

**AMERICAN INDIAN RACE AND ETHNICITY DATA: AN HISTORICAL ANALYSIS  
AND COMPARISON OF NCES AND NYS DATA FOR NYS SCHOOL DISTRICTS**

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## Acknowledgements

Many proposals have been made to us to adopt your laws, your religion, your manners and your customs. We would be better pleased with beholding the good effects of these doctrines in your own practices, than with hearing you talk about them... You say, for example, ‘Why do not the Indians till the ground and live as we do?’ May we not ask with equal propriety, ‘Why do not the white people hunt and live as we do?’

-- Principal Cherokee Chief Old Tassel, November 18, 1785

Hopewell treaty discussion with the United States.

Doing is more important than simply talking about doing. This was the substance of the statement by Cherokee Chief Old Tassel, and it relates directly to the completion of this dissertation. For years, I had talked about a doctoral degree, yet did not act for quite a while. The task itself was more daunting in reality than simply talking about it, so I was hesitant. When I came across this quote from one of my distant relatives, being a descendent of his nephew (Chief John Watts, Young Tassel), I knew that it was time to stop talking and start doing. The intellectual crossroads of American Indian education and the survival of American Indian tribal nations were just too compelling to ignore.

This doctoral dissertation has been completed through the enduring support of many people who have encouraged me and I am pleased to acknowledge those people who have shown their support for my academic growth and work in this process. I would like to thank Dr. Raymond O’Connell who as chair of my committee has provided numerous insights into the proper conduct of research, the application of theory to practice, and the support needed to push through to completion. I would also like to acknowledge Dr. Daniel Alemu, Dr. Robert Bradley,

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## **Abstract**

This research study includes both a secondary analysis of existing data that investigates the possible disparities of reported American Indian students in NYS school districts by comparing data obtained from the National Center for Educational Statistics (NCES) data base and the New York State (NYS) School Report Card and a historical review of the archival record relating to American Indian educational policy in New York State following the Regents' Native American Education policy statement in 1975. The NYS school district serves as the unit of analysis for the comparison. The standard federal American Indian race category used in both the U.S. Census and by the New York State Education Department (NYSED), serves as the common definition in the comparison, with the understanding that this definition impacted a change in the collection of data by New York State in 2010. Results from this study include both an historical review of American Indian education policy in New York State with its impact on reporting American Indian students, and a comparison of the counts of American Indian students in the federal and state data sets. A NYS undercount of American Indian students is defined as the difference in the number of American Indian students between the two data sets by district, where the NYS count is lower than the NCES. In addition, the numerical undercounts will be reported for sub-groupings of school districts based upon the difference between the two sets of data, with a determination of significant difference through a Wilcoxon Signed-Rank test. These results provide American Indian tribal leaders and educational leaders at various governmental levels with the information needed to make more informed resource and curricular decisions impacting American Indian student success, as well as the ability to have a better understanding on the impact of educational policy decisions on the American Indian student population.

Through a review of the relationship between the State and the American Indian tribal nations, this study should also serve to reawaken the American Indian community regarding

education, especially the tribal nation governments whose futures will, in many cases, be determined by the education their citizens have received. The findings show that there is a significant difference between the American Indian student counts contained in the NYS and NCES data sets, and that most of the promises of educational reform contained in the 1975 Regents policy on American Indian education have not been implemented.

The White Man does not understand the Indian for the reason that he does not understand America. He is too far removed from its formative process. The roots of the tree of his life have not yet grasped rock and soil... The man from Europe is still a foreigner and an alien. And he still hates the man who questioned his path across the continent... Tyranny, stupidity, and lack of vision have brought about the situation now alluded to as the 'Indian problem.' There is, I insist, no Indian problem as created by the Indian himself. Every problem that exists today in regard to the native population is due to the white man's cast of mind... I say... that Indians should teach Indians, that Indians should serve Indians...

Luther Standing Bear (Ota Kte)

Oglala Lakota

Carlisle Indian Industrial School graduate

(Dudley ed., 1998, pp 197-199).

*Keywords:* American Indian, assimilation, education policy, New York State, data, public schools, Board of Regents, Haudenosaunee, Iroquois, Unkechaug, Shinnecock, students

## **Chapter 1**

### **Introduction**

How different would be the sensation of a philosophic mind to reflect that instead of exterminating a part of the human race by our modes of population that we had persevered through all difficulties and at last had imparted our Knowledge of cultivating and the arts, to the Aborigines of the Country by which the source of future life and happiness had been preserved and extended. But it has been conceived to be impracticable to civilize the Indians of North America — This opinion is probably more convenient than just... (Knox, 1789).

Education is to be the medium through which the rising generation of Indians are to be brought into fraternal and harmonious relationship with their white fellow-citizens, and with them enjoy the sweets of refined homes, the delight of social intercourse, the emoluments of commerce and trade, the advantages of travel, together with the pleasures that come from literature, science, and philosophy, and the solace and stimulus afforded by a true religion... (Morgan, 1889).

Historically, schools for Native learners, including large numbers of isolated rural schools, have defined success by their ability to enable students to leave their communities either for employment or postsecondary educational opportunities far from home. For many Native learners, this particular purpose of education not only alienates the students from their homes and communities, but also causes the students to drop out of school—backstabbing the pursuit of education. Tribal governments and

Indian communities have sought to reform schools to be culturally appropriate and consequently more effective. They have also attempted to recast the mission and purposes of schools to meet their unique and distinctive social, cultural, and economic needs... (Beaulieu, 2000, p.3).

## **Overview**

The relationship between the New York State Education Department and the American Indians living on tribal lands and non-tribal lands in New York State has a rather complicated and unique history which directly impacts the current status of education policy and process. In 1940, Philip Cowen of the NYS Education Department conducted a study which praised New Deal efforts at encouraging American Indian art and cultural expression (Hauptman, 1986). Cowan's report did not advocate the movement of American Indian students to off-reservation schools. In 1944, then Bureau of Indian Affairs Director John Collier facing the problem of inadequate funds and wanting a larger federal focus on the western and southwestern states decided to divide American Indian populations into three groups based upon his view of their level of acculturation. "Among the tribes listed by Collier as acculturated peoples 'capable' of operating without the bureau were 'New York Indians'..." (Hauptman, 1986, p.11).

In 1945 and 1946, upon the urging of the NYS Education Department, noted educator Willard Beatty produced two reports on Indian schools in New York. Beatty's 1946 report gave a harsh critique of the Indian schools, and insisted that schools had "some obligation to contribute to adult assimilation of non-Indian culture patterns..." and that Indians be integrated into non-Indian schools "as quickly as possible..." (Hauptman, 1986, p.13). With Beatty's report bi-lingual and bi-cultural educational experiences which prior to this report were valued educational necessities were to be eliminated in favor of an experience of forced assimilation and acculturation. From a high of twenty-six reservation schools operated by New York State to the

present three, the State's emphasis on American Indian education has declined steadily throughout the twentieth century and there is no indication that emphasis or resources are returning to earlier levels (NYSED, 1990).

Through protests and conflicts at school districts lead by the Onondaga and Mohawk Nations from 1969 through 1971 American Indians were able to express their displeasure at "the extremely high dropout rates among Indian students, the lack of cultural enrichment programs including language instruction, and their limited voice in school district policy..." (Hauptman, 1986, p.220). Two American Indian employees at the New York State Education Department, Anna Lewis and Philip Tarbell worked to draft a new policy that, while not wholly accepted, did impact a policy statement by the Board of Regents. The Regents in 1975 issued a statement that called for an end to the assumption that American Indians "desired to become assimilated into the dominant American society..." (Hauptman, 1986, p.221). This last policy statement by the Board of Regents relating to American Indian education, now thirty-seven years old, indicated that "educational programs should accommodate specific tribal cultural differences by attempting to provide bilingual and bicultural learning environments to be offered to students at their choice and which will enable the Native American to function more effectively in a pluralistic society..." (NYSED, 1975, p.4). Being this last policy statement by the Board of Regents, this serves as the guiding policy for how the educating of American Indians occurs, or should occur, in all schools statewide, as it is not restricted to only reservation residents. The realization on the part of the Regents was the direct result of decades of activism and protest directed against educational administrators at the district and state level for attempts at "de-Indianizing them through assimilationist policies..." (Hauptman, 1986, p. 224). The fundamental question remains whether any specific policy directives, administrative instructions

or guidelines were provided to New York State school districts on what this new rejection of assimilation was to mean for their school operations or for the education provided for their American Indian students.

A critical part of formulating educational reform policy is a solid understanding of the population for whom and with whom educational reform is sought. It is critical then to understand the American Indian population as it relates to New York State school districts. Numerous researchers have discussed the inaccuracies of the census data on American Indians (Dobyns, 1984; Fost, 1991; Jobe, 2004; Passel & Berman, 1986; Snipp, 1989; Thornton, 1987; Weber, 1989).

A number of hypotheses have been presented in an attempt to understand the undercount among American Indians and Alaska Natives. The three most common explanations given for undercounting Indians are (1) high mobility patterns among the Indian population, (2) resistance because of distrust of government and fear of losing government assistance, and (3) methodological problems such as inconsistent data collection procedures and culturally biased schedules... (Lujan, 1990, p. 8).

Actions by the U.S. Census bureau (Norris et al., 2012; OMB, 1995) and additional studies (DeVoe & Darling-Churchill, 2008; Passel, 1997; Rhodes, 2005; Ronzio, 2007; Smith, 2001; Snipp 2002; Snipp, 2003; Snipp 2005; Steffey, 1997; Thornton, 2005; Wallman et al., 2000; Weber, 1989, Zuberi, 2001), have documented system improvements in collecting data, and new and more refined definitions regarding the race/ethnicity options and procedures for U.S. Census respondents. Over the past thirty years attention by the staff of the U.S. Census Bureau has resulted in improvements in not only the number of American Indian respondents, but the quality



of the data received (Lujan, 1990). Changes over the years have included a request to list the name of the principally enrolled tribe and the aggregation of population data by tribe and region. The most recent U.S. Census data gathered in 2010 forms the basis of the National Center for Educational Statistics data available on school districts in New York State.

Unfortunately, there has not been consistency between what is reported by the U.S. Census, and hence the NCES, and what is reported by New York State government, in this case collected by school districts. A report written by a New York State Education Department staff member, Dr. John R. Curley, in 1995, indicated that in the same period where the numbers of American Indian residents increased in the U.S. Census by as much as 58.3%, the number of American Indian children recorded in NYS education records actually declined (Curley, 1995, p.3). The decline of American Indian students as recorded on state records in a time when the numbers of American Indians statewide were increasing according to federal records leads to an interesting question regarding the accuracy and quality of the process used to record American Indian students by New York State. While §4113 - Chapter 16, Title VI, Article 83 of the NYS Education law requires, “[t]he commissioner of education shall cause to be taken a complete annual census of the Indian children between birth and eighteen years of age on any reservation...” it may be that the School Report Card data is meant to meet this requirement, except that in the student report card instructions there is a reference to additional reporting for American Indian students by some districts (NYS ED Law, §4113). Ironically, the latest, 33<sup>rd</sup>, edition of *School Law*, prepared by the NYS School Board Association and the New York State Bar Association, does not include any sections dealing with the Treaty or other legal obligations relating to American Indian students or their American Indian tribal governments. Indeed, there is more information available to school building leaders and school district leadership on topics

such as the Amish, dogs, milk, and metal detectors, than on American Indians (NYSSBA & NYSBA, 2010).

“Indian children in New York that receive a public education are all educated in schools run by local school districts. Furthermore, the Boards of Education in those school districts are made up almost entirely of non-Indian members and the basic curriculum and costs for educating Indian children are determined by State and local officials...” (Curley, 1995, p.1). Only small minorities of American Indians are residents on the reservations; therefore, the Commissioner's census would miss most of the American Indians in the state, including all of those in off-reservation rural areas and the entire population of urban Indians (Jones, 2002). Since §4113 does not require that the census include urban and other off-reservation residents, the data gathered under §4113 would be almost meaningless in examining the educational needs and accomplishments of American Indian students statewide, and also of little value in the examination of American Indian education nationally.

Under the United Nations *Declaration of the Rights of Indigenous People*, passed by the General Assembly on September 13, 2007, indigenous people,

have the right to self-determination...have the right to autonomy or self-government in matters relating to their internal and local affairs...have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions...have the right not to be subjected to forced assimilation...have the right to manifest, practice, develop and teach their spiritual and religious traditions...have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures...[and] right to participate in

decision-making in matters which would affect their rights... (United Nations, 2007, pp. 4-15).

The United Nations Declaration does not limit itself to only reservation resident indigenous people but includes all indigenous people. The Declaration speaks directly to the issue of education and more importantly, about the issue of education for those indigenous people living outside of their communities, when it says that UN member states have specific obligations.

Specifically in Article 14 of the Declaration,

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language. (United Nations, 2007, p.7).

The Declaration specifically prohibits the member states from “[a]ny action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities...” (United Nations, 2007, p. 5). A reservation resident-only definition of American Indian or Indian child, as exists in the current NYS Education Law, would be inconsistent with the reality of the population demographic and could be viewed as an attempt to deprive those off reservation American Indians of their integrity as a distinct people, thus in violation of United Nations Declaration.

Additionally, on December 16, 2010, President Obama announced that he would reverse the Bush administration's decision to oppose the UN Declaration, and "become the last nation to drop its opposition to the United Nations Declaration on the Rights of Indigenous Peoples..." (Richardson, 2010). Robert Coulter, who serves as the executive director of the Indian Law Resource Center, identified President Obama's policy decision as "the most significant development in international human rights law in decades... International human rights law now recognizes the rights of indigenous peoples as peoples, including rights of self-determination, property and culture..."(Richardson, 2010). It seems clear, given not only the changes in international law, but also the position that the United States' leadership is taking in relation to those changes that the current American Indian education process found in NYS Education Law and carried out in policy merits review in light of these critical international and national policy changes.

A memorandum to District Superintendents, Charter School Principals, and Nonpublic School Principals, from Alan Ray, Assistant Commissioner for Policy and Strategic Planning, dated November 10, 2009, provides guidance on the collection and reporting of race/ethnicity data for individual students (Ray, 2009). While the memorandum provides direction on how to aggregate data for reporting, it gives no definitions or specifics on what constitutes a particular race but indicates that students "should be allowed to self-identify..." (Ray, 2009, p.2). The memorandum also provides that, "Districts are strongly advised to appoint a district data coordinator to provide leadership on the collection of data..." (Ray, 2009, p.2). This two-page memorandum constitutes the first substantive guidance provided to NYS school districts relating to the collection of race/ethnicity data since 1997, and the first change in data collection methodology since 1977. This means that during the entire career of many of the state's senior

educational leadership and policy directors, there has been no substantive attention given to the collection of accurate data on American Indian students, not to mention other racial or ethnic groups.

Unlike other groups the definition of American Indian carries with it a two part test; one of racial identity, the other of cultural affiliation. Therefore, simply assuming that school district staff has the cultural and historical knowledge needed to ensure accuracy of American Indian student counts is perhaps a difficult presumption. Taking into account the information presented in the official and archival record, the material available historically, and the two data sets, this study seeks to obtain a more thorough understanding of these two data sets and to place their use inside of the complicated historical context which is American Indian – non-Indian government interactions.

### **Purpose**

This quantitative study includes both a secondary analysis of existing data that seeks to determine if there are under counts of American Indian students in New York State public school districts and an archival review that places this question within the larger historical context of the relationship between the State of New York and American Indian education since the issuing of the NYS Board of Regents' Position Paper #22 in 1975. The NYS Board of Regents, created in 1784 as a corporation to act as trustees for Columbia College and every other college and academy incorporated after that date, sits as the “oldest, continuous state education entity in America...” (NYS Board of Regents, 2012, History).

Over the course of two and a half centuries of interactions between the United States and the over five hundred American Indian tribal nations, there have been two general approaches employed by the United States to resolve the ever vexing Indian problem. The first approach has

been that of removal, either by extermination, relocation, or administrative termination. These processes have been focused on the elimination of the American Indian from the day to day working governance of the United States, turning American Indians into perhaps quaint historical anomalies, or stories in historical texts about a former people. The second approach has been that of assimilation and absorption. This process, through ever tightening blood quantum measurements for external identity validation or the use of education as a tool of assimilation have also been means employed to make the Indian problem go away by making the American Indian go away. Regardless of the approach, the unmistakable goal has been that of the down grading of indigenous sovereignty, the isolation of the American Indian tribal nations internationally, and the elimination of American Indian culture (Dudley, 1998; Taylor & Sturtevant, 1996; Trigger & Washburn, 1996). This study begins to explore the larger topic of education's role in this assimilation process and whether that role is still continuing in New York State.

Donald Sharpe, in his paper discussing validity issues in meta-analysis, outlines three major threats to validity: [1] apples and oranges, which occurs when the researcher "combine[s] ...results from studies that measured different things"; [2] file drawer, which "arises from a failure to obtain all or a representative sample of the population "; and [3] garbage in, garbage out, in which a researcher "deliberately adopt[s] a strategy that virtually all available studies be included in their ...analysis..." (Sharpe, 1997, p.882). It is critical then that the comparability of data obtained at the state and federal levels be consistent, for if it is not, the decisions based upon those data may be invalid.

There are many areas which must be clarified in order to sort out the systemic issues of the larger American Indian to non-Indian government relationship from those directly impacting

the participation of American Indians in public education in New York State. Among those areas being reviewed are the theoretical and methodological approaches to conducting a quantitative study on American Indian data, as well as the techniques for examining archival records related to educational policy and process. First, it is important to review the main bodies of research surrounding an understanding of the American Indian's relationship to American education and the development of and continuation of *being American Indian* in the face of more than two centuries of attempted assimilation and acculturation. This will require a basic understanding of the relationship between the United States, New York State, and the American Indian. Secondly, it is critical to examine the two frames of reference used in this study, those of the historical view and the dialectic view. While the historical view looks at the progression of historical events, the dialectic view is meant to explore the different points of view found between American Indians and the non-Indian governments found at the federal and state levels. These explorations will serve as the focus of the examination of the current and historical scholarship.

Through an examination of the current student counts in New York State public schools it may be possible to create sufficient cognitive dissonance to raise the issue of American Indian education in New York State to a position of greater concern. If the study demonstrates that there exists sufficient disagreement in the data and inconsistency in the policy to warrant further investigation, perhaps local educational leaders, statewide educational leaders, American Indian tribal nations, and most importantly the parents of American Indian students in public schools will take a more in depth interest into whether the education provided to American Indian students meets the current state policy and existing international law. It is important to examine the impacts and consequences of educational policy, especially on American Indians; who by

surviving hundreds of years of colonization are the subjects of one of the most consistent social experiments of all time.

### **Research Questions**

The initial research question addresses the hypothesis that there is a significant difference between the American Indian student counts published in the National Center for Education Statistics (NCES) data for 2010 and the New York State Education Department's (NYSED) Office of Information and Reporting Services 2010 Accountability and Overview Report from NYS District Report Cards. The NYS school district serves as the unit of analysis for the comparison. The null hypothesis is that there is no significant difference between the American Indian student counts by NYS and those by NCES for those data collected in 2010.

The archival research question is whether there were New York State education directives or guidance which implement the Regents 1975 policy statement regarding American Indian education, proclaiming the end of assimilation (NYS Board of Regents, 1975), or were the processes in New York State simply continued along the assimilation path, that reinstated in 1946, regardless of the new guidance in 1975, as evidenced by data collection. "The self-determination of American Indian communities has been federal Indian policy since 1975, when Congress enacted the Indian Self-Determination and Education Assistance Act, Public Law 93-638..." (Stuart, 1990, p.1).

Therefore the research questions can be summarized as follows:

1. Is there a significant difference between the American Indian student counts published in the NCES data for 2010 and the American Indian student counts in the 2010 NYS District Report Cards?



2. Are there New York State education directives or guidance which implements the Regents 1975 policy statement regarding American Indian education?

Results from this study include both a historical review of the implementation issues in the post-1975 American Indian education policy in New York State and an examination of the 2010 counts of American Indian students. These results provide educational leaders with the information needed to make more informed resource and curricular decisions impacting American Indian student success, and perhaps help urban Indian organizations and more importantly American Indian tribal nations with information needed to encourage them to make a difference in the education of American Indian students. Additionally, since education resources at the state and federal levels are often allocated by perceptions of disparity, accountability data, and/or under-representation or achievement gaps, disparity in the counts of specific ethnic groups, especially American Indians, a group with political rights independent of New York State is critical for educational leaders and educational policy makers locally, statewide, and nationally.

This study used a convenience sample based upon publicly available data on NYS School Districts for the 2010 school year. The two data sets under study are the NCES and Accountability and Overview Report from NYS District Report Cards. The study utilized matched pairs of school districts from the NYSED and NCES data sets.

### **Definitions**

Due to the nature of this research there is a need to clarify the definitions of specific terms and concepts used throughout. The term American Indian shall mean, “[a] person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community recognition...” (NCAI, 2009). The term

American Indian is a term denoting the race of an individual including those individuals, who may be of more than one race, but meet the definition of American Indian (U.S. Census, 2012). The term blood quantum refers to describing the degree or percentage of ancestry for an individual of a specific racial group, in this case American Indian tribe (Thornton, 2008). The term American Indian tribe/tribal nation shall mean, a group of American Indians forming a sovereign nation, bound together for social, political, or religious purposes, including descendants of members of these groups including those that are federally recognized by the Bureau of Indian Affairs and those recognized at the state level (US DOI, 2012, and US DOE, 2012). American Indian tribal nations may also include federations of other tribes, formed by the US government or by treaty with the US government for the purpose of being assigned to reservations. Tribal sovereignty refers to the inherent authority of American Indian tribes to govern themselves (Light and Rand, 2005).

A New York State School District includes those local educational entities created under definitions for Common School Districts, Union Free School Districts, City School Districts, Central High School Districts, and Central School Districts, contained in legislation initially passed in 1812 and in statutory amendments enacted after that date (NYS DOS, 2009). This definition does not include: Charter Schools or BOCES, if not included in the definition of school district. Finally, the term assimilation, especially assimilation used in the context of educational policy refers to the organized policy of forcing an individual or group into a different culture (Adams, 1995 and Hoxie, 1984). "Historically, assimilation was demonstrated through physical acts of actively removing the cultural marks of the students' tribe and family. More recently, assimilation takes the forms of not having any culturally relevant course material, or

requiring American Indian students to take and pass a test that is not culturally relevant to them..." (Stone, 2011, p.1).

### **Limitations and Delimitations**

With the discovery of the difference in the lists of school districts contained in the NCES and NYS data collections, the lack of a one-for-one match for each district is the largest limitation. This limitation means that there are potentially school districts with American Indian students that are not counted or are miscounted in one or the other data set. The NYS data set contains an additional twenty-nine school districts that are not included in the federal data. The fact that the unlisted districts only include twenty-seven American Indian students means that the problem is not as serious as it could have been had more American Indian students been not included in the federal data. This first limitation means that the data from the missing districts are not counted in any resulting study looking at the relationship between federal and state data. In total there are six hundred sixty-six matched pairs of school district data available for comparison. While the sets of matched pairs constituted the overwhelming majority of NYS school districts, it is a comparison of samples rather than a comparison of populations, as had originally been desired. While the desire was to conduct a study of two populations of data the lack of a consistent one-for-one match resulted in a convenience sample of 666 school districts.

Another potential limitation is less the definition of American Indian and more the method or inconsistent method through which this definition is applied and the rules applied to data aggregation. While the general definition contains a two stage test for American Indian identity that of indigenous descent and tribal/community affiliation, the NCES utilized the U.S. Census which asks for the name of the principally enrolled tribe. This component may not be a part of the NYS data collection process. The use by NCES may serve to limit or control for

individuals who may not be American Indian but who attempt to claim it on the census. The data consistency questions for this data set are the same general consistency questions which are confronted by the NCES in other data sets and by the U.S. Census Bureau generally. The research staff at NCES has substantial data quality protocols in place concerning this data. There is however concern about the way in which aggregate data is collected and categorized allowing the NCES to undercount American Indians through its data aggregation protocol. The 2008 NCES publication, *Status and Trends in the Education of American Indians and Alaskan Natives*, identifies, that the “[r]ace categories in this report exclude those persons of Hispanic ethnicity...” (NCES, 2008, p.2). In, *The Condition of Education*, the NCES identifies for 2010 that the identification of race and ethnicity are “mutually exclusive” (NCES, 2010, Note 1). Yet by 2012, the same publication states, “if respondents are classified as Hispanic, they are not categorized into racial groups...” (NCES, 2012, Note 1). This means that within its own protocol, the NCES is excluding all American Indians whom have also identified themselves as Hispanic, thus creating their own structural undercount. Since the definition of American Indian includes a stricter test, one of race and culture, than does the ethnic definition of Hispanic, which has no definitional test; it seems inconsistent to eliminate a person as American Indian in favor of a higher Hispanic count. This aggregation process is either designed to reduce the number of people being classified as American Indian, or inflate the number of people being called Hispanic. Since this is a subtle issue not clearly publicized in the data aggregation process, further investigation by all interested in accurate demographic data is warranted.

Another data quality issue relates to a potential conflict in guidance between the NYSED and the October 30, 1997 Federal Register notice relating to the *Revision to the Standards for the Classification of Federal Data on Race and Ethnicity*. While, as indicated above the NYSED

guidance both permits and encourages LEAs to identify race of a student independently, using “their own local practices and procedures...” (NYSED SIRS Dictionary, 2008, p.31); the federal guidance specifically says that the development of classification guidance “do[es] **not** tell an individual who he or she is, or specify how an individual should classify himself or herself...” (OMB, 1997, p.1).

Yet another potential issues with data quality centers on the variability in the data collection methods through which the definition of American Indian was applied. Both data sets purport to utilize the same definition, that of the United States Census, so each data element should be based upon the same criteria. Because the study does not look explicitly at the process used in each school district to determine the race/ethnicity of each student there is a lack of knowledge on the level of consistency in the application of the definition to any one individual. Additionally, because the state did not require school districts to resurvey their entire district population after the 2009 school year there may also be a lack of consistency regarding whether the definition is self-identified or externally provided. Since the school district is the unit of measurement, there should be no difference in the number of school districts in the two data sets. Given the use of the same definition of American Indian; the use of the same organizational level as the unit of measurement, and the use of data from the same year, that of 2010; even with the lack of knowledge about the actual process of determining race/ethnicity for individual students, it would be reasonable to assume that the data sets should reveal consistent data on the count of American Indian students in each NYS school district.

