Indian Schools and Community Control

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In more Indian communities today, people are demanding community control of education. This movement has substantial support. In 1968, the Special Senate Subcommittee on Indian Education, after more than two years of intensive study, recommended that the United States set as a national goal the achievement of “maximum Indian participation in the development of exemplary educational programs for (a) Federal Indian schools; (b) public schools with Indian populations; and (c) model schools to meet both social and educational goals.”

The following year, President Nixon declared, “We believe every Indian community wishing to do so should be able to control their own Indian schools.”

Approximately 200,000 Indian, Eskimo, and Aleut children now attend the nation’s public, federal, and private schools. Roughly 90 percent of these students attend public schools, 5 percent attend Federal schools operated by the Bureau of Indian Affairs ($12,000), and 5 percent attend religious or other schools.

The education of Indian children carries substantial federal financial support. In fiscal year 1970, the BIA spent almost $5,000 per pupil for its 50,000 students (40,000 boarding and 10,000 day), while the federal government provided about $2,000 for each Indian student to supplement state and local expenditures in the same public schools. This nearly doubles the nationwide average per-pupil expenditures in public schools of $85.

The purpose of this article is to discuss the legal and practical considera-


tions which face Indian communities as they begin to move toward transforming the rhetoric of "Indian control" into the reality of quality education. First, the Article presents a brief history of federal and state Indian education policies, followed by a description of the contemporary movement for community control. Next, the Article considers alternative strategies and possible guidelines for Indian community control of education. The Article concludes with a review of constitutional issues which are posed by the existence of Indian schools.

1. INDIAN EDUCATION POLICY REFORMED

It should come as no surprise that formal Indian education is termed "A National Tragedy" or "Native Genocide." For the last 200 years, the white man in the name of education has been primarily interested in changing or "civilizing" the American Indian. For 300 years, beginning in 1685 with the first mission school for Florida Indians, the various denominations of the Christian church provided most of the formal education of Native Americans. The young federal government, when confronted with skirmishes between Indian hunters and white settlers who sought to move West, adopted "civilization" as its overall Indian policy. The transformation of the Native Americans from hunters to farmers was also a change which would free millions of acres for non-Indian settlement. Education was perhaps the most important instrument through which civilization was to occur, as evidenced by the inclusion of education provisions in Indian treaties beginning in 1796 and continuing through the end of the treaty-making in 1868. Part of the consideration for these treaty promises

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7. Situated, Report, supra note 1, at 11.
8. Id., at 12.
10. Id., at 14.
11. Id., at 15.
12. Id., at 16.
13. Id., at 17.
15. Id., at 19.
16. Id., at 20.
17. Id., at 21.
18. Id., at 22.
19. Id., at 23.
20. Id., at 24.
22. Id., at 26.
23. Id., at 27.
24. Id., at 28.
25. Id., at 29.
27. Id., at 31.
28. Id., at 32.
29. Id., at 33.
30. Id., at 34.
31. Id., at 35.
32. Id., at 36.
33. Id., at 37.
34. Id., at 38.
35. Id., at 39.
36. Id., at 40.
37. Id., at 41.
38. Id., at 42.
39. Id., at 43.
40. Id., at 44.
41. Id., at 45.
42. Id., at 46.
43. Id., at 47.
44. Id., at 48.
45. Id., at 49.
46. Id., at 50.
47. Id., at 51.
48. Id., at 52.
49. Id., at 53.
50. Id., at 54.
51. Id., at 55.
52. Id., at 56.
53. Id., at 57.
54. Id., at 58.
55. Id., at 59.
56. Id., at 60.
57. Id., at 61.
58. Id., at 62.
59. Id., at 63.
60. Id., at 64.
61. Id., at 65.
62. Id., at 66.
63. Id., at 67.
64. Id., at 68.
65. Id., at 69.
66. Id., at 70.
67. Id., at 71.
68. Id., at 72.
69. Id., at 73.
70. Id., at 74.
71. Id., at 75.
72. Id., at 76.
73. Id., at 77.
74. Id., at 78.
75. Id., at 79.
76. Id., at 80.
77. Id., at 81.
78. Id., at 82.
79. Id., at 83.
80. Id., at 84.
April 1925. INDIAN SCHOOLS

of education was the policy of various Indian tribes of almost one million acres of land to the United States. Throughout the early part of the 19th century federal efforts in support of Indian education remained modest, and continued to rely heavily on the work of missionary groups. It was through the missionary societies, for example, that the government distributed its annual Indian appropriation to Indian schools in what became known as the "holy wars of civilization." For the 1850 period ending in 1859, expenditures for education among Indian tribes exceeded $250,000, of which only $149,042.34 was contributed directly by the federal government. The rest was added from Indian treaty funds. Over $1,000,000 was paid out by Indian nations themselves, and $.25 went from private benefactors.

