

## II. THE RENAISSANCE OF INDIAN EDUCATION

The movement for community control of Indian education is a reaction to the coercive assimilation through education which was imposed upon Indian communities. Indians, like other groups in the nation, are demanding that education be relevant to their needs, their culture, and their language.

This Section focuses attention on Indian control in the federal and state systems which provide education for 95 percent of Indian children. Examples of Indian community control within the federal system include the Rough Rock, Ramah, Busby, and Chemawa Schools; models of Indian control within state public school systems are represented by Rocky Boy and Hoonah City. In some communities, control of the entire school system may not be feasible or desirable. Indian control of less than an entire school system may be achieved through the administration of Johnson-O'Malley contracts or through parent advisory committees under Title I of the Elementary and Secondary Education Act of 1965,<sup>97</sup> JOM, or the new Indian Education Act of 1972.<sup>98</sup>

---

97. SUBCOMM. REPORT, *supra* note 1, at 27, 53, 101; see R. HANIGHURST, *supra* note 1, at 30-31.

98. See text accompanying notes 133-39 *infra*.

99. Pub. L. No. 92-318, §§ 401-53, 86 Stat. 334-45, amending 20 U.S.C. §§ 236, 242. See text accompanying notes 140-43 *infra*.

At the outset, it is necessary to note that "Indian control" and "community control" are not always identical. For example, the Navajo Indian Reservation, spanning parts of Arizona, New Mexico, and Utah, with an area roughly equivalent to that of West Virginia, encompasses several distinct communities. The Reservation is governed by an elected tribal council, but the acts of the tribal council, or the tribal officers, may not always be in harmony with the wishes of a particular community. This, of course, is simply an incident of representative government. On some of the smallest reservations, the tribal council consists essentially of all the adults in the village, and, for all practical purposes the council is the community. Inter-tribal, regional, and national organizations each play important roles in the contemporary Indian education scene, but the focus here is on the individual community.

### A. Federal Schools

#### 1. *Rough Rock Demonstration School.*

The oldest and perhaps best known of the new Indian schools is the Rough Rock Demonstration School. Located near the geographical center of the Navajo Reservation in Arizona,<sup>100</sup> Rough Rock is supported by funds from the BIA and the Office of Economic Opportunity, and by private grants. Founded in 1966 as a private, nonprofit corporation by three Navajo educators with assistance and encouragement from OEO and BIA, the school emphasizes Navajo bilingual education, cultural identification, school-community relations, adult education, and control of policy decisions by the local all-Navajo school board. The Rough Rock School started with a new \$3,000,000 facility turned over by the BIA together with \$307,000 of BIA funds which the Bureau would have spent to operate the school. In addition, OEO granted \$329,000 in 1966 for intensive experimentation with innovative programs. Perhaps most important, Rough Rock did not inherit an entrenched bureaucracy, instead it was free to recruit a fresh staff of interested and dedicated persons — both Navajo and Anglo. By all accounts, the Rough Rock Demonstration is a great success: students are eager to come to school and stay there; the teachers and administrators are enthusiastic.<sup>101</sup>

Without denigrating the project at Rough Rock and the enthusiastic participation by community people in the school, it is necessary to point out that Rough Rock has flourished under unique conditions. First, the demonstration was conceived not by members of the Rough Rock community but

100. See generally B. JOHNSON, *NAVAJO EDUCATION AT ROUGH ROCK (1968)*; ROSSSEL, *An Overview of the Rough Rock Demonstration School*, 7 J. AM. INDIAN EDUC., May 1968, at 2.