The census definition for American Indian contains a two stage test for American Indian identity, that of indigenous descent and tribal/community affiliation. This definition, “[a] person having origins in any of the original peoples of North and South America (including Central

America), and who maintains tribal affiliation or community recognition...” while not directly requiring enrollment in a recognized tribal nation, does imply the need to have strong connections with the larger American Indian community (NCAI, 2009). The definition actually requests for the respondent to “[p]rint the name of the enrolled or principal tribe” (U.S. Census, 2008, p.2). This kind of close connection, especially to the extent of being able to list the name of the enrolled tribe tends to place a stronger burden of association than the definitions used for any other racial or ethnic group which require no such cultural association. While the census provides this second level question, it is unknown whether New York State School districts routinely or consistently require this type of specificity regarding tribal affiliation when collecting school district data. With the exception of those districts under contract with the state for providing education to reservation residents, school districts do not produce any report identifying American Indian students by tribal nation.

The NCES utilized the U.S. Census which asks for the name of the enrolled tribe, thereby seeking to limit or control for individuals who may not be American Indian by having a connection to a current American Indian community, but who claim it on the census as a means of acknowledging bi-racial or multi-racial heritage. While there may be data consistency questions in the NCES data set of school districts, they are the same consistency questions which are confronted by the NCES in other data sets and by the U.S. Census Bureau generally. The research staff at NCES has substantial data quality protocols in place concerning this data.

The NYSED provides guidance on the definition of American Indian as it relates to Central and South Americans and in the area of two or more races in the Student Information Repository System (SIRS), however, it mentions “[t]he data used to award funding for American Indian or Alaska Native-related grants and programs is gathered through a separate application

process that includes its own data collection and reporting rules...” (NYSED, Collection and Reporting of Race/Ethnicity Data in 2010–11, p.2). It is therefore difficult to determine the scope of the limitation in data quality across the NYSED data collection system relating to the consistency of the application of the race and ethnic definitions in school supplied data. For the NYSED accountability system there is a detailed explanation of the possibility of measurement error and sampling error related to the school accountability measures surrounding a determination of Annual Measurable Objective (AMO); however there is no similar explanation concerning the accuracy of demographic data on students submitted by the district (NYSED Confidence, 2012). The guidance indicates that effective AMO is only available for an accountability group of 30 or more students (NYSED, Confidence Intervals). While all students are supposed to be accurately recorded in their school district’s data submission, it appears that the key students are those in groups of 30 or more as these relate directly to a school making annual yearly progress (AYP). This minimum threshold of 30 used for performance accountability in New York State public schools may lead to other questions relating to the accuracy of data relating to American Indians.

There is a separate process for those school districts under specific contracts to educate the American Indian reservation resident children. This is the separate application process referred to in the data reporting guidance. Since the New York State School Report Card comprises the publicly available data on the performance of all pre-kindergarten to grade twelve schools in New York State, researchers must take this data as being that which the state believes most accurately represents student populations and accountability. In all cases the data reported by the state is supposed to be consistent with the federal racial and ethnic reporting categories.

“Nothing prohibits States...from requesting more racial and ethnic information solely for State level purposes...[however]...they must collect the data for the Department using the two-part question and must use the seven categories required by this final guidance when reporting aggregate racial and ethnic data to the Department...” (USDOE, 2007, p.59269).

The independence of the various reporting entities being both state and federal make a comparison between the two possible. While each purportedly uses the same definition of American Indian, the uses of American Indian student counts by multiple parties, and the larger issues of the political and social relationship between the state and the American Indian tribal nation, make the results of these student counts interesting and applicable to larger policy questions.

The final limitation which must be addressed is that which occurs, not in the quantifiable data, but which occurs in the examination of the archival record. While there may be unknown records discovered in the future which could change the conclusions reached in this or any study, this possibility is the recognizable unknown in any historical review. The more important issue, and indeed the study limitation in dealing with an evaluation of historical actions, and the review of archival records, is the potential for bias in the selection of archival texts, in the decisions of what is important, and finally in the selection of which materials are chosen to be quoted or paraphrased. It is in the painting of the historical and policy implementation picture where one's choice of colors and background set the tone for the image that is portrayed. In studies or research which engages the topic of American Indians, especially the policy of the United States towards American Indians, there are layers of political, social, cultural, and emotional baggage that one must first recognize as clouding the facts.



Research which discusses American Indians looks first and foremost at the ongoing and aftermath of colonization. In America, the colonizer has established himself in such a position as to rewrite the history of the events and develop a cultural mythology over two hundred years which, by doctrine of discovery, manifest destiny, by divine providence, or any number of other understandings he has convinced himself that colonization and the resulting treatment of the indigenous population was justified or perhaps even predestined. The bias exists when the researcher fails to take into account the weight of this cultural baggage, or when he places too much significance on the baggage and gets lost in the injustice of colonization and its impact on people rather than the specific events or statements made at the time. Archival research, especially archival research of past policies and governmental actions, needs to examine documents and statements as historical events, outside of the emotional feelings the impacts of those documents or statements caused. Only then can the archival evidence be examined without assigning present day blame, and be used to understand the development, implementation, or incremental change in a public policy. This is the case with American Indian education policy, both at the federal and state level. Rather than simply performing research to condemn or to vindicate colonialism, the challenge is to examine the statements and activities of past political and educational leadership and use the understanding gained to perhaps help make a more humane policy in the future.

### **Significance of the Study**

In the case of measuring American Indians, the issue of race is not only one of Indian ancestry, sometimes under the term blood quantum, meaning the fractional amount of American Indian ancestry, but is also politically and culturally grounded (Lujan, 1990). Historically, other researchers examining American Indian population data have looked at undercounts (Passel &

Berman, 1986; Snipp, 1988; Thornton, 1987). What is new is the interplay between the reporting of American Indians in educational settings, the relationship to school district accountability measures, and existing federal data with which to compare the basic count.

While in 1975, the Board of Regents officially rejected the policy of assimilation as an educational goal, the findings by Dr. Curley in 1995, and the recent 2009 change to the use of equivalent race/ethnic categories mandated by the federal government prior to the 2000 U.S. Census, it is safe to say that a focus on American Indian education outlined by the Regents, especially in non-reservation areas may have taken a backseat. While undercounts of refugee populations, legal immigrant populations, and even undocumented immigrant populations have resulted in policy focus and resources, the lack of prior substantive research on possible American Indian undercounts in New York State schools has meant a gap in information relating to meeting the government-to-government obligations for teaching American Indian students. With a more accurate look at the distribution of American Indian students, perhaps the policy statement by the Board of Regents in 1975 where "educational programs ... accommodate specific tribal cultural differences" could be reviewed in a more comprehensive manner impacting American Indian students regardless of where they go to school (SED, 1975, p.4). Having a more clear view of the American Indian student population in New York State, the size and distribution of this population, as well as the districts which have significant undercounts, may lead to rethinking educational curricular and policy options regarding the teaching of American Indian history, language, and culture in New York State schools. The information available through this study may inform not only educational leadership in this state but may assist educational leaders in other eastern states with an desire to look at the situation of American Indians in their states. Finally, the study could provide the leadership of American

Indian tribal nations with information necessary to assess their public policy with respect to the focus and quality of the education their children are receiving.

## Chapter 2

### Literature Review

*Do not go gentle into that good night,  
Old age should burn and rave at close of day;  
Rage, rage against the dying of the light.*

*Though wise men at their end know dark is right,  
Because their words had forked no lightning they  
Do not go gentle into that good night.*

*Good men, the last wave by, crying how bright  
Their frail deeds might have danced in a green bay,  
Rage, rage against the dying of the light.*

*Wild men who caught and sang the sun in flight,  
And learn, too late, they grieved it on its way,  
Do not go gentle into that good night.*

*Grave men, near death, who see with blinding sight  
Blind eyes could blaze like meteors and be gay,  
Rage, rage against the dying of the light.*

*And you, my father, there on the sad height,*

*Curse, bless, me now with your fierce tears, I pray.*

*Do not go gentle into that good night.*

*Rage, rage against the dying of the light.*

– Dylan Thomas

## **Introduction**

This poem by Welsh poet Dylan Thomas, while generally being thought of as a tribute to his dying father, can also be viewed as a tribute to anyone who when facing overwhelming forces pushing in one direction simply refuses to go along gently. Such is the case with the American Indian nations and their relationship with both the loss of culture through the assimilation pressures of the last four centuries and the pressures to lose both sovereignty and land. While there are many directions this discussion of the literature could take, the goal here is to investigate and perhaps demonstrate some of the important trends in the complicated relationships between the federal government, the State of New York, the Indian nations, and education as a social institution. This review will not serve as a comprehensive review of American Indian nation history in New York State, or as an indictment of the educational process of the past two centuries.

Educationally, this review will set the stage for an examination of the historical record of actions taken after the State Board of Regents declared an end to the policy of assimilation as the centerpiece of the New York State educational philosophy. “American Indian schooling is too often cast by educational researchers and policy makers (especially non-Indians) to reflect the norms and expectations constructed by the dominant group...” (Freng, 2006, p.56). In this context it is important to see if the 1975 Regents pronouncement was the beginning of either a new era of educational experience for American Indian students in the public schools or a quiet

continuation of the century old policy as an attack on indigenous culture and community. The desire of the federal government and the State, both of which sought to reduce the power and influence of the Indian nations through the reduction of land and assimilation of American Indians into non-Indian culture, is only overshadowed by the competition between the two parties over which could succeed first and by the Indian nations desire to “not go gentle into that good night...” (Thomas, 1953). The American Indian nations have been the stalwarts of survival over the past four centuries, both accepting of change and resilient to the continuing pressures of cultural and community oblivion.

The two major approaches taken by the United States as a colonizing power with respect to the indigenous peoples of North America have been those of extermination and assimilation (Hauptman, 1995; Szasz, 1999; Washburn, 1988). The historical record has well documented the attempts and relative success of both approaches to reduce and control the population of American Indians as the new American nation expanded from the early beginnings on the east coast to first continental and then global dominance (Washburn, 1988). The American Indian nations have been reduced from the position of continental supremacy to one of relative minor importance in the global position of the United States (Lujan, 1990).

The legacy of the great nations which carried on continental trade, cultural exchange, and societal relationships for countless millennia has been reduced to approximately four million people divided up into just less than six-hundred indigenous communities (NEA, 2012). After repeated twentieth century attempts to administratively solve the *Indian problem*, the last through the implementation of the federal termination policy after World War II, American Indians individually and collectively have experienced a minor renaissance as cultures and nations (Deloria, 1988). While there is a level of sovereignty remaining in each indigenous

community especially strengthened under the federal policy of self-determination beginning in the mid-1970s, recent efforts by both the states and the federal government have tried once again to erode indigenous self-governance (Rose, 2011, p2). The discussion of surviving and sustaining indigenous sovereignty, the directions this sovereignty can take in the future, and the impact of indigenous sovereignty on the institution of education, especially in the American Indian community, will undoubtedly be a discussion point in later academic and public policy work.

The educational experiences of American Indians in relation to the United States or to individual states since the colonial times have generally been focused upon an attempt to acculturate or assimilate the American Indian into the non-Indian culture (Lomawaima, 1999; Szasz, 1999). This process has involved everything from boarding schools, to agricultural and trades education programs, to forcing children to attend schools in non-Indian communities. With the beginning of the self-determination era in federal-Indian relations, the goals and processes of forced acculturation were supposed to be over as a matter of public policy. For the first time since the balance of power in North America shifted from the indigenous people to the colonizing people, the American Indian community was supposed to have a decisive role in the institutions and techniques used to educate its children (Deyhle & Swisher, 1997).

As prominent historian Francis Paul Prucha writes in the preface to his monumental two-volumes, entitled *The Great Father: The United States Government and the American Indian*, Cries for extermination of the Indians occasionally sounded by aggressive frontiersmen and exasperated frontier commanders were rejected by United States officials responsible for Indian affairs. These officials instead sought to treat Indians honorably, even though they acted within a set of circumstances that

rested on the premise that white society would prevail. The best term for this persistent attitude is *paternalism*, a determination to do what was best for the Indians according to white norms, which translated into protectionism, subsistence of the destitute, punishment of the unruly, and eventually taking Indians by the hand and leading them along the path to white civilization and Christianity... (Prucha, 1984, p.xxviii).

Certainly any exploration of American Indian issues is complicated, not because the subject matter is inherently so, but because so much of the cultural context is all too often left unsaid. The discussion of American Indian education and the counting of American Indian students in public schools bring to the forefront issues of citizenship, sovereignty, history, public policy, and public image. Several of these issues will be the subjects of further study here, and all should be the subjects of more extensive research.

### **American Indian Identity**

Indian identity has undergone profound changes in the Twentieth Century, but will not disappear in the foreseeable future. Indianness is anchored in tribally-based metaphor and is an emergent property of a vital or “living” tribal community and indianness is a generic identity formed in the dominant American society. Although indianness may generate a new Indian identity or identities in the future, the sustaining spark of contemporary Indian communities is a tribally-based Indian identity... (Peroff, 1997, 485).

As previously identified the issues relating to accurate counts of American Indians is one that has haunted the Indian educational system, be it federal or state, for quite a long time. Stetson Kennedy, author and human rights activist provides, in his book *The Jim Crowe Guide: The Way*



*It Was*, a compelling overview of the treatment of American Indians by the United States. He indicates that the “genocidal programme likewise called for expropriating or liquidating the Indians’ culture...” (Kennedy, 1990, p.9).

The official U.S. policy, according to William Christie MacLeod in his book, *The American Indian Frontier*, became ‘merely to keep the Indian at peace pending his gradual dying off from more insidious causes than the sword or bullet’... (Kennedy, 1990, pp.11-12).

While history shows that the United States government also utilized more direct means of extermination, the belief that the American Indian was indeed vanishing was the political and public sentiment of practically the entire history of the United States. It seems that some U.S. officials just believed that the vanishing Indian was not vanishing fast enough. U.S.

Commissioner of Indian Affairs Francis Walker said in his official report of 1872 when advocating for stronger military measures against the American Indians of the plains, that;

the progress of two years or more, if not another summer, ...will... leave the ninety thousand Indians ranging between the two transcontinental lines as incapable of resisting the Government as are the Indians of New York or Massachusetts... No one certainly will rejoice more heartily than the present Commissioner when the Indians of this country cease to be in a position to dictate, in any form or degree, to the Government; when, in fact, the last hostile tribe becomes reduced to the condition of suppliants for charity. This is, indeed, the only hope of salvation for the aborigines of the continent... (Walker, 1872, p.9).

In his one concession to the American Indian, Walker says, “The people of the United States can never without dishonor refuse to respect ... That this continent was originally owned and occupied by the Indians...” (Walker, 1872, p.10).

Given this history, it is not possible to simply consider American Indians another minority group in the United States or in New York State. The centuries long unique, oftentimes inimical, relationship between the various governments establishes that American Indian tribal nations have not vanished, despite the claims to the contrary, and are indeed a proverbial thorn in the side of the United States. It is therefore equally relevant to examine the issues confronting the counting of American Indians in all setting in which they interact with the dominant government, especially in health care and other settings as well as education. Through this type of review the research process may begin to determine common themes or problems if any indeed are present.

The ability to measure a particular people is dependent upon at least four factors which will be briefly discussed: [1] the definition used by the entity measuring; [2] the definition used by the entity being measured; [3] the accurate application of the definition or definitions to the population; and [4] the skills or diligence in determining accuracy. It may seem that these factors are easily accounted for and that therefore any errors in the measurement of the American Indian population can be explained by other factors. Before making that assertion it is necessary to look at each factor, examine the complications, and perhaps see the possibilities for improvement in their application.

Obtaining a standard definition for American Indian in the United States is not as simple as one might think. America’s original inhabitants, the Native Americans, were once autonomous bands of kin with diverse cultures, languages, and traditions. They were not ethnic

groups, but rather they were independent units of people, just as France, England, and Spain were not ‘ethnicities’ of Europe but independent nations. To be part of an Indian tribe a person had to have kinship ties to that tribal community. Indians were either a part of a particular group or not (Krouse, 1999, p.75). Thus, American Indians are both not simply another ethnic group in the United States, nor are they single individuals without externalities. This complex relationship of the American Indian as individual and community member complicates not only a definition for American Indian, but also the process of measuring Indians, for to measure the individual is to measure the community.

The introduction of the issues of blood quantum has played a varying role in both non-Indian definitions of American Indian and the internalized tribal citizenship definitions. American Indian identity, or Indianness, is often expressed as a measurable or quantifiable entity. Documenting a minimum tribal blood quantum is often a requirement for official federal recognition as an American Indian, and documenting some evidence of an Indian heritage is a requirement for membership in most American Indian Tribes (Cohen, 1982 & Hagan, 1985). Because of this reliance on blood quantum as the essence of Indian identity, some researchers argue that, “Indians appear to be on a course toward irreversible absorption into the larger American society...” (Thorton, 1987). Others argue that Indianness is the quality of being a people linked to sacred places, traditions, shared history, as well as the blood ties (Holm, 1996). While still others see Indianness as the act of making a choice on census forms (Nagel, 1996). Anthropologists like James A. Clifton have advanced the idea that the Indian is a historical metaphor.

All Indian tribes perceived their land as sacred territory from which they never moved for thousands of years, and which they worshipfully personified as Mother

Earth, and upon which they lived in profound harmony; that to the Indian all creatures, all things, all thoughts, and all natural phenomena were pervasively infused with the sacred; and that, in defiance of the laws that govern cultural change everywhere else in the world, the beliefs of primeval Indians remain indelibly and irreversibly imprinted in the souls of their present-day descendants, having been passed down for endless generations unaltered by contact with the outside world, as if Native Americans alone among all the world's peoples existed utterly outside the flow of history... (Summary of Clifton, 1990 in Bordewich, 1996, pp. 210-211).

Noted scholar Vine Deloria, Jr. in looking at who has perpetuated the image of the Indian as a historical anomaly states that,

It is they who have invented and continue to invent Indians. Not willing to admit it, they then blame us for perpetuating whatever images become popular among whites. These people are among the persistent crowd of people exploiting Indians while they pretend.... to be advocating the real truth about Indians... (Deloria, 1992, p. 410).

Blood quantum continues to be a significant ethnic boundary for Native peoples today, especially in dealing with the non-Indian governmental agencies many of who tend to be fixated on the idea of a certain amount of Indian blood constitutes the *real Indians*. Even in the midst of the continuation of the blood quantum process in the federal government, definitions of blood have changed over time. While biology and heredity remain important, cultural practices, kinship ties, and community belonging also factor in into who is viewed as Indian, whether full-blood or mixed-blood (Krouse, 1999, 80). From a larger view Vine Deloria Jr. considered Indianness as

something that “captured in the restrictive terminology or limited methodologies available to academic research in the social sciences...” (Deloria, 1991, as cited by Peroff, 1997, p.486).

Measuring a person’s identity is even more a complicated factor. Sometimes a combination of opinions may arbitrarily establish Indian identity. In her discussion of racial typing of American Indians, Ann Morning says;

On one hand, recognition as American Indian depends largely on enrollment with a recognized tribe; this makes it more of a political and bureaucratic identifier than a racial one. On the other, both tribes and federal case law often equate being Indian with possessing a particular ancestral heritage, frequently measured in terms of ‘blood’ fractions or quanta. In this sense, designation as American Indian is ‘based on a totality of circumstances, including genealogy, group identification, and life style.’... (Morning, 2011, p.204).

“The National Center for Health Statistics (NCHS) currently assigns the mother’s race to a child born to a white and a Native American parent...” (Peroff, 1997, p.486). When asked the question about determining Indian identity, Malcolm Margolin, co-editor of *News From Native California* responds, “I don’t know what an Indian is.... (but).... Some people are clearly Indian, and some are clearly not...” (Fost, 1991, p.28).

The next aspect of Indian identity is the Indian tribe or Indian nation. However, even with tribal affiliation, access to governmental programs and services may often relate to living on or near a reservation or meeting some other external criteria (Rose, 1992, p.1042). While challenges to these add-ons to the definition of eligible American Indian are found, there are still those who see tribal affiliation as the only viable criteria. The Indian tribe is a synergistic community, different from other types of human groupings because the relationships are not

simply interest shared or experience, but a connection that exists at levels that are part DNA, part cultural viewpoint, and part inseparable family.

An Indian tribe is not a randomly assembled group of people. Because they have shared experiences in life, members of a tribe acquire a common body of community based metaphor that influences the way they interact with each other, with other people, and how they interact with elements of their material environment. A tribe's common body of metaphor can exist in networks of neurons in the heads of community members, sketches on a piece of paper, or in recorded oral histories. And yet, it is not the same as any of these material structures... (Peroff, 1997, p.488).

Despite numerous non-Indian attempts to define American Indians out of existence, they remain a vital and growing tribal nations and communities in a state of tension with the United States. If the state processes of assimilation continued in the decades after the official policy change, then this might reveal an interesting insight into the counts of American Indian students today. If instead, the change in policy direction at the federal level, and the state change in policy by the New York State Board of Regents did result in process changes in the relationship between American Indian students and public schools then perhaps any difference between the state and federal counts of American Indian students in 2010 might be due to other factors. This study seeks neither to investigate or criticize the current educational opportunities available for American Indian students in New York State or elsewhere, but only to determine if indeed those students are being consistently counted in the educational data presented, and whether the Regents' policy of 1975 carried with it a true change in practice away from that of assimilation.

The National Advisory Council on Indian Education, in 1976 entitled their Annual Report, *The Right to Be Indian*, indicating that the definitional issues and contradictions at the federal governmental level were complicating even the most basic issues of American Indian life.

Indian people as a 'minority ethnic group in American society need protection from the forces of assimilation whose definitions are either too broad and too vague, or by too restrictive language, definitions that would diffuse Indian identity on the one hand and would leave out a large segment of the Indian people on the other. (NACIE, 1976, p.150)

If there are significant differences between the student numbers found in the school district report cards and the National Center for Education Statistics, then we have cause to question the quality of the entire data set available through both data collection mechanisms. Once again, this study allows the American Indian to serve as the 'miner's canary' to see if the data believed to be true and accurate, and that which local, state and national educational policy, funding, and curricular decisions are based upon is actually reliable and valid (Silverman, 1991). If the counts of American Indian students in the two data sets are inconsistent, it is incumbent upon educators, policy makers, and the public to examine more closely the processes used for the collection of all demographic data for the public school students. If one cannot trust the demographic data, how reliable are the more subjective measures of achievement, college readiness, and *at-risk* designation in advising major decisions on educational policy? If there is doubt about the fundamental quality of the data being used in the development of social policy then fundamental credibility is at stake not only for the resulting policy, but for the organization which created it.

## **The Two Communities of Indians**

In the administration of the Indians every proper expedient that can be devised to gain their affections, and attach them to the interest of the Union should be adopted ...Missionaries of excellent moral character should be appointed to reside in their nation, who should be well supplied with all the implements of husbandry and the necessary stock for a farm. These men should be made the instruments to work on the indians – presents should commonly pass through their hands or by their recommendations – They should in no degree be concerned in trade, or the purchase of lands to rouse the Jealousy of the indians – They should be their friends and fathers... Such a plan although it might not fully effect the civilization of the Indians would most probably be attended with the salutary effect of attaching them to the Interest of the United States... (Knox, 1789).

The letter from Secretary of War Henry Knox to President Washington discussing the need to link American Indian tribes to the interests of the United States sets the tone for the civilization and assimilation policy which would become one of the cornerstones of United States policy. Also in this letter Knox outlines the policy of the first presidential administration toward American Indians as, “[t]he independent nations and tribes of indians ought to be considered as foreign nations, not as the subjects of any particular State...” (Knox, 1789). The relationship between the New York State Education Department and the American Indians living in tribal lands and non-tribal lands in New York State is built upon a rather complicated and unique history which directly impacts where education policy and process is currently situated. In 1940, Philip Cowen, of the NYS Education Department made a study of American Indian education in New York State in which praised New Deal efforts at encouraging American Indian



art and cultural expression. Cowan's report did not advocate the movement of American Indian students to off-reservation schools (Curley, 1995). As has been discussed earlier, the end of World War II produced a situation where funding restrictions and a shift in federal policy toward the unilateral termination of the governmental relationships lead to a change in educational policy. The Commissioner of Indian Affairs in 1944 listed the American Indians in New York as "capable' of operating without the bureau..." (Hauptman, 1986, p.11). This re-evaluation of the status of the readiness of New York Indians for full acculturation had direct implications on the educational options available to American Indian children. In 1945 and 1946, upon the urging of the New York State Education Department, noted educator Willard Beatty created two reports on Indian schools in New York. Beatty's 1946 report gave a harsh critique of the Indian schools, and insisted that schools had "some obligation to contribute to adult assimilation of non-Indian culture patterns..." and that Indians be integrated into non-Indian schools "as quickly as possible..." (Hauptman, 1986, p.13). With Beatty's report, bi-lingual and bi-cultural educational experiences which were previously valued were to be eliminated in favor of an experience of forced integration and acculturation. The state began and has since maintained a bifurcated view of American Indian children. Those residing on the reservations are one group and those not residing on the reservations are another group. Without consideration to the tribal status of the children involved, there are in New York State Education Law and practice these two groups.

To the one group, the reservation residents, is bestowed the remnant of the once commended and the ultimately largely dismantled Indian education program. NYS Education Law §4101 Duties of commissioner regarding Indian children, specifically identifies that the Commissioner of Education has the responsibility to either establish schools and maintain courses of instruction, or "contract with any school district for the education of such Indian

children” (NYS Ed Law §4101), which has been narrowed to mean only those American Indian children on reservations (NYS Ed Law §111). Strangely, it was continuing changes in budgetary priorities, rationalized by the Supreme Court case of *Brown v. The Board of Education of Topeka, Kansas* (1954) that Governor Averell Harriman used to close all but three of the state's Indian schools (Hauptman, 1986, p.14). From a high of twenty-six reservation schools operated by New York State to the present three, the State’s emphasis on American Indian education has declined steadily throughout the twentieth century, and there is no indication that emphasis or resources are returning to earlier levels (NYSED, 1990). The process of pushing American Indian children into public schools produced more distinct feedback from the Onondaga and Mohawk reservations. American Indian students were subject to "extremely high dropout rates..."and the community itself had “limited voice in school district policy...” (Hauptman, 1986, p. 220). The impact on off-reservation American Indian student attending public schools was not the subject of either study by the state or protest by the tribal nations.

To the other group, the non-reservation resident is allocated full-participation in the public school system in the state, without regard or consideration for the child’s American Indian status or citizenship. While this could be argued as treating non-reservation Indians as full citizens of the state, in reality this has resulted in an even more pressured attempt to assimilate these citizens of sovereign indigenous nations as simply just another minority in the United States, no different than the children of countless immigrants (Berry, 1969). If one is an outsider to the American Indian community, perhaps he may view this as the ultimate goal, an America full of people treated exactly the same; however for an American Indian whose tribal nation has a history extending several millennia into the past, and the treaty relationships with not only the United States but with the sovereign powers of Europe; the idea of being erased is akin to

administrative genocide (Savilla, 2008). For the state and local government, the fact that the non-reservation resident student is American Indian is regarded as only a curious anomaly of race or ethnicity, not one which requires recognition as the citizen of a sovereign indigenous nation, and the special relationship which exists by treaty between two sovereign governments (NYS DoH, 2012; NYS ED, 2012, NYS Indian Aid; NYS OCFS, 2012). It is important to examine the population counts of these all but forgotten American Indian children to determine if their existence is more than an inconvenience in the educational recordkeeping of the school district, or to see if they are counted at all. These non-reservation children, now constituting the much larger number of American Indians found in New York State, unlike their reservation resident relatives, are at least numerically the future of the American Indian population, and in particular the future of American Indian nations of which they belong (Norris, Vines & Hoeffel, 2012). The education of these American Indian children should be of paramount interest to not only the leadership of the American Indian tribal nations, but to the leadership of educational institutions at all levels.

