

INDIAN EDUCATION AND CONTRACTUAL OPTIONS FOR STATE-SUPPORTED EDUCATIONAL DELIVERY

House Concurrent Resolution No. 3004 (2009) ([Appendix A](#)) directs the Legislative Management to study Indian education issues. House Concurrent Resolution No. 3061 (2009) ([Appendix B](#)) directs the Legislative Management to study educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery. Because the latter study is a component of the former, this memorandum provides background information for both studies.

2009 NORTH DAKOTA LEGISLATION

House Concurrent Resolution No. 3004 (2009) had its genesis in the 2005 legislative session. At that time, the Legislative Assembly established a seven-member Tribal and State Relations Committee and directed that the committee conduct joint meetings with the Native American Tribal Citizens' Task Force for the purpose of studying tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, and issues related to the promotion of economic development. The Native American Tribal Citizens' Task Force consists of the executive director of the Indian Affairs Commission, the chairman of the Standing Rock Sioux Tribe, the chairman of the Spirit Lake Tribe, the chairman of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, the chairman of the Turtle Mountain Band of Chippewa, and the chairman of the Sisseton-Wahpeton Oyate, or their respective designees.

The Tribal and State Relations Committee held meetings in Bismarck and on four of the state's five Indian reservations. One issue that was consistently raised had to do with the delivery of elementary and secondary education in Indian country and, specifically, whether state aid payments should be forwarded to schools that are tribally controlled or operated under the terms of Bureau of Indian Education grants. After due consideration, the committee recommended that a broad study of Indian education issues take place. This recommendation was contained in House Concurrent Resolution No. 3004.

House Concurrent Resolution No. 3061 (2009) came about after House Bill No. 1552 (2009) was rejected by the House of Representatives. That bill would have authorized a school board to "contract with tribal officials for the education of students in a tribal school." During the hearing, concerns were raised about the scope of such contracts and the kinds of educational services that would be required. Concerns were raised about the governance of tribal schools and the interaction of tribal treaties and federal laws with state education laws. In addition,

concerns were raised about issues of responsibility, accountability, and cost.

HISTORY OF INDIAN EDUCATION IN THE UNITED STATES

Beginning in the latter half of the 1800s, the federal government's approach to Indian education was based on a goal of total assimilation into mainstream society. This was recognized as a difficult undertaking because it would involve a remolding of the Indian's system of values. However, the thought was that if it could be accomplished, the Indian would become "civilized," like the white man.

Limited federal appropriations, unfilled treaty commitments, and conflicting attitudes about the success that efforts at civilization were likely to have meant that the bulk of Indian education was left in the hands of the missionaries.

By the latter part of the 19th century, the public's attitude toward Indian education had begun to shift. Reports of the Nez Perce being forced to retreat from their home in western Oregon by the United States Army, the congressionally mandated removal of several northern tribes to Indian Territory (present-day Oklahoma) and the subsequent unwillingness of the Ponca to comply, and the flight of the Northern Cheyenne, when coupled with the continued movement of white settlers into Indian Territory and the exposure of graft within the Indian Bureau, raised the specter of white injustice and concern in Congress.

Concurrently, a United States Army captain by the name of Richard Henry Pratt began experiments in the education of Indians. After a long and active military career in the Great Plains, Captain Pratt concluded that in order to save Indians from extinction, Indian youth must be removed to nonreservation settings and then inculcated into civilized ways. Captain Pratt founded the Carlisle Indian boarding school in Carlisle, Pennsylvania, and set forth to prove his theories using both academic and vocational education. Classes to be taken by his students included English language, Christianity, art, guard duty, and craftsmanship. His students were prisoners whom he had chosen from among those who had surrendered in the Indian Territory at the end of the Red River War.

The success of the Carlisle school was acknowledged by a large congressional appropriation. By the turn of the 20th century, 25 such boarding schools had been opened.

At the same time, critics of nonreservation boarding schools began to question whether the training received by the students had any application to reservation life. They argued that these schools

trained too few students at too great an expense and that too many "returned to the blanket." Proposed alternatives included reservation boarding schools and reservation day schools. These were far less expensive and were more acceptable to the students' parents. An equally vocal group began to suggest that if the goal of Indian education was ultimate assimilation, this should not be accomplished in isolation, but rather through the public school system.

Between 1900 and 1930, life in Indian country included malnutrition and starvation, increased disease and shortened life expectancies, an unrealistic school system, and an inefficient and ineffective Bureau of Indian Affairs. Suggestions for addressing the situation came in the form of independent studies commissioned by the federal government. As a result, the Bureau of Indian Affairs started encouraging public school enrollment and took steps to reorganize its own schools. However, few of the bureau's schools even had a high school curriculum and those that did still were considered to be far inferior to the public schools. Progress by the bureau was limited at best.