101. See, e.g., Dr. Karl Menninger *Reflects on Rough Rock Demonstration School*, 7 J. AM. INDIAN EDUC., May 1968, at 22; Interview with Anita B. Pfeiffer, former Principal, Rough Rock Elementary Demonstration School, in Cambridge, Mass., May 15, 1972.

by outsiders, both Navajo and Anglo. In addition, it has received generous financial support from many sources. Even more important, the school has attracted extraordinarily talented personnel and consultants, both Navajo and Anglo, from outside the community.<sup>102</sup> Moreover, the school is maintained as somewhat of a showcase for touring bureaucrats, educators, and journalists. Indeed, in its first 22 months of operation, this remote boarding school serving 317 children attracted 15,000 visitors!<sup>103</sup>

The Rough Rock School has shown that an educational experience which involves the entire community and which incorporates the positive elements of Indian life and culture can succeed with substantial outside support. Because Rough Rock is a "demonstration," it is unlikely that the BIA, OEO, and other agencies will commit equivalent resources to many other communities. Accordingly, while many of the educational theories developed at Rough Rock can be adapted for use in other types of schools, those who wish to emulate Rough Rock must carefully assess the extent to which necessary financial and human resources will be available.

## 2. Ramah Navajo High School.

The second of the modern Indian-controlled schools was established at the Ramah Navajo community in New Mexico in 1969. Ramah High School had been operated as part of the public school system of the Gallup-McKinley school district until 1968, when the county school board closed the school as an economy measure.<sup>104</sup> Ramah Navajos were left with the choice of attending either distant federal boarding schools or the consolidated high school 20 to 30 miles away. The latter alternative became unfeasible when the Gallup-McKinley school district decided that it would be unable to provide transportation for Indian children. The subsequent failure of a suit which sought to reopen the Ramah High School<sup>105</sup> left Ramah citizens with the prospect of sending their children to the distant federal boarding schools.<sup>106</sup> At this point, some members of the community, with the assistance of legal services attorneys, decided to establish their own high school.

In February 1970, the community elected and incorporated a private school board which, with the aid of a small interim grant from the Anne Maytag Shaker Foundation of New York and additional legal assistance from the Robert F. Kennedy Memorial, secured a commitment from the Commissioner of Indian Affairs to provide the school board with funds

102. For example, Dr. Robert Bergman, a nationally famous psychiatrist, flies to Rough Rock regularly to work on a project with traditional Navajo medicine men.

103. Roessel, *supra* note 100, at 11.

104. *Community Control*, 7 *INEQUALITY IN EDUC.* 8, 10 (1971).

105. *Joss v. School Bd.*, No. 12913-Cor. (12th Judicial Dist., N.M. 1968).

106. Indian children residing on federal trust land are eligible to attend federal boarding schools when there are no other appropriate school facilities available to them. 25 C.F.R. § 31.1(a) (1972).

equivalent to what it would have cost the BIA to educate Ramah students in federal boarding schools. The \$368,068 which was provided by this formula was enough to allow the community to operate a private school for grades 7 to 12.<sup>107</sup>

The Ramah contract formula, based on the sum which the BIA would have spent to educate the Indian children in federal schools, could easily be applied to other Indian communities. There are several built-in limitations, however, which require careful consideration. First, since the formula does not include money for construction, or even renovation, there must be an adequate physical plant available at a reasonable cost.<sup>108</sup> Second, the funding level does not allow for the development of new, experimental, or innovative programs, although the community is free to seek outside funding to supplement the basic budget. Finally, under present BIA regulations not all Indian children are entitled to attend federal schools or, presumably, to receive funds under the Ramah formula. To attend a BIA day school, a child must be of at least one-fourth Indian blood and reside on an Indian reservation or allotment.<sup>109</sup> To attend boarding school, it is further required that no other appropriate school facilities be available or the child must come from a broken or unsuitable home.<sup>110</sup> The Secretary of the Interior has some discretion to waive these requirements,<sup>111</sup> but unless Congress or the BIA is prepared to modify its policy of looking to the states to provide for educational services,<sup>112</sup> there will be many Indian communities ineligible to adopt the Ramah plan.

### 3. *Busby School.*

The Busby School on the Northern Cheyenne Reservation in Montana was, until recently, a traditional BIA boarding and day school serving 98 boarders and 223 elementary and secondary day students.<sup>113</sup> In its more than 50 years of existence, no graduate of Busby was known to have completed college. Consultants to the Senate Subcommittee reported to Senator Edward M. Kennedy that "[t]he Busby School, both day and boarding students, seems to be operating as a custodial institution."<sup>114</sup> Further, the school was reputed to have an unusually high suicide attempt rate.<sup>115</sup>

107. See *Community Control*, *supra* note 104, at 10-13.

108. The facilities at Ramah are in poor condition, and this poses a serious problem.

109. 25 C.F.R. § 31.1(b) (1972).