A. Federal School System

Although religious groups continued to receive federal subsidies to operate schools for Indians until 1898, the 1860s primarily witnessed steady commitment to building reservation educational systems in the 1870s. One federal interest in enforcing treaty commitments coincided with the period in which many of the Plains tribes fought with great ferocity in the final defense of their homeland. Indian children becoming "civilized" in government institutions would not be able to join the young warriors of their tribes in battle, and parents of students in federal schools fearing possible reprisal against their children, would feel more reluctant to take up arms against the government.

In 1874, the House Committee on Indian Affairs submitted a report recommending the establishment of industrial training schools for Indian
Youth. Pointing out that more than 13,000 Indian children were entitled to education under the treaties but "less than 1,000 have received schooling, as provided," the Committee declared: "It is clear that the moral welfare and well-being of the Indians and the government, as well as the cause of civilization and humanity alike demand that these [treaty] provisions be fully carried out and enforced."

The Industrial Training Schools called for in the Committee Report would utilize abandoned army barracks and have the effect of removing Indian children from all tribal influence during the period of their education. The Committee believed its recommendations were the "true solution" to the Indian question, and that "a generation will not pass before the use of a standing army to protect our frontiers from Indian raids, depredations, barbities, and murders will no longer be required."

In the same year the Carlisle Indian School was established in Carlisle, Pennsylvania, under the direction of Captain R. H. Penn of the United States Cavalry. Carlisle was attended by Indian children from many of the western tribes, and its military format served as a model for the present federal boarding school system. Anthropologist Peter Lasch gives the following picture of Indian boarding schools:

The children usually were kept at boarding school for eight years, during which time they were not permitted to see their parents, relatives, or friends. Anything Indian — dress, language, religious practices, even outlook on life — was unconscionably prohibited. Completely educated, articulate in the English language, wearing store-bought clothes, and with their hair short and their emotionalism toned down, the boarding-school graduates were very one-sided to make their way in a White world they did not want them, or to react in a civilization to which they were now foreign.

On July 31, 1885, Congress, acting upon the recommendation of the Committee on Indian Affairs, authorized the use of vacant army posts or barracks to establish a system of normal and industrial training schools "for
Indian youth from nomadic tribes having educational treaty claims since the United States.\(^{13}\) Although the treaty system was to be based upon treaty claims of specific tribes, the practice first established at Carlisle of drawing students from many different tribes resulted in the creation of a system which operated without regard to any particular treaty. And, as the number of BIA schools increased, new facilities were constructed in addition to the present army facilities authorized by the BIA.\(^{14}\) In 1922, Congress gave the BIA board authorization to spend money for "[g]eneral support and civilization, including education.\(^{15}\)

The BIA's authority under the treaties, although never limited by treaty obligations, is not limited to the discharge of treaty commitments.\(^{16}\) After 1900, the federal system included not only boarding schools but an ever-increasing number of local day schools, including several hundred small day schools which had previously been operated by the Oklahoma tribes.\(^{17}\)

Today, the BIA school system varies dramatically among different regions and between elementary and secondary facilities. In Alaska, where most of the Native population resides in isolated villages, there are numerous small elementary day schools run by the BIA.\(^{18}\) Elementary school children are not sent to boarding school in Alaska.\(^{19}\) By contrast, most elementary school students on the Navajo reservation attend one of a relatively large reservation boarding schools.\(^{20}\) A third variant is found on the Rosebud Sioux reservation in South Dakota where the BIA maintains a dormitory, but the elementary and secondary school students attend a public school rather than a BIA facility.\(^{21}\) The present BIA boarding school program is not designed to serve all of the children who attend BIA day school.\(^{22}\) Rather, as discussed below, BIA policy is, and for many years has been, to encourage Indian students to attend state public schools wherever possible.\(^{23}\)

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\(^{14}\) Id., at 370. The 1922 Act has become the basic authority for federal activity to provide for Indian education in the boarding schools for the entire BIA school system.