In 1931 the Bureau of Indian Affairs went through a major administrative reorganization that included the creation of five separate divisions--Health, Extension, Forestry, Irrigation, and Education. Each of the divisions was to be headed by trained and technically qualified executives. With respect to education, it was hoped that under the direction of a professional educator, standards in Indian education would be significantly improved.

Under the directorship of W. Carson Ryan, a professor of education at Swarthmore College, it was suggested that improvements in Indian education were reliant on:

- The development of a community school system that was oriented to the needs of existing population centers on the reservations;
- Federal-state education contracts; and
- The gradual phasing out of boarding schools.

By 1933, 12 boarding schools had been closed. However, with the increase in the Indian population, there were actually more students attending boarding schools than there had been five years earlier. Curricular initiatives that focused on providing students with an understanding of their Indian heritage encountered challenges when the bureau realized that very few white teachers were sufficiently versed in Indian culture to allow for its incorporation in the classroom.

During this same period, the enrollment of Indian students in public schools increased. Many of the states that had significant Indian populations funded their public schools with property tax dollars. Because Indian land was exempt from property taxation, school districts were in need of financial assistance to offset their inability to access property tax dollars. This assistance came through contract negotiations between the Department of the Interior and each school district. This cumbersome approach was

replaced by the 1934 congressional passage of the Johnson-O'Malley Act. Under the provisions of the Act, the Secretary of the Interior was authorized to contract with any state or territory for education, medical attention, agricultural assistance, and social welfare.

Almost immediately, bureau education leaders became concerned that the state-operated public school systems were more focused on the money that Indian enrollment would add to their coffers than they were on the Indian students. The leaders also wondered if the bureau could retain sufficient control over the funding and administration of the public school programs to ensure that the type of education needed by Indian students would in fact be provided.

During World War II, 24,000 Indians served in the United States Armed Forces and 40,000 more left their reservations for war-related employment. This employment tended to concentrate in urban areas--shipbuilding, aircraft production, mining, and railroad work. The social changes that followed as a result again changed the thinking regarding the type of education needed by Indian students. It prompted a shift from cross-cultural efforts that emphasized both Indian and non-Indian value sets to efforts that emphasized the skills and training Indian youths would need when they entered urban life, as opposed to returning to the reservation.

While the postwar period saw a tremendous effort to place Indian children in schools, it also was a time of high dropout rates. The assumption was that Indian children were rejecting the education being made available to them. Summer school programs that focused on academics, as well as recreation and field trips, were offered. Even preschool efforts were in place by the early 1960s. Teacher quality and administrative training were examined, as was a "merit system" that allowed teachers of outstanding ability to earn higher salaries or more rapid advancement.

Discussions took place, presidential task forces were formed, studies were conducted by a variety of public and private entities, alternatives were suggested, and few changes were made. Indian criticism of Indian education became widespread and support grew for the concept of Indian parents controlling the education of their children and setting educational goals that were consistent with their cultural needs. See Margaret Szasz, *Education and the American Indian* (1974).

Advocacy groups began to take hold and became a potent force in promoting the concept of self-determination. Their efforts resulted in the 1975 passage of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 et seq. This legislation established procedures by which tribes could negotiate contracts with the Bureau of Indian Affairs to administer their own education and social service programs and it provided direct grants to help tribes develop plans so that they could assume responsibility for federal programs. The legislation

also attempted to increase parental input in Indian education by guaranteeing the involvement of Indian parents on school boards.

Subsequent amendments to the Indian Self-Determination and Education Assistance Act adopted in the 1980s and 1990s launched self-governance. Under this program, tribes could receive block grants from the Indian Health Service and the Bureau of Indian Affairs to cover a number of programs. By 2000 approximately half of the bureau's total obligations to tribes took the form of self-determination contracts or block grants.

The other piece of federal legislation that impacts education in Indian country is called the Tribally Controlled School Grants Act of 1988, 25 U.S.C. 2501 et seq. With this Act, Congress recognized that the Indian Self-Determination and Education Assistance Act was and is a crucial positive step toward tribal and community control and that the United States has an obligation to assure maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities.

Congress also declared that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children to:

- Compete and excel in areas of their choice; and
- Achieve the measure of self-determination essential to their social and economic well-being.