### **Measuring the American Indian Population**

The most consistently taken measurement of the population in the United States is the U.S. Census which began in 1790. While the census has included race, it has not always included American Indians. “Historically...the U.S. legal system has been a major institution to grapple with and disseminate concepts of race. It has functioned as an authoritative arbiter of racial membership...” (Morning, 2011, p.202). Eschbach, Supple, and Snipp stated that, “[t]o the degree that racial boundaries are fluid, membership in a racial category is the outcome of a social process of identification—race is no longer a fixed attribute...” (Eschbach, Supple, & Snipp, 1999, p.35). Since the census definition of American Indian is the one most commonly

used for federal data collection purposes and by extension, many of the data collection processes at the state level, it is important to get a sense of the development and application of the definition of American Indian and its application to the census. Article I, Section 2 of the United States Constitution states,

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct... (US Archives, 1789).

One of the interesting characteristics of the census, even from the very beginning was the division of the population into racial groupings. This was by no means a requirement, but was, like so many elements in the Constitution, a compromise needed to secure ratification. These days the United States government, in most cases is not actively involved in determining individual racial identity; however “there are still instances the United States when race is determined through legal deliberation...” (Morning, 2011, p.203).

Often considered an ‘invisible minority’, American Indians...are often left out or relegated into the category of ‘other’ within the racial equity framework in the United States. The racial equity framework must be adapted and explicitly expanded to include and indigenous lens... (Comenote, 2010, p.2).

While the challenge of the census seems to be one of logistics (how to do it) rather than complexity (nature of the task), the history of the U.S. Census has been one of complicated definitions, complex undercounts, and continuing corrective action. Cynthia Ronzio, Assistant Professor in the Center for Health Services and Community Research at the Washington D.C. Children's National Medical Center indicates that the census "data were ... designed to measure complex social constructs not to explore what these constructs mean and in which contexts..." (Ronzio, 2007, p.11). While the initial purpose for the census was that of determining representation for the national legislature, the other important consequence of the census is "the distribution of federal dollars to states based on population estimates..." (Ronzio, 2007, p.12).

The relationship of the census to American Indians comes in two ways, first through the clause in the U.S. Constitution which excludes "Indians not taxed" and secondly through the act of June 2, 1924 (43 Stat. 253, ante, 420), which unilaterally made American Indians citizens of the United States (Kappler, 1929). While the 14<sup>th</sup> amendment corrected the three-fifths compromise on the counting of African Americans, the amendment did not change the American Indian clause (US Archives, 1868). The key clause in the 1924 Act was the acknowledgement that "granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property..." (Kappler, 1929).

In looking then at the process and problems experienced in the counting of American Indians, interested researchers can see that the experience of other organizations might provide some insight into the potential problems generally faced. Noted Stanford University Sociologist C. Matthew Snipp provides interested researchers with an insight into the impact on American Indian identity of the "between 25 percent and 35 percent of American Indian children...being raised in foster and adoptive homes..." throughout the 1960s with 85 percent of them in non-

Indian homes (Snipp, 2002, p.4). The actions by the American Indian Policy Review Commission (AIPRC) also lead to the passage of the Indian Child Welfare Act (ICWA) in 1978 which strived “to keep American Indian children in cultural environments similar to, if not the same as, those into which they were born...” (Snipp, 2002, p.5). The impact of these actions on counting American Indians came in the discussion of amendments to the ICWA especially HR 3286, which sought to ensure that at least one of the parents was “a ‘real’ Indian...” (Snipp, 2002, p.5). Snipp indicates that “[h]istorically, the federal government has applied a rule of hyperdescent in deciding who will be officially recognized as an American Indian...” (Snipp, 2002, p.6). This blood quantum only definition was effectively refuted by the American Indian Policy Review Commission who defined American Indians as “members of American Indian tribes...” (AIPRC, 1977). The change in definition was from one of individual determination, that of blood quantum, to that of community determination, being a member of an Indian tribe. This definitional change would lead to changes in the administration of the census and the renewed importance of the political recognition of the Indian tribe. As Professor Snipp told us;

...some tribes are recognized by the federal government, some by states, and some by neither state nor federal authorities. The reasons for these different levels of official recognition are too complex to detail in this report. Suffice it to say that not everyone who might have a valid claim to being American Indian is recognized as such by federal authorities, or even by other American Indians...

(Snipp, 2002, p.8).

During the 1950 census the Census Bureau asked census enumerators to record their assessment of an individual’s race resulting in many Indians being overlooked (Jobe, 2004, p.75). Due to considerable errors, this process was changed for the 1960 census to allow for self-identification

(Jobe, 2004, p.76). The process used for the collection of American Indian identity was later focused with regard to American Indians to require the inclusion of the name of the enrolled tribe. Due to changes in the instrumentation for census data collection along with changes in the general attitudes in the nation about being American Indian, the census recorded large population gains from 1970 to 1980 (73%) and from 1980 to 1990 (45%) (Snipp, 2002). For the 2010 U.S. Census the National Congress of American Indians decided, in concert with Census Bureau's Indian Country Counts campaign, to describe to American Indians how to ensure that they were counted and hopefully counted correctly (NCAI, 2009). The first section indicates that a household will only be counted as American Indian if the first person on the Census form is American Indian. They also explain the Census definition of American Indian for 2010; "A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment..." (NCAI, 2009). The NCAI in explaining the multi-race option on the Census form says that the "only way to ensure that you are included in all the counts as American Indian or Alaska Native is to check just that one box on the form..." (NCAI, 2009).

Carol Lieber, presenting at the American Sociological Association meeting held in New York City in 1996, reported on the census efforts from the 1990 census. Lieber addresses her comments on the over 200,000 people who failed to complete the tribal enrollment or tribal identification section on the 1990 census form. She concludes that "either they did not answer the question themselves, or they did not find the question appropriate for their racial or ancestral heritage..." (Lieber, 1996, abstract). She reports that it is better for researchers to restrict their analysis to those individuals who listed a tribal affiliation. Lieber also goes on to indicate that "as forces of assimilation have weighed against American Indians, the racial and ethnic meaning

of being American Indian has been especially malleable...” (Lieber, 1996, p.1). While acknowledging the impact on generations of assimilation efforts, she also indicates that “non-response to a questionnaire item can be caused by a number of issues having to do with their knowledge ...of the question instead of their true ethnic identities...” (Lieber, 1996, p.2). In order to obtain accurate racial and ethnic data it is equally critical for there to be clarity in the questions as there is for clarity in the answer.

Dr. Linda Burhansstipanov and Ms. Delight Satter, indicate that, “[r]acial misclassification is the most common error affecting American Indian and Alaska Native data...” (Burhansstipanov & Satter, 2000, p.1722). Their research, primarily in the area of public health data finds five major reasons for the American Indian misclassification problems. These issues are: [1] the use of Spanish surnames for racial identification; [2] poor personal observations by data collectors; [3] the lack of American Indian as an option in the choices; [4] inconsistent definitions of American Indian in the data collection process; and [5] changes in self-identification due to external changes such as external recognition or tribal enrollment criteria changes. Their recommendation was for a greater connection between those collecting data and the members of the American Indian community who have the information necessary to improve accuracy. In general, their research shows the need for an ethical and practical method for improving data quality (Burhansstipanov & Satter, 2000).

In other studies coming from the field of public health, several researchers looked at the correct identification of race on death records in the state of Montana, a state with a substantial and well known American Indian population. In looking at 769 American Indians who died in Montana between 1996 and 1998, they found that 91% or 696 were correctly recorded on the state registry. The additional 73 were misclassified. Their research found that those who did not



live on or near a reservation were misclassified 30% of the time (Harwell, et al., 2002). These results correspond to other studies which find that, “[i]nconsistent and inaccurate race coding for American Indians has been documented for birth records, cancer registry records, Medicare billing files, end-stage renal disease dialysis records, and injury as well as death records...” (Harwell, et al., 2002, p.46). Dr. David Grossman, who conducted a study on health disparities, sees that health policy for American Indians needs to highlight four areas: [1] the impact of tribal sovereignty and self-determination; [2] the continuing urbanization of the American Indian population; [3] racial misclassification; and [4] the prevalence of health disparities (Grossman, 2003). At least the first three of those criteria are also relevant to education, especially public education which is not reservation based. While Dr. Grossman is seeking an answer to addressing the issue of health disparities especially among American Indians in California, his insights into the problems of health disparity may be credible when examining the issue of educational disparity, which educators tend to call the achievement gap.

In a study of the state of Oregon’s injury database and the racial misclassification of American Indians, Sugarman, et al. found that 44.2% of the American Indians were misclassified in the state registry. This means that Oregon was incorrect almost half of the time coding the race of individuals who were receiving health care services from the United States Indian Health Service. With almost half of the American Indians in Oregon not covered by the Indian Health Service health care program the problems for the identification of the rest of Oregon’s American Indians could be catastrophic (Sugarman, et al., 1993). If the state’s data are incorrect on this population, those whose connection to federal American Indian health care is documented in their records, it is only logical to assume that perhaps the racial misclassification would be somewhat greater for those individuals with private or other insurance or health coverage. Dr.

Dorothy Rhodes, in a study on cardiovascular disease, determined that misclassification of American Indians needed to be built into her methodology and data sets. She included misclassification adjusted population counts when looking at health related mortality across the twelve Indian Health Service regions (Rhodes, 2005). Her study found that “death rates for AIAN [American Indian/Alaska Native] were underestimated by nearly 21%...” (Rhodes, 2005, p.1254). Additionally, AIAN race was misidentified an average of 10.9%, with rates varying widely from 1.2% to 30.4% across the different [Indian Health Service] service units...” (Rhodes, 2005, p.1254). The implications in the public health arena are monumental as this type of incident data is used in not only public health surveillance and epidemiology, but in resource allocation as well. Given the seemingly obvious problems in the health care setting with accurately counting American Indians, it is not impossible that a similar situation would be found in the educational arena, where there may be even less emphasis on accurate racial records than in hospital records. With little focus going toward the largest and growing population of American Indian students, that of urban and off-reservation public school attendees, the considerations regarding misclassification and the issues that this compounding error perpetuates may be critical for educational reform efforts.

Campbell and Troyer, in their article in the American Sociological Review examine the “consequences of being perceived by others as part of a different racial group than the group one claims for one’s self...” (Campbell & Troyer, 2007, p.750). As a study population they chose American Indians because American Indians have “high rates of mismatch between self-identification and others’ perceptions...” (Campbell & Troyer, 2007, p.750). These authors give their reasons why racial misclassification is too common when dealing with the American Indian population. These reasons include: [1] American Indians are a small population meaning that

too few non-Indians have firsthand knowledge of the American Indian population; [2] in recent year more multi-racial individuals have identified themselves as American Indian, meaning that the American Indian stereotype is not always what others see; [3] the rapid growth of American Indian populations have been in off-reservation areas where non-Indians are less familiar with American Indians in general; [4] intermarriage rates for American Indians are higher than for other groups and have been this way for some time; [5] the United States has a long history of racism against American Indians including genocide, forced assimilation and the elimination of tribal identity resulting in the acceptance of the extinction of the American Indian as a reality in America (Campbell & Troyer, 2007). The impact of this ongoing conflict between the internal and the external has the potential for decidedly negative results. “We hypothesize that young American Indians today experience added stress, not because they feel unclear about their identity, but because others routinely racially misclassify them...” (Campbell & Troyer, 2007, p.752). Their research study shows that while White, Black, or Asians are correctly identified 95% of the time, single race American Indians are correctly identified only 65% of the time. The results for multi-racial American Indians are that they “are almost never perceived as American Indian...” (Campbell & Troyer, 2007, p.756-757). The implications of this in determining the number of American Indians in schools are dramatic.

Misclassified American Indians are ...more likely to live and attend school with few American Indians. Correctly classified American Indians attend schools that are, on average, almost 10 percent American Indian and live in neighborhoods that are over 11 percent ‘other race,’ while misclassified American Indians attend schools and live in neighborhoods that are, on average less than 2 percent American Indian or ‘other race,’ confirming that misclassification is especially

likely in contexts with few American Indians... (Campbell & Troyer, 2007, p.756-757).

The use of these understandings regarding the reasons and implications of racial misclassification of American Indian students in schools in the geographically diversified off-reservation American Indian population in New York State may help not only correct racial misclassifications at the school district level, but may also help reduce the increased psychological stress placed upon these American Indian students by the actions of school officials.

### **Authority and Citizenship**

As a precursor to a further exploration of educational issues, it is initially critical to have a basic understanding of the ancillary issues of citizenship in an American Indian tribal nation, and the issues surrounding authority, legitimacy and tribal sovereignty. The exercise of authority by the State of New York in American Indian education is not an accident of history but represents a focused use of authority by one government and people for the purpose of dominating another people. It has also served to control the nature of the conversation about the cross cultural and cross national interaction itself. It is therefore critical to not only understand the fundamental use of authority and control, but to see the possibilities of the underdog, in this case the American Indian, in changing the nature of the conversation this late in the contest. In examining the exercise of authority over educational policy by the State of New York with regards to American Indians, it is critical to first understand the general relationship of authority to policy action in social interactions and politics.

Richard Sennett, the Centennial Professor of Sociology at the London School of Economics and University Professor of the Humanities at New York University, describes the

qualities of authority as "[a]ssurance, superior judgment, the ability to impose discipline, [and] the capacity to inspire fear..." Sennett goes on to explain that the power of authority also gives a sense of lasting stability and order. "Indeed, one meaning of the Latin word for authority, *auctor*, is that the authority can give guarantees to others about the lasting value of what he does..." (Sennett, 1980, p.18).

Max Weber, the noted German sociologist and economist, characterizes authority as falling into general categories. "The first is traditional authority, based on 'an established belief in immemorial traditions.'...The second category of authority is legal-rational authority, which is 'based upon the belief in the legality of rules and on the right of those who occupy posts by virtue of those rules to issue commands'..." (Vincent, 1974, p.21). This second category looks at the infallibility of the *system* and the *rule of law*, where man serves only to carry out the duties proscribed in the rules. As Frederick Mosher, the former professor of government and foreign affairs at the University of Virginia, develops in *Democracy and the Public Service*, the twin principles of a politically neutral administrator separated from the policy process and an emphasis on scientific management and efficiency provided a mechanism for providing political authority without possible contamination of the rules or the system (Mosher, 1968, pp.56-80). These ideologies of authority and administration have remained firmly entrenched in much of the public's understanding of legal-rational authority. The idea of a nation of laws, and the sense that the system provides fairness and equity, are examples of a belief in the authority of rules.

Another category of authority is "charismatic, which 'rests upon the uncommon and extraordinary devotion of a group of followers to the sacredness or the heroic force or the exemplariness of an individual and the order revealed or created by them'..." (Sennett, 1980, p.21). Through these charismatic authorities, the traditional ways are overthrown and the

existing order is declared false. Sennett says that this charismatic authority possesses, "the promise of a new Truth, which is absolute, unshakeable, and solid, but previously unknown..." (Sennett, 1980, p.21).

The concept of political authority as generally presented in the modern Western world stems from John Locke and his theories on legitimacy as arising out of a social contract between people and those chosen or appointed to rule. According to Locke, the natural state of humanity is one in which there is no civil or political authority. This condition Locke calls "the state of nature [where] every one has the executive power of the law of Nature..." (Locke, 1690, Ch. 2, Sec. 13). Locke sees a movement from a state of nature to one of political association by virtue of a voluntary association.

It is not possible under Locke's understanding to possess legitimate political authority by virtue of a force or coercion. The idea of forced authority immediately provides a rationale, if not a mandate to rebel against this force. John Locke, writing on the issues of unjust government speaks of consent as a critical element in determining when a state of civil government exists and when a state of war exists.

For I have reason to conclude that he who would get me into his power without my consent would use me as he pleased when he had got me there; and destroy me too when he had a fancy to it; for nobody can desire to have me in his absolute power unless it be to compel me by force to that which is against the right of my freedom - i.e. make me a slave... (Locke, 1690, Chapter III, Sec. 17).

It is important to keep the ideas of Sennett, Weber, Mosher, and Locke in mind when thinking about the relationship between the American Indian tribal nations and the United States and in this particular case, the State of New York. As Locke indicates, perhaps the desire by the

colonial powers and later United States and New York State governments to place American Indians under their complete legal and economic domination acts as the catalyst to compel obedience to policies American Indians would not freely accept. If a people do not actively resist the rulers then political authority exists. This non-resistance constitutes obedience without either the participation of the consent of the governed or the spirituality of the divine right. Oftentimes colonial regimes have existed under this non-resistance form of legitimacy or through an illegitimate authority consisting of force and fear. The American colonies' Declaration of Independence provides a rationale for questioning political authority and ultimately disavowing the legitimacy of that authority.

When in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station in which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation... (Declaration of Independence, 1776).

These colonial citizens having suffered political oppression, ignorance of their individual and collective rights by what they then perceived as a foreign government, came together to demand the right of self determination. They not only challenged the social contract, but also sought to eliminate the sovereign-citizen relationship all together. In essence, they took onto themselves the responsibility of determining their own social future. This responsibility can be found in the foundations of Western political theory and can now be seen in the resolutions and agreements of the United Nations, including the Declaration of the Rights of Indigenous Peoples. Indeed, self-determination has become one of the cornerstones of modern international relations. This

cornerstone of self-determination lies as a legitimate method of challenging political authority and redefining the contract between people and ruler. It is important to ask how these questions of authority apply to the American Indians residing in New York State and their relationship to New York State and the United States government, especially in the area of education.

While the distinctions made by Locke between the natural state and the state of the political society may be less applicable to the issue of indigenous people, his comments on forced governance are applicable equally to the colonists of the American Revolution era and the American Indian tribal nations of both that era and today. It has been repeatedly argued that the objections voiced by the American colonists against Great Britain were based on their perception of governance without consent. Through this lack of representation, and belief of oppression, their cause of liberty gained not only internal acceptance, but also external validation by the enemies of Great Britain. They were, by characterizing Great Britain as a forced authority, able to successfully challenge its legitimacy in the colonies. It is therefore equally possible to see that the political dominance of the United States and the peculiar limited American Indian sovereignty created by Justice John Marshall and later court rulings have placed American Indian nations into a state of governance without consent, not unlike that of the revolutionary American colonies (Hobson ed., 2010). Since the role of the State of New York as a modern day colonial power is based upon the same self-serving arguments that Marshall used for the United States, then it is equally subject to question. It is important to note that Locke sees an application of the Law of Nature to this situation. He states: "...it being reasonable and just I should have a right to destroy that which threatens me with destruction..." (Locke, 1690, Chapter III).

This review of the possible methods for classifying political authority leads to questions of the role of the state in educating the children of other sovereign powers, in this case the



American Indian tribal nations, and what source do American Indian tribal nations cite as their own legitimacy to govern. Through an examination of tribal governing documents, this question can be, at least somewhat, addressed. The concepts previously explored have shown that those who claim legitimate political authority through either the divine right or consent methods should be more situated to act or begin acting as a sovereign government. On the other hand, those who claim authority for governing American Indians from statutes or agencies of the United States or who make no reference to a legitimate authority to govern would be seen as less situated to govern as a sovereign.

In 1924 the United States Congress decided to unilaterally bestow citizenship, by the act of June 2, 1924 (43 Stat. 253, ante, 420), on all American Indians who were not already citizens of the United States (Kappler, 1929). This action in a single action made American Indians citizens of the United States while still preserving them as wards of the government creating even more complications in the status of American Indian people and communities. Additionally, with the institution of boiler-plate constitutions, under the Indian Reorganization Act of June 1934 which sought to “grant certain rights of home rule to Indians...” tribal nations were forced coercively into utilizing United States derived criteria for determining who were American Indians and eligible for citizenship in their nation. This created those American Indians whom the United States would then recognize and conversely those who it did not (U.S. Congress, 1934, p.1).

Sharon O'Brien, Associate Professor of Global Indigenous Nations Studies and Political Science and Co-Director of Tribal Law and Government Center, University of Kansas School of Law, in *American Indian Tribal Governments*, (1989) provides a good insight into current tribal governmental operations and a hint at the traditional governance forms that predate these

constitutional forms. *Sovereign Nations or Indian Reservations?*, by Terry L. Anderson (1995), a John and Jean de Nault Senior Fellow at Stanford University's Hoover Institution, looks at economic alternatives for American Indian communities in the 20<sup>th</sup> century, and economic turning points in the history of U.S. - Indian relations. While using the words sovereign nations in the title, the work uses the status quo that of an U.S. dominated political structure, to set the stage for the discussion of economic options. By doing so, Anderson has bounded himself by the colonial past, without looking at the implications of sovereignty on economic opportunity. Anderson looks to set aside the various arguments for tribal economic failure, including (1) Indian dependence on federal funds, (2) limitations in human and physical capital, and (3) cultural differences including communalism. He accepts and chooses to pursue instead an explanation for reservation economic failure based on "ineffective governing institutions..." (Anderson, 1995, pp. 2-4). Anderson does offer an enlightening insight which sets the stage for work examining the role of the federal government in creating the economic and social problems of current American Indian reservations (Anderson, 1995, p.7). By doing so, he takes a major step ahead of his colleagues by not prescribing that the federal government is the solution to the *Indian problem* but instead saying that American Indian institutions are the best hope of American Indian survival.

Similarly, Paul C. Smith, Associate Curator of the Smithsonian's National Museum of the American Indian and Robert Allen Warrior, former Professor of English at the University of Oklahoma, in their work, *Like a Hurricane*, (1997) trace the development of the American Indian Movement (AIM) as a social protest from, as they say "Alcatraz to Wounded Knee..." Like Anderson, this work has the possibility of taking a next theoretical step by developing or inferring a change in the basic relationship between American Indian nations and the United

States, a change brought on by a reassertion of traditional social constructs and a disavowing of the old paternal relationship. As it is, it accurately and excellently chronicles the progression of AIM but leaves the legacy yet undeveloped. The issues of legitimacy, of sovereignty and the next steps in political authority are unanswered. As the authors say, "Indians found a way to be more than a footnote and to force fundamental reassessments of what it meant to be Indian, of American history, of each other, and of their communities. The victory was uncertain at best, but for a brief, thrilling period of time no one quite knew what to expect of Indian communities..." (Smith & Warrior, 1997, p.278).

Beyond the discussions that need to take place within and between the American Indian tribal nations, an internal view of tribal governmental structures may indicate a structural ability or willingness to move toward more sovereignty. "Many people still question the federal government's right to govern Indians and believe that Indian tribes have not lost their independence..." (Pevar, 2004, pg. 47). Sharon O'Brien devotes some discussion to the traditional government, but outlines that "tribal governments still exist to meet the social, physical and cultural needs of their people..." (O'Brien, 1989, p.197). In outlining the continuation of tribal government from ancient times, O'Brien cites the U.S. Supreme Court case of *Talton v. Mayes*, 163 U.S. 376 (1895), in which the court found that the U.S. Constitution did not apply to tribal government.

The Supreme Court decision underscored the fact that tribal governments that exist today are continuations of governments in existence for thousands of years. Unlike state governments, tribal governments were not created by the U.S. constitution. Rather, they sprang from a power, or sovereignty, in existence before the Constitution and the federal government existed. Tribal governments

were recognized as sovereign nations by the Spanish, French, Dutch, and English colonists who first settled in North America, and treaties concluded over two hundred years ago testify to Congress' long-standing recognition of tribal governments. This relationship is based not on American Indian's status as a racial group but on individual tribes' status as political entities with executive, legislative and judicial powers... (O'Brien, 1989, p.197).

Studies of political authority in the United States, especially studies which look at the authority over education of and for American Indians, could then be structured towards looking at American Indian tribal governments as nations in their own right rather than as some sort of perverted sub-set of American federalism. American Indians then form a bonafide national minority or indeed each tribal group forms its own national minority as defined by Will Kymlicka, Professor of Philosophy and Canada Research Chair in Political Philosophy at Queen's University at Kingston, in his book *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Kymlicka, 1995). The United States is then not only a multi-national state, but is a state of over five hundred different nations. One nation would be made up of immigrant derivation, and consist of people of various ethnic and cultural backgrounds. This nation would be a poly-ethnic nation (Kymlicka, 1995, p.14). The rest would consist of over five hundred nations which pre-existed the United States and have inherent rights as outlined in not only the philosophy of Locke, but have collective political rights as well. As explained by Prof. Neil Walker, Regius Professor of Public Law and the Law of Nature and Nations at the University of Edinburgh,

Sovereignty is an especially odd phenomenon. Everyone seems to want it. Those who claim to know it all tell us that sovereignty is just what we have, although

some may have more of it than others. It seems to have been around for as long as anyone can remember. Even so, for such an established fact of life, and for such a cherished ambition, there is a disconcerting uncertainty as to what it is exactly, or where it is to be found, or who has it and who does not, or where it came from in the first place, let alone what is happening to it now... (Walker, p. 16-17).

The idea of the status quo, or a future dictated by internal U.S. policy being the only governance options open to American Indian peoples is not wholly accepted inside or outside of the American Indian tribal nations and has not been for some time. Through whatever method, internally or internationally, American Indians are in a position to question the legitimacy of United States plenary power, and can base their questioning on the very western political philosophy that others, including the United States, have used to secure their own place in the family of nations. The area of education, especially the education of off-reservation residents who are citizens of American Indian tribal nations, is a critical place to start, because it is this majority of young American Indians that will be the majority of tribal population and leadership in the near future.

It is important to note that the concept of sovereignty or at least an American Indian directed political future has the attention of portions of the international community. American Indian Nations may seize this opportunity to develop and explore governance only if they are structurally positioned to make these steps, and are willing and able to think *outside the box* of the recent history of United States domination. American Indian nations may remember the many millennia of self-rule and use this as the resurgent communal vision or may pursue a political vision based upon western philosophical and theoretical constructs, but whichever path is chosen, it is important to move, for stagnation may signal extinction. The examination of the

execution of education priorities and educational control over American Indian education may, according to political and social theorists, now be open to tribal input, tribal control, or perhaps an expanded tribal voice. As the examination of counts of off-reservation American Indian students gain acceptance as an issue for tribal sovereignty, it may also gain importance as an issue of New York State policy. This interplay between the larger socio-political issues of authority, the historical colonial issues between Europeans and indigenous people, and the current and future issues relating to tribal sovereignty and its collision with state policy, all serve as the backdrop for an exploration of the educational experience of American Indian students as well as the beginning of a look at their educational future.