\(^{15}\) HUMANG, INDIAN AFFAIRS, ALTERNATING STABILITY AND ENTERPRISE FOR THE MANAGEMENT OF INDIAN AFFAIRS, by MacKINLEY, J. Ross, 7th ed. (1990), the Paper presented at the Fourth Conference of New Mexico and Arizona Indians, or, for the common benefit, more important BIA schools after the war over the United States.

\(^{16}\) Federal Indian Law, supra note 16, 37-07-72-3.

\(^{17}\) Ibid., supra note 16, and supra note 16. On the BIA, a review of the 37 BIA elementary day schools has been completed of have attendance of less than 50 and 18 schools and exceed 500 children, altogether, representing over 1,800 children.

\(^{18}\) Ibid., supra note 16.

\(^{19}\) Id., supra note 16. The state of Arizona is one of a number of states which maintain a public school in the Bureau of Indian Education.

\(^{20}\) Ibid., supra note 16. The state of Arizona is one of a number of states which maintain a public school in the Bureau of Indian Education.

\(^{21}\) Id., supra note 16. The state of Arizona is one of a number of states which maintain a public school in the Bureau of Indian Education.

\(^{22}\) Ibid., supra note 16. The state of Arizona is one of a number of states which maintain a public school in the Bureau of Indian Education.

\(^{23}\) Ibid., supra note 16. The state of Arizona is one of a number of states which maintain a public school in the Bureau of Indian Education.
B. Federal Assistance to State Schools

Prior to the Citizenship Act of 1924,\textsuperscript{46} governmental responsibility for the education of Indians rested with the federal government. Most Indians were not citizens, and therefore did not possess the right of citizens to attend state supported public schools. Even where Indians had become citizens through treaty\textsuperscript{47} or the General Allotment Act of 1887,\textsuperscript{48} the public systems did not accept large numbers of Indian students without financial subsidies from the federal government.

The state public school systems are financed in large measure by local property taxes. Title to most Indian land, including reservations and allotments, is held in trust by the United States Government for the benefit of either the Indian tribe or the individual and is not subject to local property tax.\textsuperscript{49} Accordingly, the influx of substantial numbers of Indian children places a financial burden on the state school systems. This burden has been alleviated by a variety of federal financial assistance programs.

Federal support to induce states to accept Indian children in the public school systems began as far back as 1890.\textsuperscript{50} After 1900, the practice of paying "nonresident tuition" to state schools to educate Indian children developed rapidly.\textsuperscript{51} The most important programs to subsidize the transfer of Indian children to the state school systems have been the Johnson-O’Malley Act of 1934\textsuperscript{52} and two Impact Aid laws passed in the 1950’s.\textsuperscript{53} These Acts, which authorize financial assistance to the state schools, also play an important role in facilitating the integration of Indians into non-Indian society.


The Johnson-O’Malley Act of 1934 has been the most significant program through which the federal government has brought about the transfer

reservation schools serve primarily secondary students. Id. at 12-13. The off-reservation schools in particular have been singled out for special criticism: "Most of the 39 off-reservation boarding schools have become "dumping grounds" for Indian students with serious social and emotional problems. These problems are not understood by the school personnel, and instead of diagnosis and therapy, the schools act as custodial institutions at best, and oppressive, penal institutions at worst." Statement by Representative, supra note 1, at 1158.


37. See, e.g., The Kansas Indians, 71 U.S. (4 Wall.) 727 (1865); The New York Indians, 72 U.S. (5 Wall.) 725 (1865); Board of County Commissioners v. Schoe, 130 Fed. 655 (1906), aff’d, 218 U.S. 797 (1913).


41. Id.

of Indian children from federal to state schools. Basically, the Act authorizes the BIA to make contracts with any state for the education of Indians. From 1964 to 1969, Congress appropriated more than $1,340,000 for payments to the states under Johnson-O'Malley (JOM). In 1969, the estimated expenditure of $1,755,000 meant that public school districts received approximately $124 for every eligible Indian student. Recently, JOM appropriations have increased dramatically—from $1,755,000 in 1969 to $24,671,000 in 1972.

Under existing regulations, the JOM program is administered "to accommodate unique financial needs of school districts related to the presence of large blocks of nonreservable Indian-owned property in the district." The result is that those school districts have been able to serve Indian students from the reservations without placing an unreasonable burden on school budgets.

