribes in education



Present Federal Indian Education Laws & Policies

➤ Self-Determination Era (1960s & 1970s)

- 1972 Indian Education Act
- Formula grant program (now ESSA Title VI)
- Office of Indian Education outside of BIA
- NACIE
- Nothing about tribal governance of education





Present Federal Indian Education Laws & Policies

➤ Self-Determination Era (1960s & 1970s)

- 1970 President Nixon Policy
- Sovereignty over tribal Indians is first & foremost with their tribal governments
- Federal government must support & strengthen tribal governments





Present Federal Indian Education Laws & Policies

- Self-Determination Era (1960s & 1970s)
 - 1975 Self-Determination Act
 - Title I allows tribes to contract programs & services formerly administered by federal gov't, including BIA schools
 - Title II reformed JOM to prioritize contracts to tribes, increase state & LEA compliance, & provide for elected Indian parent committees



Present Federal Indian Education Laws & Policies

- Self-Determination Era (1960s & 1970s)
 - 1978 ESEA Re-authorization
 - Impact Aid IPPs require tribal participation
 - BIA-funded schools to develop education standards in consultation with tribes
 - 1978 Tribally Controlled Community College Act





Present Federal Indian Education Laws & Policies

➤ Self-Determination Era (1980s)

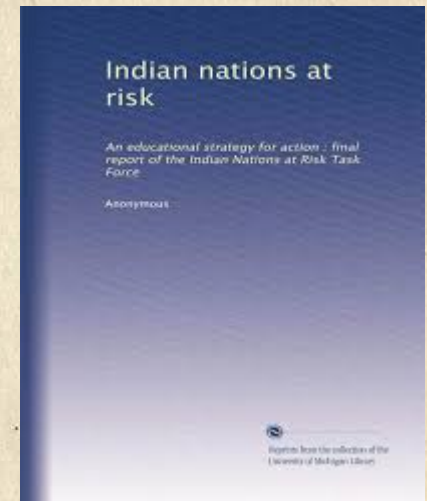
- 1984 ESEA Reauthorization
 - 1st mention of Tribal Education Departments
 - Tribes can use '638 funds for TEDs & Codes
- 1988 ESEA Reauthorization
 - BIA-funded school actions require tribal consultation, & request or approval
 - Authorization for direct funding for TEDs





Present Federal Indian Education Laws & Policies

- Self-Determination Era (1990s)
 - 1991 *Indian Nations at Risk Report*
 - Recommends state-tribal governmental partnerships in public school education
 - 1994 ESEA Reauthorization
 - Authorization for direct funding for TEDs through US Department of Education





Present Federal Indian Education Laws & Policies

- Self-Determination Era (2000s)
 - 2001 ESEA Reauthorization (NCLB)
 - Strengthened provisions for tribal accreditation of certain BIE-funded schools
 - Retained both TED direct funding authorizations
 - FY 2015 1st appropriations for TEDs



Present Federal Indian Education Laws & Policies

- Self-Determination Era (2000s)
 - 2015 ESEA Reauthorization (ESSA)
 - Requires states to consult with tribes for Title I funding
 - Makes permanent State-Tribal Education Partnership grant program
 - Requires LEAs to consult with tribes for all funding & specifically for Formula Grants
 - Requires BIE to consult with tribes for Title VI



Present Federal Indian Education Laws & Policies



- 2015 ESSA Title I consultation requirement
 - Current annual appropriations
 - for JOM @ < \$4 million
 - for IEA Formula Grants @ \$100 million
 - for Title I @
\$16 billion



Present Federal Indian Education Laws & Policies

REMARKABLE

- 2015 ESSA Title I consultation requirement
 - Most federal laws require federal agencies to consult with tribes
 - Some federal laws have optional, voluntary state-tribal partnership arrangements
 - No other federal law requires states to consult with tribes as a condition of getting federal \$\$



What about State Laws ?

- In 1995, Wisconsin recognized TEDS in its American Indian Language and Culture Education Program

Wis. Stat. §115.71





What about State Laws ?

- In 1999, Montana recognized TEDS in its Indian Education for All America Indian Studies Instruction provisions, including in-service training



Mont. Code Ann. § 20-1-502



What about State Laws ?

- In 2003, New Mexico recognized TEDs in its Indian Education Act, stating that one purpose of the Act is to ensure that TEDs are among those working to find ways to improve education for Indian students



N.M. Stat. Ann. § 22-23A-2



What about State Laws ?