### **Sovereignty: A Relevant Theme**

Use your sovereignty to protect your treaties. Believe me, it is all you have to save your people... (Senator Daniel Inouye in Savilla, 2008, p.7).

It is hard to have any discussion about American Indian people, and especially American Indian tribal nations without the subject of sovereignty, and especially of how sovereignty is carried out moving quickly to the forefront. While this highly politicized topic seems to boil down to whether self-determination is a statement of rhetoric or a statement of fact, the real issue, especially the one impacting American Indian tribal nations is that of control; control of identity, control of culture, control of education, and control of their own future. If nothing else is learned from the exploration of the role of cultural destruction and assimilation historically in American Indian education, it should be clear that it has been difficult for the non-Indian to respect the rights and desires of the American Indian to remain their own people. The most relevant theme is that of indigenous sovereignty and self-determination. The American Indian as reaffirmed

internationally by the Declaration of the Rights of Indigenous Peoples, has the right to choose their own government, culture, and political and social future.

Reasserting democratic independence is not an area where most international researchers are creating theories and rationales. In relating the current theme of democratization literature to American Indians, it is critical to see that probably without exception, this literature was not written for American Indian people or the situation that they find themselves in. While the remainder of the world undergoes a realignment of international forces, American Indian tribal nations are standing on the sidelines of these debates and these processes much more than they should be. Issues of political theory concerning democratization and reasserting independence of ethnically or culturally oppressed peoples has been an academic exercise directed at other regions of the world as the political situation of American Indians is generally ignored and perhaps American Indians themselves are viewed as historical anomalies. Most studies have concentrated on the fall of the Soviet Union and the Russian supported eastern block. Others have studied the transition to independence by former colonial holdings in Africa and Asia after the Second World War. Still others have looked at the concept of popular revolutions outside of North America.

North America and the hegemonic role of the United States in world affairs has prevented or made such studies inconceivable in examining the situation of American Indian communities. Yet, through it all there remains a persistent desire on the part of some American Indian communities to firmly reassert their place in the international family of nations. Through a study of legal history, treaty law, and international legal principles, it is possible to see that American Indian peoples should have clear avenues to a free exercise of self-determination in recreating internationally recognized and politically independent nation-states. In concert with the legal

evaluation is a set of western political philosophy founded in the writing of Locke, Hobbes and Rousseau, which speak to the rights of humans to choose their form of governance. These philosophical arguments are heralded by United States lawmakers and foreign policy executives in asserting the rights of democracy seeking ethnically and politically subjugated peoples around the world, but these same people are strangely quiet in the application of these arguments to American Indians. While law and philosophy appear to be on the side of those desiring sovereignty, practicality and the historical record appear to demonstrate the challenges that lay ahead. Carlos Mamani Condori, Professor of History and President of the United Nations Permanent Forum on Indigenous Issues, identifies that in the Americas;

...genocide and extermination constituted the origin of the modern nation-state; it was the colonizers who constituted their republics and led the process of separation from colonial powers, celebrating independence days that covered up and denied the existence of Indian nations. The colonies, now converted into republics, developed processes of ethnic cleansing through “Indian wars,” which were no more than raids that cleared out certain territories for settlement of colonists brought in from Europe... (Condori, 2010, p.285).

Perhaps the adaptation of existing and emerging studies on democratization may hold some guidance for American Indian nations in establishing the institutions, operations, and linkages necessary to advance this cause. The review of global democratization literature does presuppose that American Indian nations desire to be governed as a western style democracy, rather than a traditional or other form of government. This has yet to be demonstrated, as current tribal governments were restructured under statutes instituted without consultation by the United States. Still, an understanding of the current international theories would prove beneficial. It is



in this emerging international world that American Indian tribal nations will need to define their own position and preserve their own existence.

During the Cold War, global politics were understood as a two-way ideological struggle between western democracies led by the U.S. and totalitarian communists led by the Soviet Union. The fall of the communist icon, as seen in the Soviet Union and the changes seen in the People's Republic of China demonstrates the need for a new paradigm that reflects the growing influence of culture, ethnicity and religion on the international world. It is important to consider the major differing opinions about the role of a new international dynamic on the possibilities available in the world of the future. Francis Fukuyama, Senior Fellow at the Center on Democracy, Development and the Rule of Law at Stanford University says in, *The End of History and the Last Man* that liberal democracy will win out as the dominant ideology and operational mode of government (Fukuyama, 1992). Fukuyama uses a data set ranging from the last thirty years and with this data extrapolate the direction of world political shifts.

What is initially universal is not the desire for liberal democracy but rather the desire to live in a modern — that is, technologically advanced and prosperous — society, which, if satisfied, tends to drive demands for political participation. Liberal democracy is one of the byproducts of this modernization process, something that becomes a universal aspiration only in the course of historical time... (Fukuyama, 2006).

Fukuyama seems to question whether it is America's actual desire to bring about democracy or simply democracy that supports American interests (Fukuyama, 2006). As Fukuyama indicates, “[g]ood governance, which involves not just democracy but also the rule of law and economic development, is critical to a host of outcomes we desire, from alleviating poverty to dealing with pandemics to controlling violent conflicts...” (Fukuyama, 2006). While

Fukuyama served for many years as one of the ideological speakers of neoconservatives, there is one area where his fundamental understanding of history is missing and this gap negates many of his arguments.

Americans are not, at heart, an imperial people. Even benevolent hegemons sometimes have to act ruthlessly, and they need a staying power that does not come easily to people who are reasonably content with their own lives and society. Finally, benevolent hegemony presumed that the hegemon was not only well intentioned but competent as well... (Fukuyama, 2006).

His belief that Americans are not an imperial people flies in opposition to the entire record of historical interactions between the United States and American Indian tribal nations. While it is critical that American Indian tribal nations understand the basic cultural blind spot regarding history found in American political operatives, perhaps the emerging fractionalized international arena provides American Indians with a chance at surviving as national peoples.

Samuel Huntington, former Eaton Professor of the Science of Government at Harvard University, in his book *The Clash of Civilizations and the Remaking of World Order* sees this as a primary need in the study of international affairs. Huntington says, about the current mindset of western powers, “[i]n the emerging world of ethnic conflict and civilizational clash, Western belief in the universality of Western culture suffers three problems: it is false; it is immoral; and it is dangerous ...Imperialism is the necessary logical consequence of universalism...”

(Huntington, 1996, p.310). Rejecting the liberal universalism of Francis Fukuyama, Huntington offers a compelling scenario in which humanity may do more breaking up than coming together in the 21st century. The vacuum created by the end of global bipolarity will be filled by a new ordering principle based on various world civilizations. This may open up opportunities for

American Indian tribal nations based on cultural separation to move a stronger national agenda forward. The major difference between Huntington and Fukuyama is the authors' attitudes toward western civilization: Huntington claims that it is declining, while Fukuyama asserts it is marching toward inexorable victory.

Hypocrisy, double standards, and "but nots" are the price of universalist pretensions.

Democracy is promoted, but not if it brings Islamic fundamentalists to power; nonproliferation is preached for Iran and Iraq, but not for Israel; free trade is the elixir of economic growth, but not for agriculture; human rights are an issue for China, but not with Saudi Arabia; aggression against oil-owning Kuwaitis is massively repulsed, but not against non-oil-owning Bosnians. Double standards in practice are the unavoidable price of universal standards of principle... (Huntington, 1996, p.184).

The thrust of Huntington's argument rejects the notion of a world inevitably succumbing to Western values. On the contrary, he argues, the West's influence in the world is waning because of growing resistance to its values and the reassertion by non-Westerners of their own cultures. This trend, if correct, provides an opportunity for American Indian tribal nations, providing that the overarching power of the United States within the North American continent can be adequately challenged. Since the era of the emergence of the American Indian Movement (AIM) in the early 1970s, there has been a cultural revival among many American Indian communities. This revival has resulted in language preservation, expansion in the participation by people in traditional belief structures and ceremonies, and assertion of Treaty Rights and claims through national and international venues. The first premise of Huntington's thesis appears to be occurring, that of reasserting culture and tradition. In a book published in 1981, *The Nine Nations of North America*, by Joel Garreau, the author develops a thesis indicating that

regional economic and cultural differences will eventually result in the breakdown of the United States into nine separate nation-states each with its own ethnic mix and cultural makeup. While American Indians were not specifically mentioned as a separate nation, the idea of a separate unified Indian nation-state has appeared in works of fiction (Russell, 1975).

In looking at the international arena, Huntington successfully shifts the discussion of the post-cold-war world from ideology, ethnicity, politics, and economics to culture--and especially to the religious basis of culture, a subject generally ignored in contemporary political science. Huntington warns us against generalizations about the world becoming one; points out the resilience of civilizations to foreign influences; and underscores the ease with which religious values become secularized. Huntington describes a civilization level of human organization, which spans beyond the idea of the nation and forms the basis for the civilization paradigm.

As people increasingly define themselves by culture and religion, Huntington maintains the West will find itself more and more at odds with non-Western civilizations that reject the ideals of democracy, human rights, liberty, the rule of law, and the separation of church and state. Thus global conflict and interaction will be defined on civilization lines: Christian West vs. Islamic East vs. Confucian China vs. (homogenous) Africa. Huntington's advice for the Western powers is to draw closer together, maintain their strength, and, above all, recognize "that Western intervention in the affairs of other civilizations is probably the single most dangerous source of instability and potential global conflict in a multicivilizational world..." (Huntington, 1996).

While Huntington's ideas are not without their critics (see Stephen Walt, 1997) he does present a view of world affairs which is at least complementary to his early work on democratization. Huntington, in his examination of world affairs may be viewed as overlooking

other possible explanations of the current world political situation because of the new lenses of civilization-based analysis. Perhaps the lens he uses in this view of civilization based paradigm prohibit the possibility of viewing these events in other terms based on other factors. Among these are global and regional economic forces and how these forces may impact the formation of post-Cold War blocs.

Huntington's image of democratization is that of waves. He sees that world democratization, or at least the movement away from authoritative regimes has occurred in three distinct waves. The first wave from 1822 to 1926 involves the spreading of democratic institutions and the expansion of suffrage. The second wave from roughly 1945 to 1962 saw the emergence of new democratically governed societies. A third wave that appears to have begun with the fall of Soviet based communism and the development of the European community sets the stage for democratic institutions expanding into the twenty-first century. While these factors all impact world democratization positively, Huntington also sees that reverse waves of authoritarianism follow closely on the heels of expanding democratic institutions worldwide (Huntington, 1991). Huntington sees five factors as impacting the third wave. These factors are: (1) deepening legitimacy problems of authoritarian regimes, (2) global economic growth since the 1960s, (3) a shift in the doctrine of the Roman Catholic Church to one of opposing authoritarian regimes, (4) changes in the actions of the United States, Soviet Union and European Community, (5) Snowballing effects where previous success in democratization influences others (Huntington, 1991).

While these constitute the factors impacting the expansion of the third wave, what relevancy do these factors have in examining the situation of American Indian communities? This question can be examined through two different methods of analysis. The first looks at the

opportunities for individual or coalitions of American Indians to reform their own tribal governmental systems, starting with their educational systems, as many of these systems are holdovers from governments mandated by the United States under the guise of the Indian Reorganization Act of 1934, or carry in their fundamental principles the seeds of assimilation and termination. The possibility for American Indians to restructure their own internal governing forms around meaningful traditions and culturally sustaining criteria presents an opportunity for increased democratization of Indian country. The second method looks at whether the factors identified by Huntington will impact the opportunities for American Indian communities in regaining an international voice as a nation of people. As these two methods of analysis seek very different points of view, it is necessary to be clear on which factors impact either or both of the scopes of American Indian tribal nation sovereignty.

All five of the criteria presented by Huntington can positively impact the ability of American Indian tribal governments to be reformed in a more democratic or at least a more culturally responsive nature and develop governmental programs, especially public education which promotes sovereignty and cultural resurgence. In viewing the international arena, factors one and five present opportunities for the improvement of the American Indian's political situation. Factor one, which involves the deepening legitimacy problems of authoritarian regimes could cause a further international review of the role of the United States government in Indian affairs. The eventual signing of the United Nations Genocide Compact by the United States after forty years, the current movements toward the United States' acceptance of the United Nations Declaration of the Rights of Indigenous Peoples, along with the ability of some tribal governments to sub-contract specific federal programmatic functions under the Indian Self-determination Act, indicates that the United States' view of itself may be changing. These

international initiatives combined with gains by American Indian peoples from across the western hemisphere in advancing indigenous issues may also represent a change in the authoritarian regime the U.S. has maintained over Indian communities since the Marshall decisions of the 1830s.

Dr. Stefano Varese, Director of the Indigenous Research Center of the Americas at the University of California – Davis, states that although “the indigenous peoples of the Americas have been struggling against colonial powers for five hundred years, it was mainly after World War II that they initiated political mobilization at the national and international scale in order to resist oppression...” (Varese, 2010, p.262). The United States authority over tribal governance has been both incrementally and in quantum leaps expanded through the assumption of powers by states in the areas of criminal and civil jurisdiction and over education.

One cannot easily forget that the first and most accomplished victims of U.S. imperialism were and are the Native Americans of the United States, followed by the native Hawaiians, other Pacific Islanders, Filipinos, Puerto Ricans, and all other peoples who were occupied and “assimilated” by U.S. expansionism... (Varese, 2010, pp.271-272). Clearly regaining control of the educational process for all tribal children, not only those children living on reservations, is extremely important to sovereignty and survival.

Factor five, which deals with snowballing effects where previous success in democratization influences others, may also play a role in the improvement of opportunities for American Indian tribal nations. If indigenous peoples are able to make political gains in the areas of self-determination in other regions of the world, and especially in other regions of the Americas, then this increases the possibilities for American Indian tribal nations to realize their goals. Grimaldo Rengifo Vasquez, Peruvian agrarian engineer and coordinator of the Andean

Project of Campesino Technologies, indicates that in conversations with Aymaran and Quechuan natives, that they desire an education “that integrates that which is their own with that which is modern...” (Vasquez, 2010, p.279). The desire for an educational system that is under indigenous control; that does not seek to simply assimilate them as something else thus destroying who they are seems to be critical to the acceptance of non-indigenous education. “They need the school, but on the condition that now it helps them with a new agenda: the recuperation of respect...” (Vasquez, 2010, p. 279).

American Indian communities in the early twentieth century attempted to have their rights to an international voice reaffirmed only to see these efforts unsuccessful in the face of the political, financial and economic pressure of the United States and other countries with destructive colonial histories. The League of Nations did not include a provision relating to minority-rights due to the efforts of Australia and New Zealand to cover up their treatment of aborigines and Maoris (Boldt, Long, & Little Bear, 1985, pp.298). Additionally, the Canadian government effectively blocked a League of Nations petition by the Iroquois League for membership, even after the measure was supported by the Netherlands, Ireland, Panama, Persia, and Estonia (Boldt, Long, & Little Bear, 1985, pp.299-300).

The United Nations rejected American Indian efforts for a voice as something other than a Non-Governmental Organization, in a variety of meetings and reports in 1945, 1949, 1953, 1963, 1965, 1969, 1971, and 1978. It was not until 1982 that the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities established a working group on indigenous people (Boldt, Long, & Little Bear, 1985, pp 300-301). American Indians continue to be the only western hemispheric group of people in the world who are not represented in the family of nations, with the possible exception of Bolivia after the election of Juan Evo Morales



Ayma in 2006. While the current position of being on the outside looking in is difficult for American Indian tribal nations individually and collectively, it does not represent the only possible future.

Some writers have already written off the future of American Indian nations. Elmer Savilla, former chairman of the Quechan Nation, joins the list of scientists, politician, authors, and social theorists who have predicted for the last hundred and fifty years, the *vanishing Indian*. These naysayers have seen the continuous pressure of assimilation and termination, by both the United States and individual states which have been well documented, take its toll on American Indians. What they may miss is the sense of cultural and political identity which remains in the surviving social systems of American Indian tribal nations. How this identity manifests itself; how it is manifest in educational systems; or whether this identity is transmitted into the political decision making of the community remains a question and will profoundly affect the political future of the American Indian tribal nations.

American Indian tribal nations are faced with a variety of possible futures including the polar extremes of assimilation (extinction) and independence. On December 2, 2011, President Obama signed Executive Order 13592 entitled Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities in which he acknowledged that the “United States has a unique political and legal relationship with the federally recognized American Indian and Alaska Native (AI/AN) tribes across the country”... (Obama, 2011, pg.1), however his statement on acknowledgement holds within it the continuation of paternal hegemony. While the President acknowledges the unique relationship, he also indicates that the government has a “long standing commitment on the part of our Government to protect the unique rights and ensure the well-being of our Nation's

tribes...”(Obama, 2011, pg.1). The use of the possessive pronoun our, in the phrase “our Nation’s tribes” seems to express the sense of ownership and dominance which has long been a part of United States government policy. There is no acknowledgement of American Indian tribal nations as having the status of sovereign equals in the policy statement. Additionally, the Executive Order does not acknowledge the existence of American Indians other than those politically recognized by the Department of the Interior, the so-called federally-recognized tribes. The requirement to be acknowledged as existing by one particular agency of the United States government leaves out hundreds of American Indian tribes, nations, and communities recognized by states, as well as those who are not politically recognized by anyone, but exist nonetheless. Strangely, the Indian Arts and Crafts Act of 1990 (P.L. 101-644) defines an Indian as “a member of any federally or State recognized Indian Tribe, or an individual certified as an Indian artisan by an Indian Tribe...” (U.S. Congress, 1990, pg. 1) thereby acknowledging that the federal government understands that there are American Indians whom the United States desires to regulate which are not covered by the recognition process of the Department of the Interior. The inconsistency even in the idea of the definition of American Indian is apparent at this fundamental level and complicates the relationship between the United States and American Indian tribal nations and individuals.

Elmer Savilla indicates that the United States “government has always prodded tribes to get on the road to termination. They did this because it has always been on their agenda...” (Savilla, 2008, p.6). It appears that while there is acknowledgement of a government to government relationship by the United States on some issues and with some American Indian tribal nations, the lack of consistent recognition of inherent sovereignty allows for a political practice that is too often governed by issue specific influence.

## **Educational Assimilation of American Indians as Federal Policy**

If the states are ever to amalgamate the Indians justly and effectively with the rest of their citizenship, they should begin by taking the responsibility for educating Indian children in the public schools... (Meriam, 1928, p.416).

Education is a trust responsibility between the U.S. government and Indian tribes. However, trust responsibility in education for Native American students in public schools has never been fulfilled. Every report on Indian education since the 1928 Meriam Report has concluded that needs of Indian children in education are not met. We want to emphasize trust responsibility as one of the most important concepts to include in education policy decisions. The U.S. Constitution does not authorize Congress to provide for education, leaving much of the legal control of public education with the states. The role of states in meeting trust responsibility must be upheld because most Indian youth attend public schools... (National Caucus of Native American State Legislators, 2010, p.25).

While there are numerous books and articles written on the development, operation and problems with the federal administration of American Indian education, there are fewer of these reports focusing on the east. In 1776, the Continental Congress appropriated funds for the civilizing of the Indians, providing not only a minister and a blacksmith, but also for two teachers to live among the Delaware Indians in New York. Samuel Kirkland had been working as a minister among the Oneida since 1766 and would receive a charter for the opening of a school called the Hamilton-Oneida Academy in 1793. The school would close and would receive a new charter to open as Hamilton College in 1812. While as early as 1794 treaties

between tribes and the federal government included provisions to provide education services to tribes as part of payment for lands ceded, it was not until 1802 that Congress began appropriating funds for Indian education (Szasz and Ryan, 1988, p.288). Later treaty provisions would be carried out by the establishment of federal Indian boarding schools and day schools located both on and off established reservations or tribal lands, as well as state boarding schools. While the inclusion of a civilizing education became routine in treaty agreements, this was a means to the end of obtaining land first and foremost. As George Washington said in his Annual message to Congress, October 25, 1791,

... It is sincerely to be desired that all need of coercion, in future, may cease; and that an intimate intercourse may succeed; calculated to advance the happiness of the Indians, and to attach them firmly to the United States. ... It seems necessary: That they [the Indians] should experience the benefits of an impartial administration of justice. That the mode of alienating their lands the main source of discontent and war, should be so defined and regulated, as to obviate imposition, and as far as may be practicable, controversy concerning the reality, and extent of the alienations which are made. The commerce with them should be promoted under regulations tending to secure an equitable deportment towards them, and that such rational experiments should be made, for imparting to them the blessings of civilization, as may, from time to time, suit their condition. That the Executive of the United States should be enabled to employ the means to which the Indians have been long accustomed for uniting their immediate Interests with the preservation of Peace. And that efficacious provision should be made for inflicting adequate penalties upon all those who, by violating their rights,

shall infringe the Treaties, and endanger the peace of the Union... (Washington, 1791).

Behind the concepts of Indian education found at the beginning of the interaction between Indians and non-Indians lay some basic tenets of education. “These tenets were not based on natural truths but were culturally constructed and served specific needs of the colonizing nations...” (Lomawaima, 1999, p3). Among these were,

(1) That Native Americans were savages and had to be civilized; (2) that civilization required Christian conversion; (3) that civilization required subordination of Native communities, frequently achieved through resettlement efforts; and (4) that Native people had mental, moral, physical, or cultural deficiencies that made certain pedagogical methods necessary for their education... (Lomawaima, 1999, p3).

According to a review by Melody McCoy for the Native American Rights Fund (2000), the late 1800's saw the federal government promoting compulsory school attendance by denying rations to the families of those children who did not attend school (McCoy, 2000). This transition from education as an unexpected benefit of a treaty obligation to a federal compulsory act punishable by starvation shows that education was more than an attempt to improve the Indian's set of skills and knowledge, but instead may be inferred as a method of subjugation and assimilation (Adams, 1995; Szasz, 1999). In 1889, at a meeting of Indian policy reformers at Lake Mohonk, NY, then Commissioner of Indian Affairs, Thomas Morgan, formalized once again what had been American educational policy. Morgan claimed that a proper educational program would make American Indian children prepared “for American citizenship and assimilation into the national life...” (T. Morgan in Dudley, ed., 1998, p.183). The 1891 action by Congress “authorizing the

commissioner of Indian affairs to enforce school attendance of Indian children...” (26 U.S. Stat. 1014) typified this sort of dictatorial mandate for assimilation (Hagan, 1988, p.61). Education proved to be one of the most important tools in the efforts to civilize the Indians, assimilation served “in the words of one of its most famous architects, Colonel Richard Henry Pratt, the Superintendent of the Carlisle Indian boarding school, to ‘kill the Indian and save the man’...” (Porter, 2005, p.xxi). The philosophy of the Carlisle School seems to go hand in hand with the general philosophy of the federal government toward Indians. This federal philosophy was carried through in New York State through the over a century long operation of the Thomas Indian School. Opened in 1855, the Thomas Indian School held as many as two hundred students at a time, with the primary mission of eliminating as much of American Indian culture and identity as possible (Burich, 2007). As expressed by federal Indian Commissioner Thomas J. Morgan in 1889, “The Indians must conform to ‘the white man’s ways’ peaceably if they will, forcibly if they must...”(Hagan, 1988, p.61). An evaluation of the documentation shows that, ...in the years between 1887 and 1900 approximately 32,800 allotments of Indian land, covering 3,285,000 acres of land were made. During this same period the federal government forced the cession or sale of approximately 28,500,000 acres of ‘surplus land’ from tribes that were in the process of being allotted. The cession of these lands was, of course, the primary purpose behind the allotment program for once the Indian were settled on their allotments the remainder of their former reservations could be opened to White settlement... (Kelly, 1988, p.66).

As Felix Cohen, the noted scholar on federal Indian law says in the *Handbook of Federal Indian Law*, “Indian education policy developed as an integral part of the federal government’s general policy of ‘civilizing’ the American Indian...” (Cohen, 1982, pp.678-679). Throughout

the period from the mid 19<sup>th</sup> century to the mid 20<sup>th</sup> century the United States Congress gave to itself what has been called plenary power over Indian affairs. “The phrase ‘plenary power’ became a pejorative byword among Indians and their advocates for unreviewable, and potentially autocratic, federal legislative and administrative authority...”(Wilkinson, 1987, p.78).

The notions of federal supremacy lodged in the plenary power doctrine have long antagonized and frustrated Indian people. They consider outrageous a doctrine that justifies, among other things, strong arm rules such as the doctrine of discovery ...the idea that Indian tribes are domestic dependent governments lacking direct access to the international community; the rule that Congress can order the divestiture of tribal land...and the notion that Indian treaties can be abrogated by Congress without agreement by, or even consultation with, the affected tribes... (Wilkinson, 1987, p.79).

It is however, critical to start a more in-depth study by examining perhaps the most influential singular government report examining all aspects of the Indian situation and use it as a basis for where this review of American Indian educational policy begins. “As early as 1917, the Commissioner of Indian Affairs was of the view that state public schools, not the federal government, should meet most of the Indians’ educational needs...”(McCoy, 2000, p.21). As the assimilation policy continued those in Washington viewed positively a diminishing role of the federal government. The Snyder Act of 1921 (42 U.S. Stat. 208) “gave the secretary of the interior general authority to expend federal monies for Indian ‘benefit, care, and assistance’ and a considerable amount was spent in contracts for local school districts to entice them to provide education to Indians...”(Deloria & Lytle, 1983, p.242).

One of the major federal actions taken in the assimilation of American Indians individually into the non-Indian American society after the General Allotment Act which paved the way for Oklahoma statehood by breaking up the tribal land holdings in the Indian Territory was the Citizenship Act of 1924. The General Allotment Act sought to “replace tribal culture with white civilization...”(Savilla, 2008, p.7). Generally the United States had specifically taken steps to deal with American Indians collectively as the General Allotment Act sought to assimilate Indian communities by destroying their land base. The Citizenship Act went to the heart of the identity of the individual Indian. The Board of Indian Commissioners said, “[t]his act will place Indians on an equal footing with other citizens of the country...”(Savilla, 2008, p.7). Their statement of course forgot to indicate that American Indians with very few exceptions were not citizens. “The Six Nations Confederacy spoke with one voice on this issue, and all protested the intent of the Congress to press us into becoming citizens of the United States...”(Graymont, 1973, p.52). President Theodore Roosevelt, in December 1901, speaking before Congress said,

In my judgment, the time has arrived when we should definitely make up our minds to recognize the Indian as an individual and not as a member of a tribe. The General Allotment Act is a mighty pulverizing engine to break up the tribal mass. We should now break up the tribal funds, doing for them what allotment does for the tribal lands; that is they should be divided into individual holdings...(Savilla, 2008, p.7).

The prospect of citizenship in the United States was not universally looked upon by American Indians with any joy. As Tuscarora Chief Clinton Rickard said, “White people were always thinking up schemes to improve us poor Indians and to make the ‘Indian problem’ disappear...”



(Graymont, 1973, p.53). He goes on to say that the “most favored of these continual grand programs was to make us into imitation whites...”(Graymont, 1973, p.53).