2. Impact aid.

In recent years, an even more substantial federal subsidy to public schools has been provided through the two "Impact Aid" laws, Public Law 88-815 and Public Law 89-877. Enacted in 1964 to assist public school districts burdened by the impact of federal installations (primarily military bases), these statutes are applicable to districts with large Indian populations living on tax-exempt land. Public Law 88-815, known as the School Facilities Construction Act, authorizes "need aid" grants for the construction of public schools attended by large numbers of Indians where the immunity of Indian land from taxation impairs the ability of the public

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school districts to finance necessary construction.\(^3\) In the 1960s, funding under Public Law 81-344 was generous. For example, during the 10-year period from 1959 to 1969 (under all sections of the Act), Arizona received $41 million, New Mexico $27 million, and Montana $5 million.\(^4\)

During the last decade, appropriations under Public Law 81-344 have decreased dramatically, and with funds as have been appropriated have been earmarked for districts (section 17) or for temporary federal activities (section 9). There have been almost no new school construction funds available to states Indians. In fiscal years 1968, 1969, and 1970, not a single section 17 construction project was funded.\(^5\) This unavailability of construction funds has necessarily slowed down the transfer of Indian children from federal to state schools.

Public Law 81-345, known as the Federally Impacted Areas Act, provides public school districts with funds for general operating expenses. Money is appropriated "in lieu of taxes" from non-Indian federal property. Unlike Public Law 81-344, the congressional appropriations for Public Law 81-345 have been generous, reaching between 20 and 25 percent of the total authorization.\(^6\) In several school districts located largely or entirely on Indian reservations, Public Law 81-345 funds provide the major portion of operating revenue.\(^7\) In fiscal year 1970, appropriations under Public Law 81-345 relating to Indian land totaled $6,397,000, thus making it the single largest program of federal support for Indian education in the public schools.\(^8\)

There is an apparent duplication between Public Law 81-344 and the Johnson-O'Malley program, for both provide funds to public school districts to meet financial needs caused by the presence of tax-exempt land. When Public Law 81-344 funds became available in 1968, JOM regulations were amended to require that districts eligible for Public Law 81-344 must use JOM funds to meet educational problems "under extraordinary or exceptional circumstances."\(^9\) Thus Public Law 81-344 funds were limited to new construction.


\(^{4}\) Id. at 16-18. (1965-1967). The present funding may be viewed in part as the covered boom period upon the public schools by the sharing of Indian revenues of Indian land in some public school beginning in the early 1960s. 46-59 million and continuing until 1970.

\(^{5}\) Id. supra at 23, 24, 25 (1971). This is said to suggest that the federal government is involved in the area work. Federal school policy is the one to construct and continue its own public schools, which are now included in Section 17, as these are general purpose and supplemental funds.


\(^{7}\) Id. supra note 3, \(\S\) 33-50. (1971). Although the purpose of the legislation is to get them out, both the FEMA and a federal school program as has been undertaken for the purpose to aid in the analysis of enrollment in integrated school. Moreover, since the Indian-Allies projects, many have also benefited from Public Law 81-345 to meet the usual costs of JOM districts, thereby funding construction.
and operating revenue "in ten of years," while JOM funds are devoted to special programs for Indians.

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3. Termination.

The development of the national Indian education policy is inextricably related to overall federal Indian policy. The civilizing policy designed to bring about the assimilation of Indians into white society has been discussed above. Through the treaties, and because Indians were not state citizens, there developed a special relationship between Indians and the federal government which, according to Chief Justice John Marshall, "precludes that of a ward to his guardian." The treaties, the judicially evolved theory of guardianship, and the constitutional directive of Art. 1, § 8, to regulate commerce with Indian tribes, have provided the sources of power for Congress to pass a series of laws for the special benefit of Indians and establish the Bureau of Indian Affairs to carry out these programs.

After World War II both the executive and legislative branches of government sought to "terminate" the special relationship between Indians and the federal government, and to promote the full integration of Indians into the mainstream of society. Termination contemplated the division of tribal assets among members of the tribe, the withdrawal of BIA and Pub. Health service, and the implementation of a program to encourage Indians to relocate from reservations to urban areas where they would be trained to fill available jobs in the cities. The termination philosophy was articulated in House Concurrent Resolution 81 of the Eighty-sixth Congress which expressed the congressional desire to end the status of Indians "as wards of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship." Specific laws terminated the existence of the Menominee tribe of Wisconsin, the Kiowa tribe of Oklahoma, four Paint bands in Utah, the Ute and Osage Indians of Utah, several missions in California, and the Alabama and Chickasaw tribes of Texas. In 1953, Public Law 82-592 brought about the wholesale transfer of civil and criminal jurisdiction from the federal government to the states. The effect of this legislation has been to

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place power for law enforcement, administration of justice, and the treat-
ment of rules of conduct in state rather than federal or tribal govern-
ments. Termination contains the destruction of tribal government and with it
tribal culture.