Finally, Congress affirmed that true self-determination in any society of people is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles; that Indian people have special and unique educational needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and that those needs may best be met through a grant process.

BUREAU OF INDIAN EDUCATION-FUNDED SCHOOLS - TERMINOLOGY

The North Dakota Century Code provides for the payment of state aid to school districts in the state. Each such school district is a body corporate and governed by the provisions of Title 15.1. The laws of this state do not allow for the direct funding of elementary and secondary education-providing entities other than school districts. The laws of this state do authorize, however, school boards to "contract with federal officials for the education of students in a federal school." See Section 15.1-29-10.

As first enacted in 1963, the relevant portion of the Century Code stated:

The school board may make arrangements for the education of pupils in a federal Indian school and contract with the superintendent of the Indian agency for the payment of tuition for these pupils.

1963 S.L., ch. 158, § 1.

By 1969, however, the section had been amended to state that:

The school board may make arrangements for the education of pupils in a federal school and contract with federal officials for such education. Such contracts may be in the form of tuition charges mutually agreed upon, the sharing of education operational costs and facilities, or any other type of contract which will be agreeable to the school district.

1969 S.L., ch. 177, § 1.

This language has been interpreted to refer to schools operated by the Bureau of Indian Education.

Bureau of Indian Education-Operated Schools

While the Bureau of Indian Education funds 184 elementary and secondary schools throughout the country, it directly operates only 59 of those schools. Bureau of Indian Education-operated schools have elected local Indian school boards that cooperate and consult with the affected tribes. The Secretary of the Interior is required to consult with the tribes in developing basic education standards, and the tribes are allowed to waive or revise any such standards that they believe to be ill-conceived or inappropriate, provided that they present alternative tribal standards.

Tribal Contract Schools and Tribal Grant Schools

The remaining 125 Bureau of Indian Education-funded schools fall into one of two categories--tribal contract schools or tribal grant schools. As early as the 1960s, tribes began to contract with the Secretary of the Interior to manage schools that had been operated by the Bureau of Indian Affairs. This process became formalized with the Indian Self-Determination and Education Assistance Act of 1975. Schools operated under such contractual arrangements are referred to as "tribal contract schools."

Under the Tribally Controlled School Grants Act of 1988, Congress gave tribes the authority to apply for grants in order to operate and administer schools that in the past were operated by the Bureau of Indian Affairs or schools that in the past were tribal contract schools. Under the provisions of the Tribally Controlled School Grants Act, tribes may invest their grant funds and use the earned interest and investment income for school operations, support services, and education improvement. See *A Manual*

for Chief State School Officers and State Education Agencies on American Indian and Alaska Native Tribal Sovereignty, Federal Education Programs for Tribal Students, and Tribal Education Departments (2006).

STUDY

As the committee pursues both the general study of Indian education issues and the more specific study of contractual options for state-supported educational delivery to Indian students, there will be an opportunity to examine the various school settings in which education is currently provided to Indian students in the state, the quality of education provided in such settings, the comparative costs of educational delivery, the range of administrative models, and accountability.

ATTACH:2

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE CONCURRENT RESOLUTION NO. 3004
(Legislative Council)
(Tribal and State Relations Committee)

A concurrent resolution directing the Legislative Council to study Indian education issues.

WHEREAS, the rate of population growth on the state's Indian reservations is one of the highest growth rates in the state; and

WHEREAS, a larger percentage of Indian youth remain in the state upon graduation than do other youth; and

WHEREAS, a good quality education is essential for Indian youth to fully develop their talents and contribute to the general welfare of the state of North Dakota; and

WHEREAS, many schools in Indian country are challenged by school finance issues;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study Indian education issues; and

BE IT FURTHER RESOLVED, that the Legislative Council assign this study to an interim Education Committee or other similar interim committee for study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE CONCURRENT RESOLUTION NO. 3061
(Representatives Boucher, Boe, Delmore)

A concurrent resolution directing the Legislative Council to study educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery.

WHEREAS, elementary and secondary education can be delivered to Indian students attending schools operated within a school district structure, schools operated by the Bureau of Indian Affairs, and schools operated by tribes under contracts or grants; and

WHEREAS, regardless of the delivery system, many Indian children have educational challenges that stem from high poverty rates, isolation, and limited English proficiency; and

WHEREAS, in certain locations, issues of curriculum, teacher availability, data collection, accountability, transportation, special education, and the adequacy of school facilities are even more critical aspects of educational delivery;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study educational delivery to Indian students, ways to address the unique challenges of that effort, and the feasibility and desirability of utilizing contractual options for state-supported educational delivery; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.