The 1928 report by the Institute for Government Research for the Secretary of the Interior presented the realities of the situation facing American Indians in the first decades of the twentieth century and exposed errors, omissions, and contradictions in the policies of the past. The report, known as the Merriam Report, or more formally as *The Problem of Indian Administration*, charts out the special needs of American Indians in the area of education. The Merriam report sits as the benchmark of in depth policy research at the time from which the evaluation of the past and the course for the future of American Indian education at the national level is charted. As Thomas Hopkins puts it,

The fabled *Merriam Report* continues to be of interest to Indians and non-Indians who are interested in the education of American Indians and Alaska Natives. This interest emanates for the fact that the *Report* represents a benchmark in the field of Indian Affairs and its “Education” section set the foundation for policy that still resonates...(Hopkins, 2008, p.i).

Chapter nine of the report deals with the subject of education and contains a statement which sums up the opinion of the role of education in American Indian survival.

The most fundamental need in Indian education is a change in point of view. Whatever may have been the official governmental attitude, education for the Indian in the past has proceeded largely on the theory that it is necessary to remove the Indian child as far as possible from his home environment; whereas the modern point of view in education and social work lays stress on upbringing in the natural setting of home and family life. The Indian educational enterprise is

peculiarly in need of the kind of approach that recognizes this principle; that is, less concerned with a conventional school system and more with the understanding of human beings... (Meriam, 1928, p.346).

This introductory statement at the beginning of chapter nine established what the remaining eighty-two pages were going to attempt to cover. As described by probably the most well known scholar on the history of federal American Indian education, Margaret Szasz, the Meriam Report, was used as a blueprint by both the Hoover and Roosevelt administrations. The Meriam Report “suggested that education should be the primary function of the Indian Bureau...It encouraged the construction of day schools to serve as community centers...”(Szasz, 1998, p.3). Szasz goes on to indicate that the efforts in American Indian educational reform, while swept up in the problems of the depression, the politics of Indians, and of course that of the New Deal, were also impacted by the national educational scene.

One of the fundamental question addressed by the Meriam Report is “Can the Indian be Educated?” Specifically, “Is it really worth while to do anything for Indians, or are they an ‘inferior’ race?”(Meriam, 1928, p.352). The studies cited in the report, while believing that the Indian could be educated, did place this support in the educational research framework of the day.

T. R. Garth, of the University of Denver, who is generally credited with having done more than any one else in the study of racial psychology of Indians, found in a study ... that the ratio between the Indian mental age and that of the whites was 100 to 114, or that the whites were 14 per cent better than the Indians... (Meriam, 1928, p.352).

Miss Goodenough, cited in the report for having tested California Indians, found that American Indians scored 85.6 on a drawing test intended to be less linguistic. While the Indian's score was higher than Blacks, it was similar to Mexicans, and somewhat less than the 100.3 score for whites and Asians (Meriam, 1928, p.352). Teachers however gave American Indians a much better chance at being successful in school.

By far the great majority of public school teachers who have Indian children in their classes say that there is no essential difference in ability; that on the whole they get along satisfactorily and do the work. Once language handicaps, social status, and attendance difficulties are overcome, ability differences that seemed more or less real tend to disappear... (Meriam, 1928, p.353).

Few people who have handled Indian children in public schools, who have observed their remarkable talents in the arts, who have worked with university students of Indian blood, or who have sat in Indian councils, have any doubts as to the inherent ability, mental and otherwise, of the Indian people... (Meriam, 1928, p.353).

Once the question of basic intelligence was addressed, it seemed important to ensure that American Indian children attended school. Even in 1928 there was uncertainty about whether the government's counting of American Indian students was accurate.

The statement of a qualified observer that "probably the most accurate count that has ever been made of our Indian population can best be characterized as a reasonably good guess" applies to Indian school children. The official figures

show a curious discrepancy between general population and population of school age... (Meriam, 1928, p.355).

The Commissioner of Indian Affairs was attempting to determine how to obtain accurate data. While “[r]ecently government officers have been making special efforts to get an accurate census of Indian children...[n]o really systematic attack upon the educational problem of the Indian can be made until a thorough school census is actually established...”(Meriam, 1928, p.355).

Ironically, this is the question; one of accuracy of the count of American Indian children that sits as the basis for this research. What most would take as a given, a reliable count on the number of students, has been for the past hundred years the major pitfall in American Indian education.

As is particularly the issue in present New York State, and arguable elsewhere in the United States, the question of American Indians in non-Indian public schools was an issue even in the first decades of the twentieth century. The Meriam report cautioned in the implementation of sending American Indian students to public schools that, “the step is not taken too hastily in any given situation and as a mere matter of temporary saving of money ... [and] that the federal authorities retain sufficient professional direction to make sure the needs of the Indians are met...”(Meriam, 1928, p.415). While exhibiting some level of caution, there is a whole hearted endorsement of the idea of assimilating American Indian children with white children, through white educational institutions.

Any policy for Indians based on the notion that they can or should be kept permanently isolated from other Americans is bound to fail; mingling is inevitable, and Indian children brought up in public schools with white children have the advantage of early contacts with whites while still retaining their connection with their own Indian family and home... Once the Indian child is admitted to the

public schools with other children, the community begins to take a much more active interest in him as a citizen... (Meriam, 1928, pp.415-416).

The critical elements of educational reform outlined by Meriam especially the educational philosophy involving the connection between school, family, and community were of paramount importance. In addition the “qualifications of teachers and other employees...a real salary schedule based upon training and successful experience...” were seen as needed to improve American Indian education (Meriam, 1928, p.347). The most revealing statement on the operation of the school system, and one which is discussed today in relation to public education nationally continues to be one of adequate support for education and its impact.

“The real choice before the government is between doing a mediocre job thereby piling up for the future serious problems in poverty, disease and crime, and spending more money for an acceptable social and educational program...”

Cheapness in education is expensive...” (Meriam, 1928, p.348).

It is possible to look both at the desires of assimilation and the resolve to accomplish it. United States officials continued to see the process of assimilation as essential to survival in the white world. There appears almost universal consensus on the part of the federal government that it was American Indians who had to change. In the forward to his report *The Red Man in the United States, 1928*, Indian Commissioner Burke writes,

Practically all our work for the civilization of the Indian has become educational:

Teaching the language he must of necessity adopt, the academic knowledge essential to ordinary business transactions, the common arts and crafts of the home and the field, how to provide a settled dwelling and elevate its domestic

quality, how to get well when he is sick and how to stay well, how to make the best use of his land and the water accessible to it, how to raise the right kind of live-stock, how to work for a living, save money and start a bank account, how to want something he can call his own, a material possession with the happiness and comforts of family life and a pride in the prosperity of his children... (Meriam, 1928, p.348).

Based upon the words of the Indian Commissioner, it could be possible to see the possibility of educational reform supporting individual self-sufficiency as long as that self-sufficiency was not linked to an American Indian lifestyle. This educational reform comes in the opinion of Malcolm McDowell, Secretary of the Board of Indian Commissioners, from a benevolent motivation, which if viewed from the American Indian point of view could be seen as most sinister. McDowell states that “the training of all Indians for the best type of American citizenship, looking to their absorption into the general citizenship of the Nation” was the essential role of educational policy (Meriam, 1928, p.348).

While the public policy goal might be expressed as one of complete assimilation, the reality was somewhat different. American society of the time had distinct and often impregnable societal lines.

No less pervasive than social class was what sociologists usually termed caste but what might more accurately be called the color line. Drawn with meticulous care around most black Americans, it also limited the opportunities available to people of Mexican, Indian, and Asian descent. Racial lines, unlike class lines, could not ordinarily be crossed. One’s position was fixed forever at birth... (Polenberg, 1980, p.24).

The question then is whether assimilation was possible in reality or because of the immovability of the color line and the rigidity of the social classes, was the assimilation process meant more to totally destroy American Indian identity, finally completing the solution to the *Indian problem*?

This general assimilationist undercurrent is also found elsewhere as explained in the ultimate goals of education. One of these goals is “helping the Indian to understand that many of the privileges for which he now asks, many unwise governmental promises he insists upon having kept, are in reality bad for him and for his own sake should not be granted...”(Meriam, 1928, p.350). For generations now the view of the United States political actors has been a consistent one, that of assimilation leading to termination. In 1881, Senator George Pendleton of Ohio said,

[o]ur constitution and our laws were passed for the control of the government of white citizens, and not for Indian tribes... The Indian can no longer fish and hunt. They must either change their mode of life or they must die. That is the alternative. There is no other. Indians must change, or they will be exterminated... (Savilla, 2008, p.6-7).

The assimilation, even if forced, would move the Indian from the “irresponsibility of childhood...”(Meriam, 1928, p.350). In the words of noted policy experts Vine Deloria Jr., and Clifford Lytle, “[e]ducation has been one of the major weapons of forced assimilation since the establishment of the first colonies...”(Deloria & Lytle, 1983, p.240). In reviewing the history of American Indian education, Thomas Hopkins says that;

Never, in the history of the U.S. has the Federal Government provided sufficient financial support for the Education of Indians and Alaska Natives. Usually, high

on the deficit list are school facilities. Perhaps a major cause of this deplorable financial condition is the U.S. education organization assigning major responsibility to the states and the public schools... (Hopkins, 2008, pp. ii-iii).

Hopkins, seeks to place the fiscal and educational problems with American Indian education on the implication that states can and would adequately educate American Indians. W. Carson Ryan, one of the writers of the Meriam Report,

...cautions on turning Indian Education over to public schools without monitoring the situation to see that the special support services required for Indians are also present in the public schools. This precaution has never been paid attention to by any government entity in the U.S. When Federal education for Indians-Natives has been turned over to public schools it has done so with the tacit understanding that the Trust Responsibility for Indian and Native Education ceases, which in my view it does not... (Hopkins, 2008, p.iii).

Philleo Nash in his contribution to the Smithsonian's *Handbook of North American Indians*, writes that the onset of the Great Depression delayed much of President Hoover's implementation of the Meriam Report's findings except for those carried out under the New Deal and Commissioner of Indian Affairs John Collier. While the Indian Reorganization Act (48 U.S. Stat.984) was substantially modified from what Collier and his staff had devised, it offered "in essence, a cooperative commonwealth within the federal system..." (Nash, 1988, p.265). Collier "pushed for Natives to be allowed to have their culture, religion and language included in the classroom..." (Hunt, 2012). According to Professor of Law at the University of Montana Raymond Cross, "[i]ntegrating American Indian children into the public school system became the BIA's educational policy from the 1930's...to the 1970's..." (Cross, 1999, p.941). In 1934



“Congress laid down two paths by which powers vested in the Indian Bureau could be terminated or transferred...” (Cohen, 1953, p.376). It is under these mechanisms that states assumed control of federal Indian programs.

Under the Johnson- O'Malley Act of 1934, all welfare services performed by the Indian Bureau could be turned over to local state, county or municipal agencies... Indian Bureau education and health services had been turned over to state and local authorities wherever these authorities were willing to operate such facilities under the rather meager federal aid programs that are available... (Cohen, 1953, p.376 & p.378).

With the end of World War II, the educational philosophy in the United States toward American Indians took a decided turn. Gone were the tribal developments seen under the New Deal and the Indian Reorganization Act, with the development of tribal schools and community based education. “In the late 1940s, [education] was subject to the policy of termination (an updated version of the old policy of assimilation)...” (Szasz, 1999, p.4). While post-war budget cuts strongly impacted the state of American Indians, the Termination era began with a vengeance in 1950. Commissioner of Indian Affairs Dillon S. Myer argued that American Indians must be “moved to accept their status along side their non-Indian neighbors...” (Wilkins, 1997, p.166). The primary signal of this policy change was the 1953 House Concurrent Resolution 108. This action “declared it to be the new policy of the federal government to abolish federal supervision over the tribes as soon as practical, and then to subject the terminated Indians to...all the rights and prerogatives pertaining to American citizenship...” (Wilkins, 1997, p.166). Chair of the Senate Indian Affairs Subcommittee Arthur Watkins “believed that Indians had too much and needed to sacrifice and that they should be able to dispose of all their real

property if they wanted to, to pay for all physical improvements to their lands, and to be free to experience discrimination...” (Wunder, 1994, p.101). When President Eisenhower signed into law Public Law 280, the absorption of American Indians by the states began in earnest. Noted Indian law expert John Wunder calls Public Law 280 “the most successful attempt by the federal government to attack the cancer within. The states could be counted on to try to destroy the nascent forms of Native American tribal governments so recently established by the Indian New Deal...” (Wunder, 1994, p.111). Indian Affairs Commissioner Myer, who served under President Truman, outlined the United States policy as one that seeks “to assimilate the Indians with other citizens of the states where they reside...” (Kennedy, 1990, p.24).

Since the policy of moving federal responsibility for Indian education, especially in the east, to the states was already well underway, the policies of the Termination Era only sped up this movement. The policies under Termination, especially the explicit goal of forced assimilation, were opposed by most American Indians and favored by those parties seeking additional lands or access to previously off limits natural resources including water. As Professor Vine Deloria Jr. has stated,

Most Indians are nationalists. That is, they are primarily concerned with the development and continuance of the tribe. As nationalists, Indians could not, for the most part, care less what the rest of society does. They are interested in the progress of the tribe... (Deloria, 1988, p.241).

Clearly, any concept of American Indian nationalism was in direct opposition to the philosophy and practice of the Termination Era. In the area of education, Director of Indian Education in the Bureau of Indian Affairs (BIA) Hildegard Thompson, during her tenure of 1952-1965 continued “the accelerated effort to enroll thousands of Indian children not yet in school...” (Szasz and

Ryan, 1988, p.296). Additionally, the Termination Era saw the deliberate federal policy to move Indians from reservations to cities.

Bureau of Indian Affairs (BIA) relocation programs that had been conducted at the reservation level through the 1940s evolved into a wholesale national policy orchestrated by Field Relocation Offices in Denver, Salt Lake City, Los Angeles, Chicago, Oakland, San Jose, Dallas, San Francisco, Seattle, Tulsa, Oklahoma city, and Cleveland. These centers sought to support termination by offering placement and training services to migrating Indians... (Harvard, 2008, p.352).

As Sydney Beane writes, “the relocation program had the particular goal of assimilating Indians into the general society...” (Harvard, 2008, p.363). In speaking about the situation of urban Indians, he says, “[w]ithout the infrastructure to support our own development, our social problems have become overwhelming...” (Harvard, 2008, p.363).

By the mid 1960s over 90 percent of all Indian children were enrolled in school. By the 1980s the federal schools accounted for only 15 percent while public school dominated the education mission educating 85 percent of American Indian children (Szasz and Ryan, 1988, p.297). The avenue for a voice in public education for American Indians was supposed to occur through two avenues. The first, Title 1 of the Elementary and Secondary Education Act of 1965 (79 U.U. Stat. 27) counted American Indians as what the legislation called “children of low income families...” (Szasz and Ryan, 1988, p297). The second avenue was through P.L. 81-874 and P.L.81-815 and the Johnson O’Malley Act (48 U.S. Stat.596) which authorized the Secretary of the Interior to enter into contracts with state and local governments for educational and welfare services (Nash, 1988, p.268).

In 1969, the Kennedy Special Subcommittee on Indian Education issued a report that “characterized Indian education as a national tragedy...” (Deloria and Lytle, 1983, p.241). This report, titled, *The Education of American Indians*, was officially released by the Subcommittee on Indian Education, Committee on Labor and Public Welfare in the United States Senate. It reported that “public schools largely ignored their needs and culture...” (McCoy, 2000, p.22). The report blamed the federal Indian policy, and said that “state public schools were not required – nor did they choose – to involve tribes or Indian parents in education or to offer education beyond the basic non-Indian curriculum...” (McCoy, 2000, p.22). A major critique of the Kennedy Report is that it “failed to provide a philosophical-historical framework in which people could understand *why* Indian education was such a disaster and disgrace...” (Deloria & Lytle, 1983, p.240).

It was not until the early 1970s that some of the disastrous effects of the Termination Acts were beginning to be reversed. As President Richard Nixon said in a speech before Congress, “[t]he time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions...” (Hunt, 2012). By the passage of the Indian Education Act in 1972 (86 U.S. Stat.235, 334-345) there was a new stress on culturally relevant and bi-lingual curriculum materials. The national rejection of assimilation began, not with American Indians, but with the children of earlier immigrants. The magazine, *Newsweek*, in December 1970 included an article entitled, *A Rising Cry: Ethnic Power*, which explained the desire of people not to be forced into a culture-less mold (Polenberg, 1980, p.245). Michael Novak, in his 1973 book, *The Rise of the Unmeltable Ethnics*, wrote about his own educational experiences as a Slovak descendent in Johnstown, Pennsylvania. He says, “[t]he strategy was clearly to make an American out of me. English literature,

American literature, and even history books, as I recall them, were peopled mainly by Anglo-Saxons from Boston (where most historians seemed to live)...” (Novak, 1973, p.65).

The Congressional passage of *The Ethnic Heritage Studies Centers Act of 1972* [HR. 12659, 92<sup>nd</sup> Congress, 2<sup>nd</sup> Session] provided funds to "assist schools and school systems" in developing ways that students could learn about cultural heritage and to appreciate the "contributions of these forebears to the nation..." (U.S. House of Representatives, 1972, p.2). By giving official recognition to ethnic groups by providing funds to ensure that “all students in elementary and secondary schools of the Nation should have an opportunity to learn about differing and unique contributions to the national heritage...” this act legitimized ethnicity and made ethnic education a federal requirement (U.S. House of Representatives, 1972, p.2). Richard Polenberg, who currently serves as the Marie Underhill Noll Professor of History at Cornell University, stated that *The Ethnic Heritage Studies Centers Act of 1972* “repudiated an older assimilationist ideology as surely as the Immigration Act of 1965 had repudiated a still older racist mentality...” (Polenberg, 1980, p. 246).

The Indian Self-Determination and Education Assistance Act of 1975 (88 U.S. Stat. 2203) shifted traditional control of Johnson O’Malley Act funds from public schools, who had largely used the funds for educating all students and not Indian students, allowing direct contracting with Indian groups (Szasz and Ryan, 1988, p.298). According to a 1975 Civil Rights Commission report, “[a]ll public schools with 10 or more Indian students were eligible to receive funding for supplemental programs designed to meet the special needs of Indian students, including the use of culturally-relevant and bilingual curriculum materials...” (Hunt, 2012). Additionally, other federal statutes should have fostered greater access and participation in the educational process by American Indian students and made the educational process more

supportive of American Indian culture. *The Impact Aid Amendments of 1978* (Pub. L. No. 95-561, 92 Stat. 2315); the *Tribally Controlled Community College Assistance Act of 1978* (25 U.S.C. §1801-1815); the *Tribally Controlled School Grants Act of 1988* (25 U.S.C. §2501-2511); and the *Native American Language Act of 1990* (25 U.S.C. §2901-2906) should have each left American Indian students in New York in a stronger position both academically and socially. However, in the words of Deloria and Lytle,

Indian education...has been amply funded by the federal government in a variety of transfer payments to states for Indian education. For the most part, state school districts have welcomed the federal funds but not the Indian students.

Discrimination, in spite of direct federal allocations to the states, was always a major feature of state controlled education for Indians... (Deloria & Lytle, 1983, p.242).

After the Meriam Report, the New Deal progressive policies, and having survived both Termination and the clear policy of moving Indian education from a tribal to a federal, then to a state issue, as a means of assimilation, one would think that the concentrated programs and dollars should have resulted in near identical academic attainment as that of non-Indian children.

In 1991, the U.S. Department of Education labeled American Indians and Alaska Natives as “nations at risk” meaning that all members of the American Indian community were at risk educationally, regardless of their location on or off a reservation. The Final Report of the Indian Nations at Risk Task Force, U.S. Department of Education, *Indian Nations at Risk: An Educational Strategy for Action* stated “[o]ur schools have failed to nurture the intellectual development and intellectual performance of many Native children, as is evident from their high drop out rates and negative attitudes towards school...” (McCoy, 2000, p.23). The findings

pushed for greater involvement of American Indians in the “development, implementation, and evaluation of local, state, and federal plans...” (McCoy, 2000, p.23). Driven by the finding of this report was President Clinton’s 1998 *Executive Order 13096*, which sought to create a three prong federal Indian education policy. This policy would:

- (A) improve Federal interagency cooperation;
- (B) promote intergovernmental collaboration; and
- (C) assist tribal governments in meeting the unique educational needs of their children, including the need to preserve, revitalize, and use native languages and cultural traditions... (Clinton, 1998, p.42682).

The Executive Order mandates the coordination of federal, tribal, and state entities “to address the fragmentation of government services available to American Indian and Alaska Native students and the complexity of intergovernmental relationships affecting the education of those students...” (Clinton, 1998, p.42681). The major problem with the Executive Order approach is the fact that while the real policy over the past decades has been the shifting of responsibility of educating American Indian students to the state government, the Executive order does not include the states in the Task Force studying the issues, nor does it make states responsible for anything other than being invited to regional partnership forums. These forums would “identify promising practices and approaches on how to share information, provide assistance to schools, develop partnerships, and coordinate intergovernmental strategies supportive of accomplishing the goals of this order...” (Clinton, 1998, p.42683).

### **Educational Assimilation and Divestment as New York State American Indian Policy**

Eleven states currently have no specific or substantive laws on American Indian education. While many states have specific laws regarding scholarships, grant or tuition

programs, and some have statutes on curricular and programmatic related areas or educational committees, these states: Alabama, Arkansas, Delaware, Georgia, Missouri, New Hampshire, Pennsylvania, Rhode Island, South Carolina Vermont, and West Virginia, do not have any statutes related to American Indian education (McCoy, 2005). According to a study by the Native American Rights Fund, the State of New York has specific statutes covering cooperative agreements with tribes, as well as curricula, staffing, finance, and scholarships (McCoy, 2005).

New York State, in describing its activities relating to American Indian education indicates that “staff provide technical assistance to the contracting schools and reservation communities to improve the educational programs/services provided to Native American students, including better parent/school relationships, consultation with the nations/tribes, inclusion of Native American language/culture in the school curriculum...” (NYSED Program, 2012, p.1). There is, however, no curriculum which provides American Indian language and culture to off-reservation American Indian students attending public schools. While there is nothing that specifically prevents the development and utilization of such a curricular effort, especially as an inducement to improve the overall academic achievement of American Indian students, it simply does not exist as a statewide initiative. An interesting example of the current regard for American Indians found in the NYS educational curriculum is located in the 8<sup>th</sup> Grade NYS Intermediate Level Social Studies Test. The question shows a photograph of American Indian students before being sent to the Carlisle Indian Industrial School and after their arrival, and asks what has changed. Among the acceptable answers is that “they look more ‘American’...” (NYSED Social Studies, 2008). While the other acceptable answers, “their hair was cut”, “they wear uniforms...”, and “their clothing changed...” (NYSED Social Studies, 2008) represent simply a visual response to the question. The first answer represents cultural



assessment and one that clearly reflects the desired impact of assimilation as a cultural positive being taught in public schools. The Carlisle Indian Industrial School was the federal government's flagship boarding school of forced assimilation and represented the epitome of the national desire to change the American Indian into a white-American. If, in New York State public schools in 2008, individuals reviewing the test find that "they look more 'American'..." as an acceptable answer to what happened to American Indian children who were subjected to the harsh assimilation process of the Carlisle Indian Industrial School, then our educational leaders may still see nothing wrong with the process of forced assimilation or at least may be reluctant to teach that forced assimilation is an oppressive policy.

The State of Alabama, one of the states without specific American Indian education laws does, however, have specific educational curricula for American Indian students which seeks to preserve and enhance the student's knowledge of their own tribal heritage. The Lawrence County School Indian Education Program has a curriculum, in twenty-five lessons, with specific activities for each grade level meant for the American Indian students of the mainstream public schools. Lawrence County is located in a non-reservation area however there is and has been historically a significant population of Chickamauga Cherokee and some Choctaw in the county. This is evident in the development of the curriculum for American Indian students. The curriculum called, *Warrior Mountains Indian Heritage*, "was written for the academic and cultural enrichment of Indian students attending Lawrence County School[s]..." (Walker, 2008, Preface). The lessons were "designed to meet the state standards of Alabama and are based on the criteria required in the standardized assessments for all students..." (Walker, 2008, Preface) indicating that curricular effort which respect American Indian culture can still carry academic rigor and validity even in our assessment driven system. Additionally, "[t]hese lessons were

written from an Indian perspective...” (Walker, 2008, Preface) illustrating that it is possible for the dominant society, even in a state without specific American Indian education statutes to produce an educational program that does not have assimilation at its core.

Under New York Education Law §111, “The education department ... shall exercise and perform the functions ...in relation to the education of children upon the Indian reservations ...” (NYS Ed Law, §111). The state therefore has given itself the authority to be responsible for the education American Indian children of reservation residents, and has either through implicit or explicit actions identified that they are not necessarily responsible for the children of off-reservation residents. In dealing with the reservation Indians, the NYS Education law says in §4116, that the “commissioner shall endeavor to secure the co-operation of all the several bands of Indians, and for this purpose, shall visit, by himself or his authorized representative, all the reservations where they reside, lay the matter before them in public assembly...” (NYS Ed Law, §4116). This section does not mandate the inclusion of American Indian tribal nations, nor does it require their agreement, but simply says that the commissioner “shall endeavor to secure the co-operation” which effectively means that even without cooperation the commissioner is not prevented from acting as he sees fit. Additionally, the lack of any mention of off-reservation American Indians is disturbing as it establishes an interesting yet somewhat artificial bifurcation of the American Indian population. Whether this is an explicit belief that the children of off-reservation American Indians are no longer *Indian*, by virtue of their place of residence, or that the state has no longer a responsibility because of a belief that off-reservation Indians are assimilated is unknown.

These Indian people have been kept as ‘wards’ or children long enough. They should now be educated to be men, not Indians, and it is the earnest belief of the

committee that when the suggestions made, or at least the more important of them are accomplished facts and the Indians of the State are absorbed into the great mass of the American people, then, and not before, will the 'Indian problem' be solved... (New York State Assembly, 1889).

One particular component of the European colonization effort that continues to this day to afflict Indigenous societies has been the effort by the Colonists to exercise control over the remaining Indigenous societies. The surviving Indigenous nations in North America have been a continuous source of obstruction to the development and expansion of Euro-American society. Foremost this obstruction had taken the form of Indigenous control over land and an unwillingness to relinquish it to governmental and entrepreneurial interests. Since disease and warfare failed to eliminate this obstruction—which the Colonists at one point called their “Indian problem”—a more “humane” method of exterminating the Indigenous population was developed. This approach was called assimilation... (Porter, 2005, p.xx).

Historian and policy analyst Professor Laurence Hauptman accurately summed up the ongoing situation between New York State and American Indians when he said that “while state politicians and reformers frequently referred to the so-called ‘Indian problem’ as being in dire need of a solution, the Indians have historically perceived Albany policy and policymakers as their main problem...” (Hauptman, 1988, p.3).