The movement to transfer federal responsibility for the education of
Indians to the states gained its greatest momentum during the termination
era (the 1950s). In 1969, the BIA closed down all federal schools in Idaho,
Michigan, Washington, and Wisconsin. The following year 19 federal
boarding and day schools were closed. The Impact Aid programs provided
the necessary additional funds to enable public school districts to absorb
Indian children living on the same land into the system. The construction
funds under Public Law 85-854 were particularly crucial, for in many cases
it was necessary to erect new buildings or additions to existing buildings
which the local districts could not have financed alone.

Most Indian people opposed compulsory transfer to the public school.
For example, the leaders of the San Felipe and Santa Domingo Pueblos in
New Mexico kept all children out of school for the entire year of 1968, rather
than send them to public school. Only after negotiation of an agreement
between the Pueblos, the public school district, and the BIA, guaranteeing
Indian children rights to an education equal to the best in the state did the
Santa Domingo and San Felipe Pueblos permit their children to attend
public school. The all-out drive for termination ended on September 28, 1968, when
Secretary of the Interior Fred Seaton announced that no tribe would be
terminated without its consent. The shock and anguish felt by Indian
people during the 1950s continues to play a key role in the Indian's assess-
ment of any new proposal or policy. Writing in 1969, V.J. DeLongis asserted
that "termination is the single most important problem of the American
Indian people at the present time." The fear of termination continues as a
serious issue because of the tremendous economic and social pressures
which are in fact pushing Indian people into the mainstream of society. In
order to overcome the extreme poverty which confronts most Indian tribes,
it is necessary to undertake economic development projects. To succeed,
Indians will have to learn the white man's methods of doing business and be
able to deal comfortably with non-Indians. The acquisition of a quality
education is rapidly becoming a necessity for Indian people. But, if Indian

176. For example, as a result of P.L. 113, Navajo agency building authorities may now apply to
reservation Indians.

180. Interview with Fred Seaton, former Commissioner of Indian Affairs, in Santa Fe, New Mexico, March

181. V. DeLongis, supra note 163, at 74.
people succeed in their economic development plans, if they acquire decent educations, and if they are able to take care of their own affairs, then there will be no need for the government. Indeed, a more harmonious relationship with the federal government and some form of federal assistance will be desirable. By contrast, if Indian people fail in these efforts to become self-sufficient, then it will be necessary for the government to continue special programs for the benefit of Indian people. The dichotomy is real. Most tribes today are committed to economic development but there remains the lingering fear that the federal government will cut off support before Indian tribes or communities have reached a secure position of self-sufficiency. This fear is pervasive and cannot be ignored in attempting to understand contemporary Indian issues.

The Kennedy, Johnson and Nixon administrations have regulated the policy of forced termination. In education, however, the policy of transferring responsibility from the federal government to the states has continued, and the percentage of Indian children in state public schools increased yearly.

C. Legal Obligation to Provide Educational Services

In reviewing Indian education policy, reference must be made to the legal relation between the Indians and the state and federal governments. Who has the legal responsibility for providing educational services to Indians, and how is this responsibility reflected in policy?

1. Federal Obligation.

Generally, the federal government has no legal obligation to provide educational services for Indian children. The Congress has authorized the Bureau of Indian Affairs to provide educational services and has regularly appropriated funds for that purpose, but no statute requires the continuation of educational programs. The BIA, which operates some 200 schools for Indians, could probably close them all next year. Federal policy reflecting this legal relation was set forth recently by a BIA spokesman:

"The federal government claims the position that legal responsibility for Indian education rests with the States... While public schools are not accessible because of geographical location, remunerable status of Indian lands, or for other reasons, (the Indian) Government maintains its responsibility to continue to meet the educational needs of Indian children until such time as the States are able to assume full educational responsibility for all of their children."