110. *Id.* at § 31.1(a).

111. "[W]here permitted by law and . . . in the best interest of the Indians." *Id.* § 1.2.

112. See text accompanying notes 70-71 *supra*.

113. *STATISTICS*, *supra* note 4, at 13.

114. Letter from Arthur L. MacDonald, Ph.D., and William D. Bliss, Ph.D., to Edward M. Kennedy, Jan. 7, 1969, in SENATE COMM. ON LABOR AND PUBLIC WELFARE, *THE EDUCATION OF AMERICAN INDIANS: A COMPENDIUM OF FEDERAL BOARDING SCHOOL EVALUATIONS 284* (1969).

115. *OUR BROTHER'S KEEPER: THE INDIAN IN WHITE AMERICA* 40 (E. Cahn ed. 1970) [hereinafter cited as *OUR BROTHER'S KEEPER*].

The initial step in the movement for local control at Busby was to attempt to bridge the barriers between the community and the school. This effort was aided by the parent participation requirements of Title I, and a "Parental Involvement Program in Education" project funded by the Donner Foundation of New York. Gradually a consensus formed among the community that it, rather than the BIA, should operate the Busby School. The BIA, in turn, seemed eager to relinquish control of the school.<sup>116</sup> In July 1972, an elected Busby School Board assumed control of the school under a \$795,000 contract.

The arrangement for Indian community control of Busby differs from the Rough Rock and Ramah experiences in several respects. First, unlike Rough Rock and Ramah, where the local communities formed private corporations to deal directly with the BIA, the parties to the Busby contract are the BIA and the Northern Cheyenne Tribal Council. Although relations between the Tribal Council and the community are excellent at present, the possibility of future difficulties should not be ignored. The Northern Cheyenne Reservation encompasses several other communities, and the Council may not always reflect the interests of the Busby community alone.

A second major difference is that the Busby School inherited an existing staff, whose members retained their civil service status.<sup>117</sup> In some ways the community was limited in this regard, for many of the nonprofessional staff are tribal members whose desire to retain civil service benefits was stated clearly. In addition, the non-Indian teachers and administrators could have fomented further bad feeling. The Busby School, because of its inherited staff, may move more slowly in the direction of educational reform, a style which seems to suit the relatively conservative Busby community. Stability is the great advantage to the Busby model. As the school board members begin to assume their responsibilities, they may be aided by experienced personnel in coping with any crises which might arise. New staff members can be brought in gradually as many of the existing staff members either retire or transfer.

#### 4. *Chemawa Indian School.*

During the last three years the BIA has responded to the Indian movement for control of education by establishing parent "Advisory School Boards" for each of the federal schools. While the establishment of a recognized board which enables parents to visit the school is itself a major innovation, so far the advisory boards have not had a major impact. In the

116. Officials from the BIA agency on the reservation and the Area Office in Billings, Montana, suggested that the school become part of the public school system, but the community preferred to operate the school with funds obtained through contract with the BIA. Interview with Ted Rising-sun, Chairman of Busby School Board, in Busby, Mont., Nov. 22, 1971.

117. New staff members will become tribal employees.

case of the off-reservation boarding schools, the problem of distance makes it difficult for the board to meet more than two or three times a year.

The Chemawa Indian School near Salem, Oregon, has developed a procedure which may help overcome the barrier of physical distance between parents and the school. Chemawa serves 859 students from Alaska, Montana, Idaho, Washington and Oregon. In the fall of 1971, the BIA entered into a \$25,000 contract with the Advisory School Board which enabled the Board to hire its own Executive Secretary to act as a full-time liaison between the Board and the school. The Executive Secretary is given office space at the school, and also spends considerable time traveling to meet with Board members in their home areas. These procedures are based on the hope that communication will be increased in two ways: the Executive Secretary disseminates news from the school; and he also acts as the advocate for the Advisory Board at school in the absence of Board members.<sup>118</sup>

BIA advisory school boards may make suggestions and recommendations, and, as a practical matter, have the power to remove the school superintendent.<sup>119</sup> Aside from this ultimate power, however, the advisory boards cannot be said to have meaningful "control." While it does not play a decisive role in determining curriculum, selecting personnel or evaluating academic standards, the Chemawa Board does set out general guidelines for the Superintendent to follow, and Board members, selected to represent different geographical areas, act as ombudsmen for the parents and students from their home areas.