Tuscarora Chief Clinton Rickard spoke about the relationships between the Six Nations and New York State government by saying, “we were completely frustrated in obtaining justice

by the hard-hearted attitude of unbelievably stupid New York State politicians...” (Graymont, 1973, p.53). Like the relationship between federal Indian land policy and federal Indian educational policy being linked, specifically through the assimilation of Indians making it possible to acquire more lands; the linkage between land or resource acquisition, assimilation, and education are equally strong in the state. Without recounting the long and troubled history of interactions between the various arms of state government with the Haudenosaunee (Iroquois Six Nations), the Long Island tribes, not to mention the Abenaki, Delaware, and other remnant bands of Indians it is important to note that many of these problems, especially the tone of the discussions themselves, pre-date the internal conflicts within the Haudenosaunee at the time of the American Revolution. The competing relationships with the French and the English, not to mention the early Dutch colony has long had the Iroquois in the middle of external conflicts (Spencer & Jennings, et al., 1965, pp.386-387). Unlike those diplomatic and military conflicts of past centuries, the present “battleground is the courtroom, the combatants are attorneys, and the weapons are the rules and precedents of law...” (Nagel, 1997, p.160).

An example of the independence of the Iroquois people can be seen in a 1684 response to an English directive not to meet with the French. In speaking to the English Commander at Albany, Colonel Dungan, Garangula, an Onondaga Chief said, “[y]ou say we are subjects to the King of England and the Duke of York. We say we are brethren, and take care of ourselves...” (Thatcher, 1910, p.37). Likewise in 1693 the Governor of Canada issued his own warning to the Iroquois about the risk of not coming under the protection of the French King.

Formerly the chief men of the Five Nations used to converse with me; but this Governor of New York has so deluded you, that you hearken to none but him; but

take care of what will follow, if you hearken to none but him... (Thatcher, 1910, p.58).

The actions of the Iroquois in trying to negotiate their way between the English and the French, maintaining their own independence proceeded to drag them into not one, but two major wars between non-Indian combatants. The tactics used by the colonial British seemed to give the later State government much needed lessons of how to acquire more Indian land.

In 1767 the Iroquois complained that the white people were taking their land and killing or driving away the game. The Indian commissioner for the northern tribes then called for a great Indian council at Fort Stanwix ...and bought from the Iroquois and other northern tribes their title to all lands between the Ohio and Tennessee Rivers... The Commissioner for the southern tribes called a council [in] South Carolina, and bought the title to the same land, except a few reservations from the Cherokees ... The Cherokees had chiefs in both councils... (McGee, 1919, pp.32-33).

It seems that the strategy of the Royal Governor of New York, so long ago, proved to be one consistently employed over the centuries by the State; place the Iroquois in the middle between two powerful political combatants and use this contest as a means to further restrict American Indian independence, obtain land, or both. Indeed the warning of the French Governor to “take care of what will follow” still seems prudent.

New York State Indian policy created during the colonial era was bent on not only acquiring more land, but specifically on eliminating the claim of the United States government to authority over Indian affairs (Hauptman, 1988, p.6). The efforts to manipulate the Iroquois at the outset of the American Revolution reflect a continuation of the strategy of playing one non-Indian power against another. While Guy Johnson as British Indian agent maneuvered the

Iroquois towards a continued military alliance with Great Britain, a “‘council fire’ was held in Albany, commencing August 23 [1774] and carried on, with great deliberation, by 700 Indians for more than a week...” (Ward, 1952, p.143). This council sought to extract a pledge guaranteeing, as the Continental Congress had desired in their “A Speech to the Six Confederate Nation”... “We desire you to remain at home and not join either side, but keep the hatchet buried deep...” (Ward, 1952, p.143). While some villages and Indian nations would try to remain neutral, others had already made their choice to support the British while portions of the Oneida and Mohawk nations would support the colonists.

While the Iroquois played a somewhat minor part in the total colonial war effort, the part played by the Colonial Army on the Iroquois was somewhat more devastating. The Six Nations constituted a territory extending "from Lake Ontario on the north to the Susquehanna River in Pennsylvania and from the Catskill Mountains on the east to Lake Erie..." (Ward, 1952, p. 638). Christopher Ward, who died while working on this epic historical analysis of the Revolutionary War leaving the work to be edited by John Richard Alden, noted that the mission of the much remembered Sullivan Campaign against the Iroquois was one bent on destroying American Indian communities which "had achieved a high degree of civilization..." (Ward, 1952, p. 638). He specifically says, "Washington's purposes, as communicated to Sullivan, were two 'the total destruction and devastation of their settlements and the capture of as many prisoners of every age and sex as possible' to be held as hostages...The country... was not to be 'merely *overrun* but destroyed..." (Ward, 1952, p. 639). Thus the purpose of the Sullivan campaign was not a military expedition, e.g. the attacking of enemy soldiers; but instead was what could be referred to as a scorched earth policy focused upon non-combatant American Indian women and children. The one of the goals seemed to be that of eliminating the presence of the Iroquois communities

in areas that New York State would later seek to claim. Major General Sullivan in his own report to the Congress, states as much. His report, reprinted in the October 19, 1779 edition of the *Maryland Journal and Baltimore Advertiser*, identifies the burning of forty towns, the destruction of 160,000 bushels of corn and "a vast quantity of vegetables of every kind." (Sullivan in Cook, 1887, p. 303). He takes pride in the fact that they burned one orchard "which had in it 1,500 fruit trees..." (Sullivan in Cook, 1887, p. 303). Sullivan reports that this was all accomplished without the loss of forty men showing that this was not a series of battles but instead the destruction of non-combatant homes and food, and blames these few troop losses on events that "naturally attend marching through an enemy's country, abounding in woods, creeks, rivers, mountains, morasses and defiles..." (Sullivan in Cook, 1887, p.303). In his closing to Congress, Sullivan reported "we have not left a single settlement or field of corn in the country of the Five Nations...I trust the steps I have taken with respect to the Oneidas, Cayugas and Mohawks will prove satisfactory..." (Sullivan in Cook, 1887, p.305).

John Jay, in 1779, wrote to Governor Clinton relating to the territory over which the Sullivan campaign had marched during the war, that it would "be proper for New York to establish Posts in that Country and in every respect treat it as their own ..." (Hauptman, 1988, p.6). The approach was not only directed at the Iroquois but also at the United States government. These actions were to preempt federal action by taking steps to establish a policy precedent to then force or persuade the federal government to ratify, validate, or simply ignore what has already taken place.

This approach appears to have continued unabated since 1779; however the state attempts to totally preempt federal authority have been successfully challenged more than once. The chaos among the Haudenosaunee resulting after the Revolutionary War was evident in the

movement of the pro-British Iroquois fighters under the leadership of Joseph Brant to land along the Grand River in Ontario, today called the Six Nations Reserve. Many of the Fort Hunter Mohawks and the Lower Mohawk Castle also went to Canada under the leadership of John Deserontyon, to what is called the Tyendinaga Reserve. A contingent of Oneida also left in 1849 to the Thames River Reserve in Ontario. The political toll on the confederacy was staggering.

The council fire was moved from the ancient seat at Onondaga to Buffalo Creek – the largest of the Seneca reservations and now a more central location for the Iroquois than Onondaga. Gradually, however those who lived on each side of the border drifted apart and set up Six Nations Confederacies, with council fires at both Grand River and Onondaga... (Graymont, 1973, p.xx).

In 1783, the New York State legislature created a Council of Appointment to “appoint three Indian commissioners who would, in conjunction with the governor, have control of Indian affairs...” (Hauptman, 1988, p.6).

The U.S. Supreme Court opinion in *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974), indicates that “[o]nce the United States was organized and the Constitution adopted, these tribal rights to Indian lands became the exclusive province of the federal law. Indian title recognized to be only a right of occupancy was extinguishable only by the United States...” (U.S. Supreme Court, 1974, 414 U.S. 667). So while not recognizing the rights of American Indian people to their lands in anything other than a right of occupancy, the U.S. Supreme Court did decisively preempt unilateral state action regarding land. Likewise in relating to the imposition of state taxes on American Indian lands the Court had already ruled that the State had no jurisdiction.



In *The New York Indians*, 5 Wall. 761 (1867), the State sought to tax the reservation lands of the Senecas. The Court held the tax void. The Court referred to the Indian right of occupancy as creating "an indefeasible title to the reservations that may extend from generation to generation, and will cease only by the dissolution of the tribe, or their consent to sell to the party possessed of the right of preemption," *id.* at 72 U. S. 771, and noted that New York "possessed no power to deal with Indian rights or title," *id.* at 72 U. S. 769... (U.S. Supreme Court, 1866, 72 U.S. 771-772).

Finally in *United States v. Forness*, 125 F.2d 928 (CA2), *cert. denied sub nom. City of Salamanca v. United States*, 316 U.S. 694 (1942), the Court of Appeals for the Second Circuit held "state law cannot be invoked to limit the rights in lands granted by the United States to the Indians, because, as the court below recognized, state law does not apply to the Indians except so far as the United States has given its consent..." (U.S. Supreme Court, 1974, 414 U.S. 674). While in 1948, when criminal jurisdiction over New York Indian reservations was ceded to the State (62 Stat. 1224, 25 U.S.C. §232), and in 1950 when civil jurisdiction was ceded to the State (64 Stat. 845, 25 U.S.C. §233); it was with the provision that nothing in the statute "shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York," or as "conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to September 13, 1952..." (United States Code, 2006, Title 25 pg. 43).

In the 1973 report of the Temporary Commission on the Powers of Local Government, entitled *Strengthening Local Government in New York*, there is a thorough discussion of all levels of government in the State of New York, save one. While an Indian reservation is shown on the detail map of Onondaga County, the report in three volumes discusses the origin, powers, development and evolution of cities, counties, towns and villages without ever once mentioning American Indians, Indian nations, indigenous sovereignty, or tribal existence (Temporary Commission on the Powers of Local Government, 1973). One would think that such notables as the County Executive for Suffolk County, the County Executive of Erie County, Mayor of Rochester, a former Vice President of Syracuse University, the Executive Director of the Adirondack Park Agency who was a former County Executive of Oneida County, and a Distinguished Professor of Urban Affairs at CUNY, all of whom served on the commission would have heard of the Indian nations and maybe considered them worth mentioning (Temporary Commission on the Powers of Local Government, 1973). If they had given any consideration to the role Indian nations as local government, that would have been at least an acknowledgement of their existence, rather than a complete dismissal in the discussion of revitalizing local government in New York State (Wagner, 1973). Conversely, the complete absence of any discussion or acknowledgement of American Indian tribal nations in the Commission's report could have been an admission, at least passively, that New York State government had no jurisdiction or rights within those American Indian nation territories. After not being successful in completely dominating the land, resources, and the American Indian people by losing U.S. Supreme Court cases, the State approach in 1973 was to simply not acknowledge them at all. Ignoring

American Indian tribal nations in a discussion of local government, and the issues impacting local government in New York State could also be viewed as seeming to follow the process suggested by John Jay to consider Indian territory “as their own...” (Hauptman, 1988, p.6).

Through a review of the historical interactions between the state and the Indian nations it is possible to see that “New York State government, with few exceptions, has largely ignored native populations...” especially in the era after legal domination failed (Hauptman, 1986, p.45). Unfortunately, this has not been a process free of continual conflict as the seemingly unending desire of the State to exterminate any American Indian title to land as well as occupancy and national standing demonstrates.

By the compact of 1786, New York assumed to grant to Massachusetts “the right of preemption of the soil from the native Indians, and all the estate, right, title and property which the said State of New York hath," and Massachusetts assumed to grant to New York " the right to the government, sovereignty and jurisdiction" of these lands. New York got the right to extend her civil and criminal laws over this territory, 'the right to exercise supreme power," "the right to make, declare and apply the law" over it... (New York State Assembly, 1889, pp.34-35).

It is also true in the attempts both past and present to force the Iroquois nations and Long Island tribes to conform to the state’s desires in the areas of taxation and the application of state laws on Indian lands. Thus the competition between the federal government and New York State over control of the Indians, and for the American Indians a continuing struggle with the state over their survival in the face of disregard on policy matters and the rights of the nations themselves to continue to exist and govern themselves and their people. This basic conflict, which began in

the desire of New York State to circumvent the federal role in Indian affairs and to dictate the future to the native nations, has continued with the issues of the building of NY Route 17, now upgrading to Interstate 86; the NYS Power Authority and the flooding of one-fifth of the Tuscarora reservation; and the modern land claims stemming from illegal land transactions between the State of New York and Haudenosaunee (Abler & Tooker, 1978; Fors, 2011; Landy, 1978; Murphy, 2009). The relationships between the Long Island tribes and the state have also not progressed much past the point of ongoing litigation especially in the areas of historical fishing and shell fish rights and tobacco sales, as well as ongoing Unkechaug inquiries into the mysterious loss of one-hundred and twenty-five acres of Unkechaug land (Strong, 2008, p.115-120).

Seneca legal scholar Professor Robert Odawi Porter, Professor of Law, Dean's Research Scholar of Indigenous Nations Law, Director, Center for Indigenous Law, Governance & Citizenship, and President of the Seneca Nation of Indians, writes in the preface identifying the purpose of his book, *Sovereignty, Colonialism and the Indigenous Nations: A Reader*, that his “primary objective is to remedy what I believe to be an insufficient understanding by both Indigenous and non-Indigenous peoples about the meaning of Indigenous sovereignty...” (Porter, 2005, p.xix). He relates the story of the Seneca blocking interstate highways and disruptive tire fires in response to attempts to embargo Seneca businesses. “After six weeks of episodic conflict with the State Police, the governor ended the embargo, pledged to ‘respect Seneca Nation sovereignty,’ and withdrew his taxation plan and his troopers...” (Porter, 2005, p.xx). It has been possible to show that from the earliest interactions between the Iroquois and the colonial powers that the Iroquois have maintained their position as distinct and not under the jurisdiction of either the colonial Governors or the succeeding governors after the creation of the

State of New York. While the state has sought to establish its position, the Iroquois have yet to relinquish theirs.

While the Whipple Report, New York State Assembly *Report of Special Committee To Investigate the Indian Problem of the State of New York, 1889*, goes into great detail about the efforts undertaken through the Indian removal process to remove all American Indians from New York, even this report acknowledges that the process was not consistent with ethical legal procedures.

The President, the chairman of the Committee on Indian Affairs, Governor Everett, of Massachusetts, Governor Seward, of New York, a committee of the General Assembly of Massachusetts and the Society of Friends, all expressed the opinion that improper means had been brought to bear to induce the assent of the Senecas to the treaty. Still, with what must have been a full knowledge of all the facts, the Senate ratified the treaty by the casting vote of the Vice-President, both Senators from New York, one of whom was Silas Wright, voting in its favor, and President Van Buren proclaimed it... (New York State Assembly, 1889, p.28).

The resulting compromise treaty, the 1842 Treaty of Buffalo Creek secured the Allegany and Cattaraugus reservations for the Seneca Nation. By February 14, 1863 the lands which would constitute the Tonawanda reservation would be “conveyed these lands to Lucius Robinson, Comptroller of the State of New York, and to his successors in office in fee, in trust for the Tonawanda band of Seneca Indians...” (New York State Assembly, 1889, p.31). The competition and intrigue relating to the attempted removal of the Seneca ultimately resulted in the splitting of the Seneca people into three politically separate communities within the larger boundaries of the United States, one in what is now Oklahoma, one at Tonawanda, and those

reservations which make up the Seneca Nation, not including those Seneca that reside on the various reserves in Canada. This Indian removal example demonstrates that the interactions of state government have not always reflected the highest ethical behavior, nor has the state easily accepted the rights of the American Indian people and the role of the federal government.

It could be argued that one major consequences of the tactics used in the past by the state in dealing with the American Indian tribal nations is the extremely litigious nature of practically every interaction these days (Gover & Gede, 2010). There is a fundamental lack of trust which has been learned over two centuries. Another aspect of the relationship between the American Indian tribal nations and the state is the almost constant refrain from many segments of United States society proclaiming the extinction of the American Indian (Thornton, 2005). The vanishing Indian, like a political talking point of the present day, is repeated so many times that after a while people, hearing nothing else, tend to not only believe it, but proclaim that it has already happened and then act accordingly. Lewis Henry Morgan, from the village of Aurora in Cayuga County, NY, one of the pioneers in American anthropology wrote in 1851,

The Iroquois will soon be lost as a people, in that night of impenetrable darkness in which so many Indian races have been enshrouded. Already their country has been appropriated, their forests cleared, and their trails obliterated. The residue of this proud and gifted race, who still linger around their native seats, are destined to fade away, until they become eradicated as an Indian stock. We shall ere long look backward to the Iroquois, as a race blotted from existence; but to remember them as a people whose sachems had no cities, whose religion had no temples, and whose government had no record... (Morgan, 1851, pp.145-146).

Indeed it is possible to see that the contemporary opinions of not only state but local governmental leadership seems to silently ask the question why the American Indians are still here when all had agreed years ago that they were extinct or at least as good as extinct? “Colonial histories were constructed to legitimize colonial conquests and to obfuscate Native representations, and they continue to obstruct the claims and civil rights of indigenous ... people...” (D’Hautesserre, 2010, p.109).

The Oneida have faced and continue to face, with other Haudenosaunee member nations a continuing tense relationship with New York State while not always expressly about land, it is principally fueled by a concern of both New York officials and land owners over clear title. “Oneida County executive Ralph Eannes put it bluntly: ‘if they buy back 250,000 acres, they rip the community of central New York apart. If this guy pays taxes but that guy doesn't, this guy lives by zoning laws, that guy doesn't— what does that do to the community?’ ...” (Bruyneel, 2000, p.79). It seems almost ironic that the same arguments once made by American Indians in the face of an advancing and land hungry non-Indian population now mirror those made by the public officials in New York State about Indian nations regaining their ancestral lands. “The lawyer for the property owners referred to the Oneida Nation as having ‘quasi-sovereignty,’ that its claims against American private property ‘violates principles of the American Constitution,’ and said it was ‘shocking to see a government of this sort within *our* government’ ...” (Bruyneel, 2000, p.79). Strangely from this same attorney there is no critique of the violations of federal statutes, violations of the Treaties between the United States and the Six Nations, violations of the same U.S. Constitution, and the unethical conduct by New York State to obtain occupancy to American Indian land. The U.S. Constitution states explicitly in Article VI, that’ “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme

Law of the Land; and the Judges in every State shall be bound thereby...” (U.S. Constitution, 1789, Art. VI.). These state actions resulted in the majority of the Oneida, an ally of the colonists in the American Revolution, being relocated to either Canada or Wisconsin and the remainder possessing only 32 acres. The fact of the Oneida alliance with the American colonists and their willingness to fight alongside colonial units is well documented (Ward, 1952, pp. 547, 564, 566, 649-652). In recent years the more conservative U.S. Supreme Court has issued rulings that aspects of the three Oneida legal cases regarding their land claims in central New York cannot proceed, yet noted legal scholars George Generas and Karen Gantt say that “the claims do not disappear because of a Supreme court decision...” (Generas and Gantt, 2008, p.18).

The Cayuga have long sought the return of enough of their original land base to provide them with a stronger sense of place in their own homeland. Since 1807 the Cayuga have worked to regain their land or receive compensation for the seizure. Prior to 1957, the Cayuga could not get into state courts and prior to 1974 the Cayuga could not get into federal court, these restrictions thus barring the legitimate avenues the Cayuga were able to pursue to regain a homeland (Fort, 2011, p.393).

The Cayuga’s efforts to seek redress from the State for the loss of their homeland in 1795 ...attest to their perseverance and fortitude. Those efforts do not support a finding that the Cayuga should be denied prejudgment interest simply because they took advantage of the legal and political mechanisms available to them through the years. (*Cayuga Indian Nation of NY v. Cuomo* 165 F. Supp.2d 266, 366 (N.D.N.Y. 2005))... (Fort, 2011, p.394).



While the issue of right seems somewhat straightforward, there are those who strongly oppose the Cayuga on purely political grounds. Having successfully seized all of the Cayuga land, the Syracuse Post Standard had eleven articles and one editorial about the Cayuga. “Ironically, at issue was the decision by two counties to press a legal battle against the Cayugas because, said the counties, ‘if we don’t...we’re conceding it’s a sovereign reservation and that would give them the right to do anything they want on the land...’” (Smith, 2010, p.11).

The Mohawks have also had on-going conflicts with the State of New York over land, and sovereignty and not just the land claim relating to the St. Regis reservation. The Ganienkeh crisis, at least a crisis for New York State, has been an issue since Moss Lake in 1974 and remains an unresolved issue for New York State and Clinton County governments (Landsman, 1987). From the time in May 1974 when Mohawks from the Caughnawaga Reserve and Akwesasne Reservations took over the 612 acre site near Moss Lake, the issue had been sovereignty. As much an issue with the United States as with the State of New York, the Moss Lake situation was one which characterized the differences between the traditional and what were called the ‘electives’ who chose to participate with the United States in a tribal nation government recognized by the United States Bureau of Indian Affairs (Landsman, 1987). This crisis turned bloody and it was this violent turn and the potential for more bad press for New York State after the Attica prison riot that moved then New York Secretary of State Mario Cuomo to negotiate the movement of the Ganienkeh Mohawks to parcels of land in Clinton County, where a small Mohawk community remains today. During the crisis the Mohawks sought to invoke Article 7 of the Treaty of 1794 which “specifies that any grievance between the Iroquois and white individuals involves a complaint ...by the Six Nations...to the President of the United States...” (Landsman, 1987, p.105). This demonstrates that among potential other

rationales, the on-going sovereignty battle between the Indians, New York State and the federal government was at least a major factor on the part of the Mohawks. By 1977, Governor Hugh Carey had assigned Mario Cuomo to develop a resolution through the development of the Turtle Island Land Trust, established to hold land entrusted to the Warrior Society Mohawks in Clinton County including 5,700 acres near Miner Lake and a tract in Macomb state reforestation area (Odata, 2012). "The Ganienkeh inhabitants consider the state property reclaimed Mohawk land and themselves a sovereign nation. They have kept out interlopers, especially anyone with illegal drugs or alcohol, with their own police force..." (Odata, 2012). Donald Washburn, a retired pastor of Burnt Hills United Methodist Church, who is chairman of Turtle Island Land Trust said, "All they want is to be left alone so they can have their own schools where the kids learn English and Mohawk..." (Odata, 2012). While the Mohawks are trying to secure a perpetuation of their own society and culture through whatever means are available, including the education of their children on their own terms, the issues of other parties are a bit more transparent. "'It's all about money,' said Washburn about push-back from outsiders..." (Odata, 2012).

The military standoff between the Mohawks and the external governments has been an ongoing issue for the past thirty-eight years. "Thirteen years after the Moss Lake confrontations, in 1990, a Vermont National Guard helicopter was struck by rifle fire from around Ganienkeh and a doctor aboard was seriously wounded. The ensuing standoff between Ganienkeh Mohawks and State Police lasted 11 days..." (Odata, 2012). Over the intervening years since the 1990 standoff, the Ganienkeh residents have purchased additional land through the Turtle Island Trust, removing it from county tax status and causing further frustration for Clinton County officials. On their website the Ganienkeh Council Fire suggests that it can and does play a role of "ushering in a new age of respect and communication between various individuals,

‘factions’ and communities within the great longhouse of the Confederacy...” (Ganienkeh, 2012, webpage). Christopher Nyhan, a member of the Turtle Island Land Trust said about the Ganienkeh residents, “They would say they are some of the least dangerous people anywhere ... but if you are going to come and invade their land, they would defend it to the death...” (Odata, 2012, p.1). This leads to some fundamental questions regarding the political and legal status of the Ganienkeh Mohawks. Since the original members were made up of Canadian band members, therefore *status Indians* (recognized) under Canadian law the current residents may or may not have retained that recognition. It seems that the actions of the State of New York in providing land to be held by a trust could indicate that the State has officially recognized the Ganienkeh Mohawks as a separate Mohawk band or tribe; however the NYS Indian Law does not include a section on this group. In 2006, 45th District Senatorial candidate Tim Merrick indicated that he was in favor of “exploring the federal recognition process for this tribe, which could result in sovereign lands...” (North Country Gazette, 2006).

A May 14, 2012 news article indicated that New York State government was trying to collect approximately \$400 million from casinos operated under state gaming compacts with the Senecas and Mohawks indicating that the American Indian tribal nations are holding the money due to issues related to the larger New York State – American Indian relationship (Odata, 2012). Certainly for the Mohawks, part of the controversy remains the relationship between Ganienkeh and Akwesasne. While the issues of gaming is controversial in many segments of society, the money resulting from gaming is desired by many parties, including American Indian tribal governments, local town and county governments, and the state. For all parties except the American Indian nations these dollars represent an opportunity at ‘free’ money, in essence money that they did nothing to earn, but simply want a cut.

Additionally, the Kanatsiohareke Mohawk Community reestablished in 1993 and located in the Town of Fonda, Montgomery County, while established by a peaceful and mostly welcoming relocation of Mohawks from Akwesasne, also sits in a unique position in the historical land base and legal reservation (Kanatsiohareke Mohawk Community, 2012). The question regarding these Mohawk is one of status as individuals and as a community within the legal parameters of the State and federal governments. If these Mohawks are citizens of the St. Regis Tribe, then their status as federally-recognized Indians could place specific issues before the State and federal officials. If these Mohawk are citizens of the Akwesasne Reserve, under the leadership of the Akwesasne Mohawk Council, then as what are called *status Indians* in Canada, there could be questions regarding State and federal obligations. Finally, if these Mohawks carry neither federal recognition nor Canadian recognition, and the State of New York has not recognized them as an Indian tribe, then their community existence, as defined externally is extremely unclear. The United States Military Academy in their publication *Native American Historic Context for the United States Military Academy* calls them “The Mohawk Community of Kanatsiohareke” and lists them as an interested party in consultations concerning the Hudson highlands (Mann, 2006, p.28).

The politically recognized American Indian populations on Long Island consist of the Shinnecock Indian Nation and the Unkechaug Nation of the Poosepatuck Reservation. These two tribal nations do not have the wealth of historical research concerning them as do the Iroquois nations, but because of the early acquisition and recognition of their lands, they still have established Indian communities and reservations on Long Island which have remained relatively intact surrounded by non-Indians since the seventeenth century. The other two tribal communities, the unrecognized Montauk and Matinnecock, do not have tribal land remaining

and exist as landless tribal nations (Strong, 1998). It would be equally beneficial to examine either Long Island tribe get the sense of the relationship between land, assimilation, and education, so in an attempt to give adequate coverage, the Unkechaug will be the teller of the Indian story on Long Island. Through the strange practices of early colonial land grants, it was William Smith who actually ensured that the Unkechaug would have a secure land base. His deed provides one-hundred seventy-five acres of land in four parcels to the Unkechaug, acknowledging that “said Indians and their children or posterity have not any privilege to sell convey, alienate or let this planting right or any part thereof to any person or persons whatsoever...” (Strong, 2008, p.48). As John A. Strong, a retired professor from Long Island University’s Southampton College who has written several books on Long Island Indians points out “tribes on Long Island without a secure land base have had a very difficult time keeping their community and culture intact...” (Strong, 2008, p.48). During the period of the eighteenth century, the Unkechaug also largely converted to Christianity, though a form that reflected “melding traditional religious occasions with Christian services...” (Strong, 2008, p.48). As the arm of the United States Indian policy continued to spread across the continent, the Unkechaug were basically left behind, reasonably secure on their land, and fitting in as an identifiable underclass on Long Island. Educationally the Unkechaug were the subject of interest for two of the founding fathers. During the summer of 1791 the Unkechaug played host to both Thomas Jefferson and James Madison who were interested in a comparison of Algonquin tribal languages (Strong, 2008, p.68-69).