48. See e.g., President's Message, supra note 47.


The United States did agree in many cases to provide teachers and other educational services. In some instances the obligation is for a limited number of years (long since past); in others, the duration is to be determined by the President, and, in a few, there is no period or time specified. Even if the treaty promises were legally enforceable, it is not at all clear that an Indian tribe could obtain effective relief. Most of the treaties do not specify how the government shall discharge its obligations, and the government in Court instances can argue that its programs of financial assistance to public schools are sufficient to discharge whatever obligation remains. Several of the more specific treaty provisions, moreover, obligate the government to provide services, such as millers or blacksmiths, which may not be appropriate for contemporary needs.

Some treaty education provisions, however, may still remain valid. One successful instance of educational treaty enforcement occurred when the Mesquakie Indians of Tama, Iowa, relying upon a treaty brought suit in federal district court in 1960 to enjoin the BIA from closing the day school in the Indian settlement. After the plaintiffs secured a preliminary injunction, the Indians and the BIA reached an agreement and the case never went to trial.

Even though there may be no specifically enforceable federal obligation to provide educational services, there is a strong moral duty derived from the history of the federal government's dealings with the Indians and the general guardianship or quasi relation assumed by the courts. The classic statement of the general federal obligation is found in United States v. Kagama, in which the Court upheld congressional authority to vest federal rather than state courts with jurisdiction over cases involving major conflicts between Indians occurring on Indian reservations. The Court explained:

These Indian tribes are the wards of the nation. They are a community dependent on the United States. . . . Because of the local and feeling of the people of the State where they are located and their present condition, from their very weakness and helplessness, arising largely from their course of dealing by the Federal Government with them, and the treaties by which it has been promised, these cases the duty of proceeding, and seek in the power, to

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94. See e.g., Treaty with the Chippewa Indians, Sept. 24, 1837, 9 Stat. 941.
95. See e.g., Treaty with the Cheyennes, Aug. 11, 1851, 9 Stat. 941.
96. See e.g., Treaty with the Choctaw and Chickasaw, Oct. 6, 1832, 7 Stat. 586 (as long as they remain a nation).
98. See Treaty with the Navajo Indians, June 1, 1868, 15 Stat. 402, 405 (one of the last to be made).
100. Id. at 881 (emphasis in original), noted and approved in Tulee v. Washington, 315 U.S.
The precise nature of the "wardship" relation has never been defined by the Congress or the Court. Arguably, the "duty of protection" mentioned in Article VI may give rise to a legally enforceable federal obligation to assure that all children are placed in educational opportunities by either the state or federal government. It seems clear that the wardship doctrine is valid today. Thus President Nixon, summing up his administration's Indian policy, stated: "[W]e have turned from the question of whether the Federal government has a responsibility to Indians to the question of how that responsibility can best be fulfilled."

Now education policy reflects a wardship or trust responsibility for only a limited class of Indian people. Enrollment in federal day schools is limited to children of at least one-fourth Indian blood who reside on Indian land under the jurisdiction of the BIA. Approximately 50 percent of these students enter first grade with little or no English language facility, and are ill-equipped to conduct a foreign language and a foreign culture in the public schools.

Enrollment in federal boarding schools is limited to children who are eligible to attend day school when there are no other appropriate school facilities available, or when the children come from broken or unsuitable homes. In practice, the boarding schools serve a large number of orphans, children from non-English-speaking families, the academically retarded, dropouts from public schools, or children having special problems which the public schools are not equipped to meet. The BIA appears to be converting its boarding schools to specialized institutions designed to deal with highly specialized needs of Indian children. Although most boarding schools still offer a general educational program, the boarding school at Santa Fe, New Mexico, serves academically retarded Indian children from throughout the nation, the boarding school at Pine Ridge, South Dakota, serves primarily children with social problems, and the current boarding school at Albuquerque, New Mexico, provides vocational education. Coincident with the increasing specialization of federal schools, basic education
programs for Indian children are provided by the states in an ever increasing extent.


State government, unlike the federal government, do have an obligation to provide public education for Indians. The Supreme Court has ruled emphatically that "[s]uch an exemption, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

Indian children who reside on remote reservations not now served by public schools have a constitutional right to education from the state. Under the equal protection clause of the fourteenth amendment, state action which discriminates between two classes of people on the basis of race is subject to strict scrutiny by the courts and will be upheld only if necessary to promote a compelling state interest." Indians are a distinct racial group and are thus able to trigger this rigorous constitutional test.