The cost of the Advisory School Board with its Executive Secretary is substantial, but if board members and the Executive Secretary are conscientious and competent, the benefits to the overall school program will easily justify the cost. The Chemawa model seems well adapted to other BIA schools. A board could surely be more effective where the distance between the parents and school can be measured in tens of miles rather than thousands.

### B. Public Schools

Many Indian people have been reluctant to exercise their right to vote for members of public school boards because of fear that it will lead to the termination of their special status as wards of the United States and open the way to state taxation of their land.<sup>120</sup> As more Indian children attend

118. Telephone interview with Albert Ouchi, Superintendent, Chemawa Indian School, June 26, 1972.

119. The BIA is sufficiently committed to the concept of respecting the requests of duly organized and recognized Indian boards or councils that it does respond when a direct, formal demand is made. This observation is based on the author's 5 years of experience as a practicing attorney dealing with the BIA in Washington, BIA Area Offices in Phoenix, Sacramento, Juneau, Aberdeen, Minneapolis, Window Rock, Billings, and Albuquerque, and with local BIA agencies in Albuquerque, Santa Fe, Parker, Ariz., Sells, Ariz., Riverside, Calif., Lame Deer, Mont., and Winnebago, Neb.

120. See text accompanying notes 161-64 *infra*.

public schools, however, their parents have seen that they must vote in order to have a significant influence over local educational policy. Predominantly Indian communities can control public school boards through the ballot box. There are 78 public school districts in the country with predominantly Indian school boards.<sup>121</sup> These elected school boards have power to hire and fire school personnel, develop curriculum (consistent with state requirements),<sup>122</sup> negotiate contracts, and organize or reorganize the manner in which the district is operated. Indian controlled boards can bring in Indian administrators, Indian teachers, and Indian personnel, and can insist upon the development of a curriculum relevant to Indian needs. Even where Indians are not in the majority, it is still possible to bring about change through coalitions with other minority groups. For many communities this is the easiest and most direct path to making public schools responsive to Indian needs.

This tactic may be most successful in small districts where the Indian community can have an excellent opportunity to influence the operation of the schools. Such is the case in Hoonah, Alaska.<sup>123</sup> In some instances, however, districts may be so large that meaningful "community control" cannot be easily exercised. The Indian controlled Gallup-McKinley district in New Mexico, for example, serves more than 7,000 Navajo and Zuñi children from communities scattered over thousands of square miles. The Navajos on the school board cannot represent any single community and, accordingly, Indian control of the school board does not necessarily assure community control.

Indian control of school boards may similarly be achieved by realigning school district boundaries to insure that large Indian communities control their own districts. This technique has succeeded in the Rocky Boy Public School District in Montana.<sup>124</sup> The principal problems inherent in this device are discussed in later sections of this Article. They include the precarious

---

121. 117 CONG. REC. 16,129 (daily ed. Oct. 8, 1971). Thirty-one of the districts are located in eastern Oklahoma, and the rest are scattered throughout the West.

122. See notes 156-69 *infra* and accompanying text.

123. See 117 CONG. REC. 16,129 (daily ed. Oct. 8, 1971). Four of five school board members in Hoonah, Alaska, are Tlingit Indians. The board, moreover, is aided by a 14-member Native Education Advisory Committee. The Hoonah School has an enrollment of 200 elementary and 120 secondary students and operates on a budget of \$600,000. The education program includes a Title I project in Tlingit culture (both language and heritage), teacher aides (most of whom are Alaska natives), Headstart, Follow-Through, and a state-funded day-care center.