In addition to the many Unkechaug and Shinnecock Indians who served on both whaling and naval ships, “[m]any of the Unkechaug worked as servants, domestics and day laborers for the Floyd family...” (Strong, 2008, p.82). The subordinate nature of the Unkechaug reflected

their lack of social and political power and the reality that they were distinct minorities in their own country. By the mid-nineteenth century, “whites tended to assert themselves as the ‘gatekeepers’ of cultural identity...” (Strong, 2008, p84).

Similar to the Iroquois, the Indians of Long Island were also covered under the New York State legislature’s funding of reservation schools in 1846. The 1846 law, *An act to provide for the education of the children of the Onondaga, and the children of the other Indians residing in the state*, was passed April 30, 1846 (Keyes, 1879, p.790). This was not, however the earliest state law relating to American Indian education. The February 28, 1804, “act for the establishment of schools in New Stockbridge for the instruction of Indian children...” authorized the leasing of land and the paying of wages of school-masters “for the instruction of Indian children...” (Keyes, 1879, p.789). The act passed by the legislature in 1856 expresses the intent clearly in the title “*An Act to Facilitate Education and Civilization Among the Indians Residing in New York State...*” (Strong, 2008, p.85), was one of ten additional statutes passed concerning American Indian education during that decade (Keyes, 1879, p.790). To think that the legislature sought to facilitate civilization among the Indians speaks to not only the state’s desire to manage Indian affairs independent of the federal government, but also a reflection of the national policy of assimilation rampant across the country. The Unkechaug were not originally part of the Indian school system, but were added in 1875 after a petition from the Unkechaug.

The superintendent sent a representative to Poosepatuck and followed up with a personal visit. He found that the petition was accurate and that the state was obliged by Chapter 71 of the 1856 law to assist the Unkechaug Indians in establishing a state sponsored school on their reservation. He obtained the concurrence of the Secretary of State and the Controller and the school construction was completed in the spring of 1875. The

establishment of the school was fiercely opposed by the Floyd family... (Strong, 2008, p86).

The Floyd family understood that involvement by the state in the education of the Unkechaug represented a fundamental acknowledgement of the tribal existence and community rights of the Unkechaug nation and thus a limiting of the family's unilateral control of the Indians which had gone on for generations. The schools on the Unkechaug and Shinnecock reservations functioning under the same superintendent focused upon vocational education and "the expectations for the children were very low..." (Strong, 2008, p.87). In the 1915 report of the Department of the Interior the Poosepatuck and the Shinnecock Indians were listed in tables entitled "Indian Population of the United States" confirming that the federal government regarded these two Indian communities to be recognized Indians in New York State (RDI, 1916, p.66).

Similarly, other academic studies report on not only the Iroquois and the Long Island tribes, but other American Indians existing in communities in New York State outside of the reservation system. In the 1948 Annual Report of the Smithsonian Institution entitled *Surviving Indian Groups of the Eastern United States*, author William H. Gilbert discusses the six nations of the Iroquois, including the Tonawanda Band of Seneca; the five remaining tribes on Long Island (e.g. Shinnecock, Poosepatuck, Montauk, Setauket, and Matinecock); the Abenaki Indians of Lake George; and the smaller Indian groups along the Hudson River, Schoharie Valley, and elsewhere (Gilbert, 1948, pp.410-413). It is important to realize that it has been clearly known to the federal government, and through extension to the state, for more than six decades that there are quite a selection of American Indian populations in New York State, with only a few having political status or reservation lands. Of an interesting note is that five Abenaki students attended

Carlisle Indian Industrial School. Records show that among those were Abenaki from what was called the “Encampment at Lake George...” (Memorial Hall, 2008 & Sorrell, 2003, p. 138).

The Hudson River Indian groups are called *Bushwackers* of Columbia County and the *Pondshiners* west of Newburgh. The American Indian isolate group living in the hills north of Albany in Rensselaer County is called the *Van Guilders*. The isolate Indian groups of the Schoharie valley include the *Slaughters*, the *Honies*, and the *Clappers*. The *Narns*, an Indian group first reported in 1912 and the *Jukes*, a group first described in the 19<sup>th</sup> century, are also reported as living north of New York City (Gilbert, 1948, pp.410-413). Additionally, an American Indian group called the *Yanses* settled in the Albany Hill area of Schenectady in the beginning of the 19<sup>th</sup> century (Greene, 1925, pp. 1165-1174). Finally, the rather extensive *Jackson Whites*, living in Orange and Rockland counties constituted a distinct community of approximately 5,000 people in the 1948 report (Gilbert, 1948, pp.410-413).

Calvin Beale, a member of the Economic Research Service of the U.S. Department of Agriculture reports on what he calls “American Triracial Isolates” in 1957 and “mixed racial isolates in the United States...” in 1972, meaning communities of people who possess European, African and American Indian ancestry (Beale, 1957, p.187, & Beale, 1972, p.704). While indicating that the American Indians listed on the 1950 U.S. Census, “do not constitute the sole biological legacy of the aboriginal population once found in the east...” (Beale, 1957, p.194). Beale, describes the *Bushwackers* of Columbia County and the *Jackson Whites* of Orange and Rockland Counties. Brewton Berry, in his description of surviving American Indian groups includes not only the Iroquois Nations, the Long Island nations, but also American Indians in the lower and mid-Hudson valley, and Mohawk valley (Berry, 1963). Dr. William S. Pollitzer, noted anatomist and anthropologist, specifically reports on and names some of the groups,



specifically the *Bushwackers*, and *Jackson Whites*, in the lower and mid-Hudson valley (Pollitzer, 1972, p.722). Beale reported in 1972, a decade and a half after his original research that the “existence of mixed racial [American Indian] populations ... constitute a distinctive segment of society...” (Beale, 1972, p.705). The existence of these varied and certainly off-reservation American Indian or bi-racial or tri-racial isolate groups could certainly complicate the process of American Indian education.

It is important when looking at the success of education in New York State to determine the relative level of involvement and expertise found in state government; Hauptman found in his research that there is “tremendous ignorance by state officials of American Indians...” (Hauptman, 1986, p.45). The general history of American Indian education is not generally favorable due in large part to the prejudices and preconceptions that non-Indian officials brought to the effort. Overcoming prejudice and discrimination requires first an acknowledgement that one’s prejudices may not be true. This realization has been long in coming in the dealing with those responsible for American Indian education practices. “Such efforts as have been made to ‘educate’ the Indians have been characterized by ruthless suppression of tribal culture and crude imposition of the white man’s ways...” (Kennedy, 1990, p.20) These efforts characterize the assimilation model of American Indian education. The state had provided aid for both on and off reservation Indian students since before 1846, but the state codified their role in law at that point establishing a firm state role in the educational sector. The 1872 report of the U.S. Commissioner of Indian Affairs provides the federal view of the situation in New York. Commissioner Walker reports, that regardless of the fee status of the land itself, the “State of New York exercises sovereignty over these reservations...” (Walker, 1872, p.16). It is unclear whether this was in order to preempt the federal government in the area of Indian affairs or a

genuine desire to educate American Indians. In either case, as has been shown generally in educational policy, the educational mission was less one of treaty and more one of assimilation.

In 1872, the federal government reported,

On the New York reservations are twenty-eight schools; the attendance during some portions of the past year exceeding eleven hundred, the daily average attendance being six hundred and eight. Of the teachers employed, fifteen are Indians, as fully competent for this position as their white associates. An indication of what is to be accomplished in the future, in an educational point of view, is found in the successful effort made in August last to establish a teachers' institute on the Cattaraugus reservation for the education of teachers specially for Indian schools. Thirty-eight applicants attended, and twenty-six are now under training... (Walker 1872, p.16).

In contrast to the federal report in 1872, the State indicates that, “[b]y 1875, there were 26 reservation schools on 8 reservations and school attendance was made mandatory for all American Indian children between the ages of 6 and 16 in 1904...” (State Education Department, 1990).

The impact on education of the complex state politics surrounding Indian land would be dramatic. Madelyn Smith, the teacher at the Unkechaug School had arrived in 1930 and found there were no grading system, no report cards, and no procedures for graduation. It seemed clear that there was no expectation that the Unkechaug children advance beyond basic elementary level (Smith, 1935, p.82). While she worked for five years to establish an educational curriculum, obtain text books and furniture, her request in 1935 to the state board of education received an interesting reply. Smith was told, as is reported in the New York Times, April 1,

1935, that the school would be closed and the Unkechaug children would be transferred to the Moriches school system (Strong, 2008, p.95-96). The superintendent of the Moriches schools, Roscoe Craft reported that the white parents were “not at all sure that the citizens of Moriches wanted the children in their schools...” (Strong, 2008, p.95-96). The decision to close the school appears to be not educational, but one motivated by that age old quest for Indian land. Donald Treadwell, former Chief of the Unkechaug, writes about the relationship of the Unkechaug children and the local community.

After the original Presbyterian reservation school closed in the 1940's, the reservation children became wards of New York State. They were sent to the nearest Union Free School which was located in Bellport. No other school would accept Indian children because of public pressure...Bellport only accepted our children because the State offered a bribe... (Treadwell, 1992, p.68).

William S. Dana, a land owner, desired that the state declare that Poosepatuck was not an Indian reservation, allowing him to claim title and evict them (Strong, 2008, p.97). This appears to be the continuation of the control issues raised by the Floyd family when the school was first constructed. While the official decision to close the school at this point was reversed on the facts, William Dana launched a private action to evict them as squatters hiring former State Supreme Court Justice John R. Vunk to represent his interests. Suffolk County Judge Richard Hawkins in dismissing the case cited the precedents of the *Seneca Indians v. Lehey* (8 N.Y.S. 245, 55 Hun, 83) and *People ex. rel. Schuyler v. Livingstone* (205 N.Y.S. 888, 123 Misc. 605) (Strong, 2008, p.103-104). Similar to the Dana case was the case of Elmer Buckman, of Fort Hunter, who in 1958 retained an attorney Charles S. Tracy to “seek a court order for the ejection of a band of Mohawk Indians who, he said, were camping on his property...” since 1957 (Kennedy, 1990,

p.19). This case resulted in a court order by Judge Chandler S. Knight to vacate the property by April 1. The Mohawk leader Frank Johnson and his 25 followers were threatened to be forcibly removed by the Sheriff's Office to the County jail if they refused (Evening Recorder, 1958, p.6). By the time of the court order, the leadership of the Iroquois Council at Onondaga had already moved many of the Mohawks to the Onondaga Reservation, however Johnson and another Mohawk Peter Beauvais, chose to remain. Strangely the huts built by the Mohawks were mysteriously burned "by persons whose connection with the court ordered evacuation remains unknown..." (Evening Recorder, 1958, p.6)

The decision in 1954 to close Indian schools would finally push the Shinnecock children involuntarily into the public school system. The State education officials denied that the *Brown v. Board of Education of Topeka*, had anything to do with the plan to integrate the schools, by closing the Indian school, and the Department claimed in the *New York Times*, September 24, 1954 edition that the plan had been underway for some time. "Tensions between the school districts and the tribal leaders on the Shinnecock and Unkechaug reservations soon emerged and continue to challenge the local communities..." (Strong, 2008, p.112). By the late 1960s the Unkechaug students were moved over to the Center Moriches school system. Donald Treadwell indicates that "[f]ederal money had been spent for...Indian programs, but was funneled into other school programs...[t]he other programs benefited the majority of students within the dominant society, but were of little benefit to Indian children..." (Treadwell, 1992, p.69) On October 7, 1970 the New York State Assembly Subcommittee on Indian Affairs held public hearings at Poosapatuck in which, according to the Brookhaven Town historian, the Unkechaug complained about not only housing and health care, but also education (Strong, 2008, p.114). In a 1971 letter from Ronald Daly, Chief of the Bureau of Elementary School Supervision for the

New York State Education Department, he writes about a recent meeting of the Assembly Subcommittee on Indian Affairs, where the members wanted to see “their progress on an Indian education ‘Position Paper’ proposed by the Regents...” (Daly, 1971). It seems clear that at this point the position paper was in its infancy. Daly indicates as much by saying “active participation of representatives of Indian communities will be a vital part of this project. In the near future, we shall be asking your assistance in gathering data relevant to Indian education...” (Daly, 1971). In responding to a letter from a concerned parent, Anna Lewis, Associate in the Education of Indians states,

Survey teams, composed of Indians, will be interviewing both reservation and urban Indians to gather information about the education of Indian children. The survey is intended to pinpoint types of problems as well as possible alternative solutions. This information will then be compiled and a plan for change submitted to the Board of Regents for consideration... (Lewis, 1971).

What Mrs. John, the concerned parent of eight children, had asked for cannot be considered as outrageous or unacceptable. Mrs. John requested, a seat for American Indians on the School Board of Silver Creek because, “we need our own representation from the reservation not from a different area by a white person...” (John, 1971). She also asked that the curriculum be changed because it is, “destroying our young brilliant Indian students psychologically by referring to them as uncivilized; savages; hostile; ignorant and scores of other degrading names...” (John, 1971). The concern over degrading stereotypes and assimilationist curriculum was not a single concern, but was well known at the highest levels of government. In the 1974, *Final Report of the Pilot Planning Program for the Indians in New York State*, report author Richard Wiebe, writing to Governor Malcolm Wilson, indicates that “most of the respondents strongly criticized

educational institutions for the traditional Indian stereotype conveyed in educational materials, texts, etc...” (Wiebe, 1974).

In looking at the possibility that perhaps the concerns by the Indians about the motivations of the state were unfounded, it is worth knowing the experience of the key Chiefs during the past century and the statements made by local government officials. Chief Rickard of the Tuscarora says, “[t]he white people who live closest to Indians are always the most prejudiced against them...” (Graymont, 1973, p.121). Professor Ronald Smith of the Buffalo State College’s Communication Department recently conducted a study on the New York State media coverage of Haudenosaunee sovereignty. This study looked not only at the tone of the coverage, but also how they frame the issues surrounding native sovereignty. Since practically all American Indian children are enrolled in New York state public schools, the presentation of their families, their tribal nations and their culture is of extreme importance as part of the educational experience. Doing four separate content analyses he tended to find that the articles included a sense of mockery and dismissal of Indian rights, lacked a historical context “explaining why the Indians were adamant”, most lacked mentions to treaties or sovereignty, tried to frame the article in economic terms, and supported the position that the “state would inevitably move forward”, even calling the Indians “‘super-citizens’ who unfairly do not pay taxes...” (Smith, 2010, p.5). “The Buffalo newspaper editorial allowed that the Senecas are a sovereign nation protected by ancient treaties, but it argued that the state financial crisis trumped the Indians’ right not to collect sales taxes...” (Smith, 2010, p.11). In reviewing the New York State news media coverage of American Indians, Professor Smith says clearly that “[n]ews coverage of public policy issues involving an American Indian entity does not generally reflect the highest standards and qualities of the journalistic profession...” (Smith, 200, p.15). This

rather derogatory opinion of the American Indian by non-Indian residents in New York State is by no means new.

The 1837 *History of the Indian Tribes of the United States their Present Condition and Prospects and a Sketch of their Ancient Status*, published by order of the United States Congress says this about the perception of the Iroquois in New York State,

Little attention was given to the Indians. Wise in their own conceits, regarding proficiency and excellence in the arts of war and hunting as the limit of all attainments, they hated education, deemed voluntary labor as equivalent to slavery, and despised morality, as well as the teachings of the gospel. If such people disappeared, the magistrates felt little or no sympathy for their fate; ...the majority of the citizens ...were glad to see them pass away, and give place to a superior race... (Schoolcraft, 1837, p.325).

It seems that rarely in history has there been such a fundamental misunderstanding of one group of people by another. There appears, given the information available, to be a substantial disconnect by the citizens and government of the State of New York in recognizing merit and legitimacy in the Indian position on the main issues of land and political sovereignty, as well as a basic understanding of American Indian history and culture.

Tuscarora Chief Clinton Rickard says, “[i]f New York State ever assumed jurisdiction over us, we ... would suffer continued discrimination and even our lands would not be safe from the desires of our white neighbors...” (Graymont, 1973, p.121).

Faithkeeper Oren Lyons says about the relationship between the Haudenosaunee and the federal and New York State governments;

We're equal. We don't call each other 'Father' or 'Son,' we call each other 'Brother.' That's the way it's supposed to be between us 'for as long as the grass grows and water flows and the sun shines.' Those words come from this treaty. We still believe them. We're waiting for the White Man to live up to his side... (Arden & Wall, 1990, p.69).

As Harriet Gumbs, Shinnecock elder has said,

We were here for thousands and thousands of years before the first white settlers arrived in 1640...Our ancestors called this place 'Sea-wan-hac-hee' or 'Shell Heaven'... Back then the land was ours for miles around. Now we have only these 400 acres... This land is ours forever – we're not leaving... (Arden & Wall, 1990, p.42).

As former Unkechaug Chief Donald Treadwell said,

As long as there are people like myself, however, who continue to write, to promote and to stimulate Indianism as a way of life, a culture, some will still live. Our new children are learning to live in the mainstream and in their own culture and unique subcultures... as long as there is native American blood in the veins of the people living on the reservation, it should be theirs in perpetuity, forever... (Treadwell, 1992, p. 107, 88).

Finally, in a most explicit statement outlining the distance between the positions of the American Indian tribal nation and the non-Indian government on the issue of independence, the late Tadodaho Leon Shenandoah, in 1971, shortly after being appointed to the position confronted New York State Police and highway crews on Interstate 81. "Drawing a symbolic line with his



ceremonial condolence cane across the road leading into Onondaga, Chief Shenandoah announced: ‘The United States stops here!’...” (Arden & Wall, 1990, p.104).

These statements recorded from the leaders and elders illustrate the continuation of the principle of separateness which has existed since first European contact between the Iroquois and the European. According to Ray Fadden in his work *Wampum Belts of the Iroquois*, the Two Row Wampum Treaty, Guswhenta, represents the 1613 agreement between the Five Nations and the Dutch which acknowledges that each people exists in their own nation and that neither will attempt to make laws or obligations that interfere with the other. This agreement sits as the fundamental principle under which all subsequent agreements with the European powers, the United States, and the State of New York are made and understood (Fadden, 1999).

Educationally, the Indian nations have seen the state’s reform efforts rise and fall with the role education played in the larger issues relating to cultural assimilation and land acquisition. As mentioned earlier, the New York State legislature enacted in 1846 a law “providing for school buildings and annual appropriations for the education of American Indians on four of the reservations: Allegany, Cattaraugus, Onondaga, and St. Regis...” (Hauptman, 1988, p.75). The Shinnecock School opened in 1848, Tonawanda and Tuscarora in 1855, Oneida opened in 1857 and closed in 1889, and the Poosepatuck School, previously mentioned opened in 1875. Between 1931 and 1965 all but three of the schools were closed by the state (Hauptman, 1988, p. 75). As previously noted the desires to gain Indian land and to assimilate Indians into non-Indian society were the cornerstones of the educational philosophy. W.W. Newman, superintendent of the Onondaga school suggested that the Onondagas engaged in the “‘practical communism’ of Indian life that ‘takes away some of the incentives to personal exertion.’...” (Hauptman, 1988, p.7). While there were missionary and religious schools, it has also been

possible to leave the reservation to attend high school or even college. Notably, Arthur C. Parker, Seneca anthropologist, historian, and museum administrator graduated from high school in 1897 in White Plains (Thomas, 1955, p.3).

Since 1954 school districts adjoining a reservation “have taught reservation students on contract with the Department...” (NYSED History, 2012). In 1971, Anna Lewis, a member of the staff in the State Education Department stated that state education officials “merely built another school facility rather than questioning the philosophy of assimilation...” (Hauptman, 1988, p.76). Additionally, “some of the public funds to which Indian nations in New York were entitled were never applied for by state educational administrators until the early 1970s...” (Hauptman, 1988, p.76). Even when public school districts applied for or received funds for American Indian education rarely were the funds used for the intended purpose. Those off-reservation school districts with larger numbers of American Indian students “took federal monies for Indian education and rarely gave any of the cultural enrichment courses and/or activities under federal/state programmatic requirements...” (Hauptman, 1988, p.76). In response to inactivity of the public school districts near the reservations, St. Regis Mohawks under the leadership of Chief John Cook and Minerva White boycotted the Salmon River School District in 1968. Minerva White expressed her frustration with the public schools by saying;

It is probably hard for whites...to understand what it is like knowing who to talk to and not having anyone who will listen when problems arise where your children go to school. We could go to talk to the principal and he would listen to us and agree with us while we were there. But nothing was ever done...

(Hauptman, 1988, p.76).

Mohawk parents were also angered by the lack of due diligence in looking into their complaints by their Assembly member, the local school board, and the State Education Department. It was shown that at Salmon River Central School District, Title I funding earmarked for Indian education “was used for general education, audio-visual equipment, and the hiring of teachers and nurses...” (Hauptman, 1988, p.77). Eventually, after working with St. Lawrence University and the Institute on the American Indian in Higher Education, an Upward Bound program and a Mohawk language class were started in the district (Hauptman, 1988, p.77).

Onondaga parents led by Lloyd Elm a science teacher in the school district kept their children out of school in 1971. “The Onondagas were reacting to the extremely high dropout rates among Indian students, the lack of cultural enrichment programs including language instruction, and their limited voice in school district policy...” (Hauptman, 1988, p. 77). After negotiations with the State Education Department, the Onondaga school was expanded to include eighth grade and “more awareness of cultural concerns became evident in the Lafayette School District...” (Hauptman, 1988, p. 77).

In probably the most important course correction in a century, then Executive Deputy Commissioner Gordon Ambach journeyed to St. Regis in 1971 to put forth a major policy redesign. He stated, “[w]e cannot talk about the purposes and programs of Indian education without discussing the goals of Indian society...” (Hauptman, 1988, p.78). His program outlined three major goals for Indian education (1) sensitivity to Indian differences; (2) the development of programs on Indian culture; and (3) the participation of Indians as teachers, para-professionals, and members of educational advisory committees (Hauptman, 1988, p.78). As an SED staff member, Anna Lewis in collaboration with Dale Samuelson, using Executive Deputy Commissioner Ambach’s talk, wrote a five-year plan for the improvement of Indian education.

In a unique approach the plan called for Indian education boards “for each tribal group in New York...” (Hauptman, 1988, p.78). Specifically relating to the issues of those Indians not living on reservations, the plan called for “special consideration...for all the problems that encompass the urban Indian...” (Hauptman, 1988, p.78). During this same time period, the New York State Assembly recommended the establishment of Indian pre-kindergarten, dropout prevention programs, new curricular initiatives, and training of teachers on Indian educational needs. The Assembly also called for the creation of an advisory committee consisting of each chief school officer and at least one Indian leader from each of the SED districts. Strangely the first meeting of the department’s Native American Education Advisory Committee wasn’t until forty six years after it had first been recommended in 1940 (Hauptman, 1988, p. 79).

The Board of Regents first took up the issue of American Indian education in 1971 as part of a meeting with minority groups. American Indians were only invited to the minority group meeting as an afterthought and at the insistence of Gordon Ambach in a letter to secretary to the Board of Regents, Richard J. Sawyer. In his letter Ambach says, “[n]o mention of New York State Indians has been made with regard to this meeting. We should definitely have one or two Indians invited and perhaps you would want to have one on the panel...” (Hauptman, 1988, p.80). As a the prelude to the Board of Regents policy statement in 1975, the State Education Department, according to Hauptman, created the Native American Education Unit in 1973 under the leadership of Lincoln White, a Mohawk and former school superintendent. In the Board of Regents’ overview of the history of elementary, middle, secondary and continuing education, they claim it was established in 1972 (Hauptman, 1988, p.79 & NYSED History, 2012).

In 1975, the Board of Regents announced a significant change in the educational policy of New York State toward American Indians. It is this policy statement which marks the end of

the formal assimilation policy era in New York State Indian education and the beginning of a potentially new era. The new policy, contained in position paper number twenty-two says, in part, the following:

The formal educational programs provided for native Americans in New York State assumed that they desired to become assimilated into the dominant society, while forsaking their tribal heritages. The Regents now recognize that these people prefer to retain specific tribal cultural identities and life styles and that they wish to exercise the prerogatives of adopting only those components of the dominant American culture that meet their needs. In American history, the State and Federal attempts to terminate tribes, to dissolve their reservation status, and to relocate their people into urban settings have been unsuccessful... (Hauptman, 1988, p. 81).

Beyond the formal adoption of a new educational policy for American Indian students, the Regents' 1975 policy paper included nine specific objectives for improving American Indian education in New York State. The five items which would have had a dramatic impact on American Indian K-12 education included: (1) the creation of a Statewide Native American Education Advisory Committee; (2) improved procedures to ensure that representatives of American Indian tribal nations "can have greater involvement in decisions in the education of their children..."; (3) school employment policies which enable more American Indians to be employed as instructional and non-instructional positions; (4) enabling teacher training to include courses and teacher-training experiences concerning American Indians, including in-service and pre-service training for those who teach American Indian students; and (5) the

rewriting of the elementary and secondary school curriculum to maximize educational opportunities for American Indian students (Hauptman, 1988, pp.81-82).

Through this review, the purpose has been to explore and provide familiarity about the relationship between the education and general American Indian policy of the state. The issues relating to the implementation of the 1975 Regents' position paper on American Indian education serve as the important question of policy. If a policy is never implemented, is it indeed a policy? The fundamental question of translating a policy statement into an implemented initiative will be reviewed based upon the records of the Education Department. It is this official change of direction publicly proclaimed by the NYS Board of Regents in 1975 that should have opened a new era in American Indian education in New York State. The willingness of the New York State government to acknowledge the educational responsibilities to those American Indian students who are not reservation residents and to foster active participation in the formulation of educational policies and programs for all American Indian students by American Indian tribal nations should be plainly evident in the decades following 1975.