- In 2010, Oklahoma's Advisory Council on Indian Education included representatives of TEDs

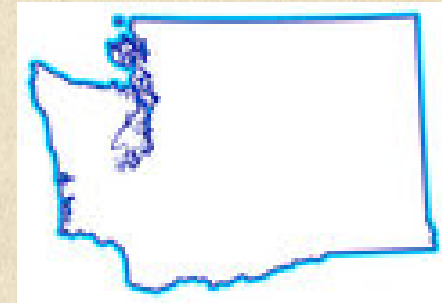
Okla. Stat. tit. 70 § 3.173





What about State Laws ?

- In 2013, Washington became the 1st state to authorize state-tribal compacts in K-12 public school education



Wash. Rev. Code § 28A.715.005



What about State Laws ?

- In 2018, California became the 1st state to legislate consultation with tribes regarding Native studies curriculum



Cal. Educ. Code § 51226.9(a)(1)



What about State Laws ?

- At least 14 states have formalized roles for tribes in their school laws or administrative codes, most often in connection with state laws allowing the teaching of tribal native languages in schools, & the certification or licensing of teachers for the languages: Arizona, California, Idaho, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Washington, Wisconsin, & Wyoming



Tribal Education Governance Today

➤ Nationwide

- 573 federally-recognized tribes
 - Less than ½ have TEDs / TEAs
 - Even fewer have Tribal Education Codes



Tribal Education Governance Today

- Washington State
 - 5 Tribal Compact Schools:
 - Suquamish
 - Lummi
 - Muckleshoot
 - Quileute
 - Nisqually

<http://www.k12.wa.us/IndianEd/STECs.aspx>



Tribal Education Governance Today

- ESSA State-Tribal Education Partnership Program
 - FY 2012 Grantees
 - Oklahoma – Chickasaw Nation
 - New Mexico - Dine
 - Idaho - Nez Perce Tribe
 - Oregon – Confederated Umatilla Tribes



Tribal Education Governance Today

- ESSA State-Tribal Education Partnership Program
 - FY 2015 Grantees
 - Oklahoma – Muscogee Creek Nation
 - Oklahoma - Chickasaw Nation
 - Idaho - Nez Perce Tribe
 - Idaho - Coeur d'Alene Tribe
 - FY 2019 applications due August 12, 2019



What Do All the Good Laws Really Mean?

➤ Troubling statistics

- In 2016, only about 75% of AI/AN students completed high school - less than any other racial or ethnic group in the US

<https://nces.ed.gov/pubs2019/2019038.pdf>

- In 2015, about 50% of AI/AN K-12 students reported never being exposed to their Native languages, including in school

<https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2019048>



What Do All the Good Laws Really Mean ?

➤ Ongoing federal investigation

- U.S. Department of Education's Office of Civil Rights investigating alleged discrimination of Native students in Wolf Point School District, Montana (Ft. Peck Indian Reservation)
- Unequal treatment, push outs, discipline, harassment, retaliation, & deprivation of basic due process rights
- In 2010, 6 Native students committed suicide; another 20 attempted



https://www.aclumontana.org/sites/default/files/field_documents/fort_peck_reservation_title_vi_doj_complaint.pdf



What Do All the Good Laws Really Mean ?

- Pending federal court case (*Stephen C., et al. v. BIE*)
 - Havasupai Elementary School (K-8)
 - Allegations
 - Failure to provide basic instruction
 - Only minimal instruction in Native language
 - Non-compliant library
 - No extracurricular activities
 - Disabled students ignored or mistreated





Can Tribes Govern State Public Schools?

- US Court of Appeals for the Ninth Circuit
 - Possibly, where schools are on tribal land
 - *Window Rock Unified School Dist. v. Reeves*, 861 F.3d 894 (9th Cir. 2017)

- US Court of Appeals for the Eighth Circuit
 - Very unlikely
 - *Fort Yates Public School Dist. v. Murphy*, 786 F.3d 662 (8th Cir. 2015)





Will the US ever Properly Manage Indian Education?

- US GAO, *Further Actions on GAO Recommendations Needed to Address Systemic Management Challenges with Indian Education* (April 2015)

<https://www.gao.gov/assets/670/669784.pdf>

- US GAO, *Further Actions Needed to Improve Oversight and Accountability for [BIE] School Safety Inspections* (May 2017)

<https://www.gao.gov/products/GAO-17-421>



What Can be Done about Attendance & Language?

- US GAO, *Public School Choice: Limited Options Available for Many AI/AN Students* (January 2019)

<https://www.gao.gov/assets/670/669784.pdf>

- In 2015, Oklahoma became the 1st state to authorize tribes to charter directly state public schools

Okla. Stat. tit. 70 § 3-132