124. The Rocky Boy District is roughly coterminous with the Rocky Boy Reservation. In 1959, the Reservation was incorporated into the Havre Public School District, a predominantly white community, whose center is located 30 miles from the Rocky Boy Reservation. Elementary school students continued to attend school on the Reservation but under the auspices of the Havre District. In July 1970, school district lines were redrawn, and the Rocky Boy Public School District became an independent district controlled by a five-member, all-Indian board of education. Because the district contains no taxable property, the basic support for the operation of the Rocky Boy District and school is provided by Impact Aid funds, without which the Rocky Boy District could not exist. State public school funds, Title I, and Johnson-O'Malley funds augment the Impact Aid monies, but none of these sources alone can provide a separate basis for the district's existence.

nature of a "community school" which is absolutely dependent on federal and state financial assistance,<sup>125</sup> the question of the deliberate creation of a racially imbalanced public school district,<sup>126</sup> the obstacles to the formation of new districts presented by state education codes,<sup>127</sup> and the imposition of state educational requirements upon the Indian community.<sup>128</sup>

### C. Control of Federal Programs in Public Schools

It may not be necessary to take control of a school in order to exercise substantial power over the educational program. Many of the programs of federal assistance to public schools have requirements for community participation which, if exercised, will make a difference. Often such federal funds constitute the major portion of the school budget.

#### 1. Johnson-O'Malley contracts.

The Johnson-O'Malley program is designed primarily to provide supplemental aid to meet the special educational needs of Indian children in the public schools.<sup>129</sup> To discharge this function, the BIA may contract with "any appropriate State or private corporation, agency, or institution."<sup>130</sup> Until 1971, the BIA invariably contracted with the state departments of education, but recently there has been an increasing tendency to find Indian tribal groups "appropriate." Thus, contracts have already been made with the United Tribes of South Dakota, the United Tribes of North Dakota, the All-Indian Pueblo Council, the Nebraska Inter-Tribal Development Corporation, and the Omaha Indian Tribe. The contractors have in turn chosen to subcontract with public school districts.

Through the administration of a Johnson-O'Malley program, a community can control a significant segment of the educational program in the public schools. The Omaha Tribe, for example, occupies a small reservation in Macy, Nebraska. Through a \$215,000 contract with the BIA, the tribal education committee was able to establish an Indian culture and language program in the public school. In addition, JOM funds were used to hire Indian teacher aides and to reimburse Indian parents for out-of-pocket charges imposed by the school.

There is no reason why contracting should be restricted to Indian intertribal organizations or tribal councils. The BIA, or one of the intertribal groups, could contract directly with a community Indian education committee. The committee could then contract with a public school or administer its own program.

125. See text accompanying notes 156-60 *infra*.

126. See notes 338-65 *infra* and accompanying text.

127. See notes 186-88 *infra* and accompanying text.

128. See note 166 *infra* and accompanying text.

129. See notes 44-47 & 56-57 *supra* and accompanying text.

130. 25 U.S.C. § 452 (1970).



Some of the items which can be included in a Johnson-O'Malley program are: special language classes, extracurricular travel, athletic equipment, clothing, and additional teacher aides or home-school coordinators. In addition, there are a number of important indirect benefits which may result from having Indian tribes or communities administer JOM contracts. The responsibility for administering the contract will help give some Indian people valuable experience which they would not otherwise receive. It may, moreover, provide a means by which the Indian community can learn more about the operation of the entire educational program at the school. Finally, in school districts where JOM funds constitute a substantial portion of the budget, a dissatisfied community will have the ultimate recourse of directing the funds to other areas outside the school.<sup>131</sup>

Apart from contracting to administer JOM funds, a community may play a role in influencing the JOM program by participation on a JOM parent advisory committee. Although existing JOM regulations do not require that there be a parent advisory committee to review the JOM program in each school or district, the BIA has actively encouraged the formation of these committees in almost every school district which receives JOM funds. Ordinarily, parent advisory committees for JOM programs do not have a major impact on public school education because they have no power. The BIA currently has under consideration, however, new regulations which would give parent advisory committees an effective veto over the use of JOM funds in their communities.<sup>132</sup>

## 2. Title I programs.

Title I of the Elementary and Secondary Education Act of 1965<sup>133</sup> provides funds for compensatory programs to meet the needs of educationally deprived children.<sup>134</sup> On October 14, 1971, HEW promulgated new regulations requiring parental involvement in the Title I programs.<sup>135</sup> The new regulations require each local educational agency to:

[E]stablish a council in which parents (not employed by the local educational agency) of educationally deprived children residing in attendance areas which are to be served by the project, constitute more than a simple majority, or designate for

---

131. The community could use JOM funds for a supplemental program entirely outside the school. This might include trips to historic places, an arts and crafts program, the maintenance of a community center, or educational workshops. For example, at Deer River, Minnesota, the non-Indian school board was unable to reach agreement with the local Indian advisory committee on the use of JOM funds, and ultimately it voted not to accept any further JOM funding. The Indian parents then formed their own non-profit corporation and now operate a JOM program outside the school. See Letter from Robert B. Elison, Leech Lake Legal Services, Minn., to the author, Aug. 23, 1972, on file with *Stanford Law Review*.

132. See Rosenfeld, *supra* note 44.

133. 20 U.S.C. § 241(a) (m) (1970).

134. See Yonof, *supra* note 44, at 27-29.

135. 45 C.F.R. § 116.17(a) (1972).

that purpose an existing organized group in which such parents will constitute more than a simple majority . . . .<sup>136</sup>

Without giving the parents' council outright control of the Title I program, the regulations allow a well-organized parents' group to provide substantial input into school decisionmaking. There must be "adequate procedures to insure prompt response" to suggestions from the parents' council,<sup>137</sup> and the parents' council must have an opportunity "to submit comments to the State educational agency" on the proposed Title I program.<sup>138</sup> Thus, the parents' council will have direct contact not only with the local, but also with the state education agencies. If those agencies prove nonresponsive, a complaint can be filed with the Office of Education in Washington.<sup>139</sup>

### 3. Indian Education Act of 1972

The movement toward Indian community control of education should receive significant support from the Indian Education Act of 1972<sup>140</sup> which authorizes funds for a series of new programs in elementary, secondary, and higher education. Some of the programs will be merely supplemental to the regular school program and designed to meet the special educational needs of Indian students; others will be innovative and experimental.

The requirements for parent, community, and Indian involvement in these new programs are the most stringent ever enacted into federal law. Section 305(b), which applies to supplemental programs, provides that applicants for funds must demonstrate that the proposed project has been developed:

(i) in open consultation with parents of Indian children, teachers, and, where applicable, secondary school students, including public hearings at which such persons have had a full opportunity to understand the program for which assistance is being sought and to offer recommendations thereon, and

(ii) with the participation and approval of a committee composed of, and selected by, parents of children participating in the program for which assistance is sought, teachers, and, where applicable, secondary school students of which at least half the members shall be such parents . . . .<sup>141</sup>

136. *Id.* § 115.17(o)(2). A tribal education committee might insist that it be "designated" as the parents' council under this regulation.

137. *Id.* § 115.17(o)(2)(vii).

138. *Id.* § 115.17(o)(2)(viii).

139. The Office of Education has not been particularly aggressive in responding to complaints; however, it does investigate, and it will bring pressure on local educational agencies where there is a clear violation of law. The Title I parent participation regulations may not be effective where the parents' council is divided, or where the members have been carefully selected by the local school superintendent because of their passivity. Nevertheless, they most certainly do provide an opportunity for meaningful community involvement in school programs.

140. Pub. L. No. 92-318, §§ 401-53, 86 Stat. 334-45, amending an U.S.C. §§ 236-44, 887-88.

141. *Id.* § 411, 86 Stat. 337 (emphasis added).

Thus, the parents' committee is given a flat veto over all proposals submitted under Part A of the Act.<sup>142</sup> The parent participation requirements under Part B of the Act, providing for discretionary grants for innovative programs, are not as rigid. In the latter instance, the statute requires only that the Commissioner of Education be "satisfied . . . that there has been adequate participation by the parents of the children to be served and tribal communities in the planning and development of the project, and that there will be such a participation in the operation and evaluation of the project."<sup>143</sup> Since funds have not yet been obligated under the new Act, it is too soon to tell how the parent participation requirements of Part B will be interpreted.