No state could conscientiously be "compelling an interest" in denying Indian access to its public school system. In the remote areas of the Navajo Reservation or the sections of Alaska there are no state schools. Alaska natives need not be sent to federal boarding schools in Oklahoma or Oregon and Navajos need not be hauled 400 miles to the Intermountain School in Utah. Indian people might successfully bring suit to compel the state to provide public schools. The courts have long held that the exclusion based on the availability of federal Indian schools cannot be justified under either federal or state constitutions. Nor could such a rule be condemned in the name of education. In Piper v. Big Pan School District the Supreme Court of California, with a tacit slap at the quality of education provided by the federal schools, flatly rejected the contention that the availability of federal schools was a fact which justified the exclusion of Indians from California public schools:

The public school system of this state is a product of the combined thought of the brightest elements of this and adjacent states. The entire system is practical and efficient... Each grade is preparatory to a higher grade and, indeed, affords an entrance into schools of technology, agriculture, normal schools, and

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2. Id., Scott v. Board of Education, 340 U.S. 207, 211 (1950). In other words, if the state has undertaken to provide education, it must make it available to all on equal terms.
3. See, e.g., Washington v. Appelo, 323 U.S. 294, 299 (1945); Mariner State School v. Redmond, 369 U.S. 151, 155 (1962). In these cases, the Supreme Court held that the federal government's provision of education did not justify the state's exclusion of Indians from state schools.
4. See, e.g., Arizona v. Maricopa County, 422 U.S. 259, 286 (1975); Pico v. Board of Education, 405 U.S. 504, 515 (1972); see also, supra note 1, supra note 3.
5. See, e.g., Cipollone v. Episcopalian School, 475 U.S. 584 (1986). In these cases, the Supreme Court held that the federal government's provision of education did not justify the state's exclusion of Indians from state schools.
the University of California. In other words, the elementary schools are doorways opening into a number of scientific, social, and the like, fields of knowledge.

D. Need for Increased Indian Control

"The inadequacy of the present system of formal Indian education in both public and federal schools is suggested by the following statistics compiled by the Senate Subcommittee: (1) dropout rates for Indians are twice the national average; (2) more than 20 percent of Indian men have less than 5 years of schooling; (3) among Navajo Indians, nearly a third of the entire tribe is functionally illiterate in English, and (4) only 18 percent of the students in federal Indian schools go on to college (the national average is 71 percent)."

A review of the testimony of Indian leaders in hearings held by the Senate Subcommittee and by other congressional committees reveals a strong consensus that the single most important reason for this deplorable condition in both public and federal schools has been the exclusion of Indian parents and community members from participation in, and influence over, the kind of education which their children receive. Most Indian children are taught by persons from a foreign culture with foreign values who speak a foreign language. Other factors are also operating to make many Indian children unemployable in white schools. These factors include the historical fact that Indian people have been treated by non-Indians as inferior, that non-Indians have usurped Indian lands, and that non-Indians control all important private and public organizations.

After almost 100 years of a federal "civilization" policy, one-half to two-thirds of Indian children enter school with little or no skill in the English language, and only a handful of teachers and administrators speak Indian languages. Even where language itself is not a barrier, very few federal or public school teachers fully understand and share the values of their Indian students. At school, the curricula, textbooks, and educational philosophy are designed to instill values such as competitiveness and individualism.
school self-aggrandizement which are alien to Native American culture.** In short, the present educational system is simply not equipped to cope with the cultural and linguistic disparities presented by Indian residents.

Today there is a widely growing awareness in Indian communities that a bilingual/bicultural education built upon Indian values and Indian traditions presents a viable alternative to present forms of instruction. There is an increasing reason why education must take place in a foreign language and instill foreign values. Indian parents, however, must play an active role in shaping the schools if they are to become more relevant to the needs of Indian children. Fortunately, the importance of education is becoming increasingly apparent to Indian people eager to escape poverty by helping to form the force of skilled and professional workers in the economic development of their reservations. In this regard, Indian parents and community members are taking a new look at the educational institutions which serve their children.

The call for "Indian community control of Indian education" has struck a responsive chord among Indian communities. Reports of the exciting experiment at the Rough Rock Demonstration School in Arizona contrast sharply with the blanket condemnation of existing public and federal programs, and are now leading many Indian communities to adopt new approaches to education.