### **Implications and Unresolved Questions**

There are many areas where gaps in the body of available research provide open avenues for future academic and professional study. Within the literature are found several powerful studies utilizing the comparison between federal and state data in the general area of public health and health outcomes. These studies, some of which have been highlighted here, demonstrate that even when comparing data between the state and the federal Indian Health Service, there are significant disparities, large issues with racial misclassification, and one could argue a general lack of understanding by state record keepers of American Indians in general and

specifically of the American Indian communities within their respective states. As you move eastward geographically this issue only gets progressively worse, as there are fewer and fewer studies looking at eastern American Indian communities and less emphasis or focus in national studies on American Indians located in the east, you find a general feeling that study on eastern American Indians is unwarranted or unnecessary. It seems that the myth of American Indians being exterminated in the east, totally removed during the 19<sup>th</sup> century, or perhaps completely absorbed into the dominant society is strongly in place even among people who by profession and training should know better. The lack of emphasis on American Indians in state policy, with the exception of the seemingly constant parade of lawsuits over taxation, gaming, and land, have perpetuated a relationship of both ambivalence on the social policy side and animosity any time American Indians speak of sovereignty. Because of this, there is great need for academic research which examine issues of racial misclassification, off-reservation American Indian populations both in and outside of the major urban centers, and sociological and anthropological and political science studies on assimilation policy, Indian education, and tribal governance. The study of American Indians, especially the interrelationships between American Indians and non-Indian organizations, institutions and governments becomes, almost from the start, a multi-disciplinary effort. It is necessary to have an understanding of history, policy and politics, racial and social demographics, and then the particular area you are seeking to uncover, in this case education and student data. Without this multi-disciplinary knowledge base, the inconsistencies in procedures, the huge gaps in academic study especially in considering eastern American Indians, and the institutional barriers to information seem almost unfathomable and insurmountable.

## Conclusion

To find the faults in the progress of Indian education it is possible to look at the administrative problems of the federal and state governments, as well as the basic premise of Indian education in the policies of the colonial and United States' policymakers from the beginning. "Historically, the goals of the ...education of American Indians have been to transform Indian people and societies and to eradicate Indian self-government, self-determination, and self-education..." (Lomawaima, 1999, p.5). While historically it is possible to see efforts at including input and a voice by American Indian people, and at times tribal governments, into the educational process these efforts have been overshadowed by the desire to control Indians. "Indian education often still means the education of Indians by non-Indians..."(Lomawaima, 1999, p.5). Brewton Berry, in his classic book *Race Relations* defines assimilation as,

the process whereby groups with different cultures come to have a common culture. This means, of course, not merely such items of culture as dress, knives and forks, language, food sports, and automobiles, which are relatively easy to appreciate and acquire, but also those less tangible items such as values, memories, sentiments, ideas, and attitudes. Assimilation refers thus to the fusion of cultural heritages, and must be distinguished from amalgamation, which denotes the biological mixture of originally distinct racial strains... (Berry, 1951, p. 217).

It is critical to understand that by thinking about possible programmatic alternatives, it is necessary to move beyond the age old stereotypes of American Indians as historically static museum displays, perhaps not even *real* nations, and certainly not a modern vibrant collection of



communities. A successful educational strategy needs to not only examine the longstanding problem of inaccurate or even guess-work counts of American Indian students, but also create methods for tribal and American Indian control of learning and the definition of important knowledge. As a prelude to the continuation of a much larger discussion on Indian education which needs to be occurring at all levels and locales, it is important to listen to Pennsylvania State University Professor John Tippeconnic III. He says that assimilation has not worked, but that the wreckage in its wake includes both terrible educational statistics and the poor quality of education received by Indian students. In his analysis, the educational system has been used “to eliminate Indians by the systematic destruction of tribal languages and cultures in schools...” (Tippeconnic, 1999, p.34).

Today, the same questions are being asked which have been asked since the Meriam Report about fixing the educational system to make it more accountable for results and achievement. “This cultural genocide of tribal people is a tragedy and an irony in a country that supposedly values diversity...” (Tippeconnic, 1999, p.34). Those off-reservation Indian students, while they may not reside within reservation boundaries are still citizens of the tribal nation governments and as American Indian tribal citizens are entitled to an educational system that is not bent on the destruction of their cultural identities. States, the federal government, and tribal governments need to realize the inherent connection of these American Indian students as all seek to solve the current educational problems. “Tribal control is in keeping with the government-to-government relationship and the policy of tribal self-determination...” (Tippeconnic, 1999, p.40). The real discussion must therefore include a need to get beyond the stereotypes that hold the so-called disadvantaged populations in a perpetual state of disadvantage. Through research and responsible action a brighter educational future for American Indian

students awaits regardless of where they are educated. “The stereotypes of Native America may seem inescapable, but they are not inevitable...” (Lomawaima, 1999, p21).

## Chapter 3

### Methodology

#### Introduction

The fundamental purpose of research is to add to knowledge. In the field of education this means that the research process seeks to continually improve the product and process of education (Creswell, 2005, p.3). Within this larger addition to the field of knowledge is the idea of changing perceptions. “All of us have perceptions of the way the world operates. We act upon those perceptions everyday as if they are reality. Basically, we do not act differently from what we value, believe, or perceive...” (Bernhardt, 2004, p.54). As John W. Creswell, Professor of Educational Psychology at the University of Nebraska-Lincoln, indicates in this 2005 book, *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research*. 2<sup>nd</sup> ed, improving educational practice involves determining of gaps in existing knowledge, the examination of those gaps, and research which expands knowledge, broadens perspectives, and informs educational practice. Additionally, the replication of existing research seeks to determine what is still consistent and relevant in today’s world (Cresswell, 2005). All of these processes seek to improve practice and expand the view and value of education.

The process of changing perceptions is through cognitive dissonance. “Cognitive dissonance is the discomfort one feels when holding two thoughts, opinions, or ideas that are inconsistent...” (Bernhardt, 2004, p.55). This study seeks to examine the consistency of the process of data gathering between two data gathering organizations, and also to broaden or change perspectives by allowing educational leaders and those interested in educational policy and practice to challenge the use of education, as it has been used on American Indian students, for more than two centuries. It is critical to step outside of the currently held biases and look

fundamentally at right and wrong, benefit and cost, and damage and support. It is hopeful that an examination of the current student counts in New York State public schools will create sufficient cognitive dissonance to raise the issue of American Indian education in New York State to a position of greater concern for local educational leaders, statewide educational leaders, American Indian tribal nations, and most importantly the parents of American Indian students in public schools. It is important to examine the impacts and consequences of educational policy, especially on those who are the subjects of one of the most consistent social experiments of all time.

This project sought fundamentally to determine if there are undercounts of American Indian students in New York State public school districts and to place this question within the historical context of the larger relationship between the United States and American Indians, and more specifically to the relationship between New York State and American Indian elementary and secondary education since the New York State Board of Regents' policy statement in Position Paper #22 in 1975. The questions on the count of American Indian students in state public schools and the state policy used to direct activities in American Indian education are not as disparate as one might think. If the philosophy and guiding principle of American Indian education is the assimilation of American Indians into the dominant culture then an observer would expect to see fewer and fewer people identifying themselves as American Indian on public school records. Even as the overall population of American Indians is increasing as census counts tend to show (Jobe, 2004), a properly executed assimilation process in schools, would by individual choice or institutional choice, reduce the numbers of American Indians. This would result in a consistently shrinking of both state and federal counts of American Indians in school records, with perhaps an elimination of American Indian as a separate category. The eventual

desired result of assimilation would be the final dissolution of American Indian tribal nations and the loss of a separate identity for American Indian people. If there is a difference in the counts of American Indian students in state public schools between the state sources and the federal sources, especially if federal sources are higher, then it might be more important to examine further whether the assimilation doctrine has actually been abandoned at the state level, as was proclaimed in 1975, or continued just not as explicitly. Further it is important to examine the activities of the State educational leaders following the end of the assimilation policy, to determine if actual guidance proclaims this change in a practical manner to public school districts. The use of an eastern state in this study, particularly a state with a history of trying to downplay the role of the federal government in Indian affairs, might then show the possible future for those American Indian tribal nations in other parts of North America where this type of state involvement is just now an emerging reality.

This study included both a secondary analysis of existing data that investigated the possible undercount of reported American Indian students in NYS school districts by comparing data obtained from the NCES data base for 2010 and the NYS School Report Card for 2010 and a historical review of the description of New York State educational policy regarding American Indians to school districts at the end of the federal Termination Era. The NYS school district served as the unit of analysis for the comparison. The standard federal American Indian race category used in both the Census and by NYSED served as the item of comparison. Undercount of American Indian students is defined as the difference in the number of American Indian students between the two data sets by district, where the NCES number is presumed to be more accurate based upon its reliance on the U.S. Census. The possibility of an over count, meaning a situation where the state data identifies more American Indian students than the federal data,

must also be considered. If this is the case, especially if the over count is large, then it would be necessary to examine the individual districts to see if there are specific circumstances that may explain the difference.

The initial research question is the test hypothesis that there is no significant difference between the American Indian student counts published in the National Center for Education Statistics (NCES) data for 2010 and the New York State Education Department's (NYSED) Office of Information and Reporting Services 2010 Accountability and Overview Report from NYS District Report Cards. The secondary research question asks if there has been a policy of assimilating American Indian students into New York State public education schools since the end of termination era and the explicit repudiation of this policy by the State Board of Regents. The approach will be to determine if there were directives or policies issued by the state government which sought to alter the previous educational policy approaches. Results from this study will include both a historical review of the post 1975 American Indian education policy in New York State with its impact on reporting American Indian students, and an examination of the counts of American Indian students in the two data sets. While the study itself may seem basic, it is exploratory in the sense that rarely have there been studies of comparable educational demographic data utilizing Americans Indians in states where there is no federal Indian education presence. In general studies on eastern American Indians are scarce, and ones who seek to challenge the longstanding acceptance of state hegemony, especially in the area of education, are even rarer. While the purpose is not to challenge whether the state should have an important role in administering educational programs to American Indian students, instead, the questions here revolve both around how genuinely this mission has been carried out and whether

the process respects the rights of the youngest citizens of American Indian tribal nations, first and foremost, the right to exist.

### **Research Design**

In order to proceed in this analysis, it became necessary to perform two types of research. The first is an historical analysis of archival and published materials related to New York State educational directives toward American Indians and the state educational policy at the end of the termination era in Indian policy. The second is a quantitative analysis of matched pairs of data reporting the number of American Indian students in selected New York State school districts. While mixed methods studies typically use both quantitative and qualitative elements, generally seeking answers to questions through this two-fold approach, this study uses a slightly different mixed methods approach (Creswell, 2005, p.510). The approach looks at the implications of an historical educational policy, especially the actions taken by policy regulators after a directed policy shift, and then seeks to understand whether there is a longer term impact on the measurement of the population in question. This is not a study that seeks to determine mathematical correlation or causation between educational policy and student counts, but instead looks at the overall indirect effect of policy on how and whether American Indian students are counted.

Indirect effects is a relative term: with increased understanding, the effects will not seem so indirect and surprising. There are two basic types: static indirect effects, at a single point in time; and dynamic indirect effects, in which time lags operate. Again, the separation is not clean... (Herendeen, 1998, p. 10).

It would be difficult to examine the direct effect of the historical assimilation policy of American Indian education on how American Indian students would be counted. Attempting to establish

some sense of causation between a longer term policy and a specific singular action is practically impossible, especially in a study that seeks to explore questions of data quality and policy implementation not previously examined. So, while a relationship cannot be tested, it would be difficult, especially after examining the larger historical trends of American Indian education to assume that no impact exists. Given this understanding, the effects would most probably seem indirect in the initial study of the subject becoming progressively clearer if follow-up studies were undertaken.

### **Quantitative Data Analysis**

This study used a convenience sample based upon available data on NYS School Districts for the 2010 school year. The two data sets under study are the NCES and Accountability and Overview Report from NYS District Report Cards. The original plan was to utilize the entire population of school districts however upon initial investigation of the two data sets this plan needed to change. It was discovered that there are districts which have NCES data that do not have NYS School District Report Cards. The school district names for the two data sets were compared to ensure that only identical matched pairs of data were utilized in the study. In total 666 school districts were found to be included in both the NCES and the NYSED data. The 29 school districts which are not included in the NCES count represent only 27 American Indian students in the NYSED total of 16,767 and as these 27 represent only .16% of the total, the impact on the larger numerical count is less important. The sample therefore constitutes 96% of the NYSED reported school districts for 2010 and 100% of the districts included on the NCES database for 2010. The matching of school districts should result in a sample from which reasonable comparisons can be made.



The quantitative analysis portion of the study sought to determine the difference between matched pairs of American Indian enrolment data (e.g. data from each data set matched by school district). As an analysis of existing data there are issues relating to questionnaire design and sampling that are not applicable at this stage in the research process. The issues of data quality will be examined through an examination of the methods used by both NCES and NYSED. The analysis is a comparison and contrast between two samples using the same demographic data factor, the same population of school children, matched in school district pairs, using the data from two different governmental organizations. “Demographics build the context of the school and help us predict future conditions, so we can take an active approach to serving the needs of our current and future students...” (Bernhardt, 2004, p.32). As Professor Bernhardt says, “[d]emographic data do so much more than just inform us of human characteristics... demographic data also tell us about the system...” (Bernhardt, 2004, p.32) It is this knowledge of the system and its relationship to American Indian students in New York State public schools that should be understood.

After exploring the descriptive information on each data set, a Wilcoxon non-parametric test was undertaken to determine the relationship between the NCES American Indian student count and the NYSED student count utilizing the differences between the counts for the individual school districts. In his 1945 article, Frank Wilcoxon illustrates this statistical process for “a number of paired comparisons leading to a series of differences, some of which may be positive and some negative...” (Wilcoxon, 1945, p.80). The key to the use of a non-parametric test is that the sample does not meet the assumptions necessary for a parametric test, specifically the probability of the variables and the sample being large enough to represent an entire population (Salkind, 2004, pp.261-262). Additionally, the source population may not reasonably

be believed to have a normal distribution (Lowry, 2012, chpt. 12a). This non-parametric test is the alternative to a t-test, in this case the t-test for correlated samples (Lowry, 2012, chpt. 12a). Like the t-test, the Wilcoxon signed ranks test applies to matched pairs. The null hypothesis for the Wilcoxon test requires that “we are dealing with a sample of positive and negative differences normally distributed around zero...” (Wilcoxon, 1945, p.81). The assumptions of the Wilcoxon test are:

- that the paired values of  $X_A$  and  $X_B$  are randomly and independently drawn (i.e., each pair is drawn independently of all other pairs);
- that the dependent variable (e.g., a subject's probability estimate) is intrinsically continuous, capable in principle, if not in practice, of producing measures carried out to the  $n^{\text{th}}$  decimal place; and
- that the measures of  $X_A$  and  $X_B$  have the properties of at least an ordinal scale of measurement, so that it is meaningful to speak of "greater than," "less than," and "equal to"... (Lowry, 2012, chpt. 12a).

The process for the Wilcoxon test is to take the absolute difference for each pair,  $|X_a - X_b|$ ; eliminate those pairs where the absolute difference is zero,  $|X_a - X_b| = 0$ ; rank the remaining absolute differences from smallest to largest, using ties where needed; assign each rank with a positive or negative value as appropriate, "+" sign when  $X_a - X_b > 0$  and a "-" sign when  $X_a - X_b < 0$ ; and then calculate the value of  $W$  (Wilcoxon test) where the “present version of the procedure is equal to the sum of the signed ranks. The number of signed ranks, here designated as  $n_{s/r}$ , is equal to the number of  $X_a X_b$  pairs with which the researcher began minus the number of pairs for which  $|X_a - X_b| = 0$ . When  $n_{s/r}$  is equal to or greater than 10, the sampling distribution of  $W$  is a reasonably close approximation of the normal distribution...” (Lowry, 2012, chpt. 12a).

As the size of N increases, the sampling distribution of **W** comes closer and closer to the outlines of the normal distribution. With a sample of size N=10 or greater, the approximation is close enough to allow for the calculation of a **z**-ratio, which can then be referred to the unit normal distribution... We noted earlier that on the null hypothesis we would expect the value of **W** to approximate zero, within the limits of random variability. This is tantamount to saying that any particular observed value of **W** belongs to a sampling distribution whose mean is equal to zero... (Lowry, 2012, chpt. 12a).

The result of the test statistic is to correctly reject the null hypothesis. If the null hypothesis is incorrectly rejected, this results in a Type I error. If the null hypothesis is not rejected, while being false, this results in a type II error. Table 1, below, provides a visual representation of the types of errors possible in general statistical analysis.

Table 1  
*Type 1 and Type 2 Error Explanations*

<b>Result of hypothesis test</b>	<b>Null is actually true</b>	<b>Null is actually false</b>
Reject null, accept test	Type I error	Correct Decision
Do not reject null	Correct Decision	Type II error

Labeled by the character  $\alpha$ , or alpha, the significance level is the probability of making a Type I error, or the probability that the null hypothesis would be rejected when it is true. For the purposes of the study the two-tailed test will use a significance level of .10 providing semi-strong evidence for rejecting the null hypothesis. This level of significance provides protection against a Type I error while not incurring excessive risk of a Type II error (beta ( $\beta$ )), and maintaining a 90% confidence level. The .10 alpha level is most typically used for exploratory studies, and

since this analysis seeks to determine the general relationship between the two samples this level is appropriate (Winter, 1980, p.82).

For this analysis the Wilcoxon Matched-Pairs Signed-Rank test was selected because, although there are 666 pairs of data representing the NCES and NYSED American Indian student counts for as many school districts, it is not possible to make the assumption that the distributions are normal, and with only two reported observations there are not a sufficient number to assume that they represent the population. In addition, as part of the general description of the samples there will be a presentation of descriptive statistics to provide a familiarity with the type of information available through a visual examination of the paired American Indian student counts and the differences between the NCES count and the NYSED count. While inferential measures may be particularly helpful in the explanation of the meaning of the data, oftentimes a solid familiarity with the data itself can provide a good sense of the possible patterns or unique anomalies found there. One example of the need to become familiar with the data is the overwhelming impact of the New York City Department of Education on research studies addressing public school students in New York State. The impact of this one district on the statewide totals is dramatic enough to potentially invalidate the results of any parametric test.

### **Data Sources and Method of Data Collection**

In a report for the Global Biodiversity Information Facility, the researchers remarked on the quality of data and the implication of misperceptions of data quality on global research and policy based decision making. “The need for quality data is not in question, but many data managers assume that the data contained and portrayed in their system is absolute and error free – or that the errors are not important. But error and uncertainty are inherent in all data, and all

errors affect the final uses that the data may be put to...” (Chapman, 2005). The fundamental concern in this study is the quality of the data used to make policy and programmatic decisions. Secondly the implications of data errors on the education of American Indian students are of serious importance. Finally, for American Indians the impacts of education protocols on the strengthening of American Indian culture, and ensuring tribal nation sovereignty cannot be completely overlooked.

The NCES is the primary federal entity for collecting and analyzing data related to education in the U.S. and other nations. The National Center for Education Statistics fulfills a Congressional mandate to collect, collate, analyze, and report complete statistics on the condition of American education; conduct and publish reports; and review and report on education activities internationally. NCES has an extensive Statistical Standards Program that consults and advises on methodological and statistical aspects involved in the design, collection, and analysis of data collections in the Center. The NCES in 1985 made the successful case for the collection of educational data beyond a student-level (Thomas, 1985). The desire was to “better understand the process of schooling and other structural components of elementary and secondary that are associated with and influence various student outcomes...” (Thomas, 1985, p.520).

The NCES Handbook of Survey Methods explores not only the various types of surveys and data sets collected and analyzed by the center, but also the specific processes used to collect the data (Burns, Wang, & Henning, 2011). Of particular interest is the Common Core of Data which is “NCES’s primary database on public elementary and secondary education in the United States...” (Burns, Wang, & Henning, 2011, p.27). These data, first collected in the 1986-87 school year, are collected at the school district level and then aggregated to the state level. Within this common core of data is found the *State Nonfiscal Survey of Public*

*Elementary/Secondary Education* which includes information on “all students and staff aggregated to the state level, including number of students by grade level; counts of FTE staff by major employment category; and high school completers by race/ethnicity...” (Burns, Wang, & Henning, 2011, p.28).

The CCD collects three categories of information: (1) general descriptive information on schools and school districts, including name, address, phone number, and type of locale; (2) data on students and staff, including demographic characteristics (e.g., race/ethnicity); and (3) fiscal data covering revenues and current expenditures...Similarly, the impact of state and local education policies and practices can be assessed through an examination of changes in school and district characteristics. For example, districts that have shown substantial improvement in their racial balance or interracial exposure indices can be identified. The policies and practices employed by these districts can then be examined... (Burns, Wang, & Henning, 2011, pp.28-29).

The CCD includes all LEAs throughout the United States, and to “assure comparable data across states, NCES provides the CCD coordinator [who is appointed by the Chief State School Officer] with a set of standard critical definitions for all survey items...” and “[n]o imputations or adjustments are made to racial/ethnic data...” (Burns, Wang, & Henning, 2011, pp.30-31). Additionally, because the CCD is a universe survey, NCES reports that the data are not subject to a sampling error or a non-response error. There are other errors possible including coverage error, which typically fall into categories of nontraditional agencies that provide special education, vocational education, or other special services. In attempting to ensure comparability and consistency of data, NCES seeks to avoid confusion in definitions (e.g. hospitalized students,

homebound students, etc.) by publishing “the numbers of students and staff from the State Nonfiscal Survey as the official counts for each state...” (Burns, Wang, & Henning, 2011, pp.33).

Data collected by the NCES follow the internal statistical standards program. Written Standards were first developed at NCES in 1987 when 21 standards were formally accepted by the congressionally mandated Advisory Council on Education Statistics. The current set of statistical standards were vetted through a series of internal seminars, approved by the NCES Senior Management Staff, reviewed and recommended for adoption by an independent panel of experts established by the National Institute of Statistical Sciences, and finally adopted for an October 1 2002 release of the 2002 NCES Statistical Standards. The School District Demographics System provides access to school district demographic and related geographic data. The Census 2010 short form data for all school districts became available via SDDS in late summer 2011.

The NYSED’s Office of Information and Reporting Services is responsible for the collection and reporting of enrollment, assessment, school violence, state and No Child Left Behind accountability, career and technical education, graduation rate, post-graduation plans, teacher certification, and school staff data for school districts, public schools, charter schools, and nonpublic schools in New York State. The portion of the NYS School Report Card used in this study comes from the Accountability and Overview Report, which shows district/school profile data, accountability statuses, and data on accountability measures. The school and district data reported in the NYS School and District Report Cards were submitted by local school district officials. School superintendents and school principals were provided with an opportunity to review and correct verification reports based upon these data. The guidance for

collecting race/ethnic data on New York State public school students is governed by the Student Information Repository System (SIRS).

The New York State Student Information Repository System (SIRS) provides a single source of standardized individual student records for analysis at the local, regional, and State levels to improve student performance and to meet State and federal reporting and accountability requirements. Local Education Agencies (LEAs) must use this system to report certain data to the New York State Education Department (NYSED)... (NYSED, 2011, SIRS).

The unit of analysis is that of the school district meaning that in the NYS Education Department system, individual student data is aggregated at the school building, and then the district level as it is reported. The NYS Education Department identifies that there are three levels of data collection points within the SIRS process. “The first point is the local student management system (SMS) used by the LEA. Student demographic, school enrollment, program, and performance data are typically collected in the local SMS. LEAs that have a local SMS can import their data into ‘Level 0’ of SIRS...” (NYSED, 2011, SIRS). The level 0 is a web-based program “hosted by the Regional Information Centers (RICs) that provides LEAs with the ability to enter and verify data...”(NYSED, 2011, SIRS). Data that are verified can then be loaded into the Level 1 repository. “Each Level 1 repository includes, at a minimum, all the data elements defined in the “SIRS Data Elements” document...” (NYSED, 2011, SIRS). The level 1 repository is not an optional process for school districts. Guidance provided by the NYS Education Department indicates that not just school districts participate in the collection of student and educational data. “All school districts, charter schools, State agencies that operate educational programs, nonpublic schools that administer State assessments and child-care



institutions that operate a school must participate in a Level 1 Repository...” (NYSED, 2011, SIRS).

The level 2 repository is the location where data is combined and sorted into useable formats for the variety of reports issued by the department. The level 2 reports (L2RPT); ... are designed to help districts verify a variety of demographic, enrollment, program, assessment and graduation data in support of accountability and other requirements, as well as Reasonableness reports designed to flag significant deltas between expected and actual outcomes or value... (NYSED, 2012, L2RPT).

It is from the level 2 repository that the NYS School report cards and other standardized reports are produced.

Data in the Level 2 Repository are available only to users with a legitimate educational interest. Currently, Level 2 provides data for the *New York State School Report Card*, for determining the accountability status of public and charter schools and districts, to meet federal reporting requirements, to inform policy decisions, and to meet other State needs for individual student data... (NYSED, 2011, SIRS).

In the 2011-2012 SIRS Student Reporting Rules, the guidelines speak specifically about the requirements for race and ethnicity reporting. It is from these guidelines, that the standards and priorities for reporting of race and ethnic data are found. While there are specific sections on foreign exchange students, homeless students, migrant students, homebound students, and immigrant students, there are no specific guidelines for American Indian students. The entire section on guidance relating to Racial/Ethnic Groups, speaks only about the reporting of Hispanic/Latino students. Likewise the section on acronyms and definitions fails to contain even

a definition of American Indian for use in the SIRS data collection process (NYSED, 2012, SIRS Reporting).

### **The Target Population**

The target population is American Indian public school students in New York State. While there has already been a discussion of the general issues confronting the counting of American Indians, it is important at this point to review the standards under which the two data sets were collected and the definition used to determine if the two data sets at least purport to count the same students. US DOE indicates that States “have discretion in determining which racial groups are ‘major’ for the purposes of fulfilling NCLB accountability requirements for making AYP determinations and issuing State and local report cards...” (USDOE, 2007). Thus, the state can determine whether or not American Indian students will be considered in the success of a school or district.

In 1977, the United States Office and Management and Budget (OMB) issued Race and Ethnic Standards for Federal Statistics and Administrative Reporting in a guidance called Statistical Policy Directive No. 15. This standard included the following definition for American Indian, “A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition...” (OMB, 1977, p.1). By 1994, the standards had been criticized for not effectively reflecting the changing diversity of the United States population. Because of these criticisms, by 1995, OMB had released revisions for the race and ethnic standards which would be implemented by 1997 (US OMB, 1995). In their findings, OMB reported that “American Indians are sometimes misreported as ‘White’ on death certificates...” and that “‘Native American,’ is an unacceptable term to many American Indians...” (OMB, 1995, p.(d)(1)). The guidance released by the

United State Department of Education in 2007 was in response to the earlier OMB directives to “establish consistent government-wide guidance at the Federal level for collecting and reporting racial and ethnic data...” (USDOE, 2007, p.59266). The majority of this guidance expresses the need to improve the collection of data relating to Hispanic/Latino respondents, while also improving the mechanisms for recording data on individuals of more than one race. USDOE requires under 20 U.S.C. 9541, educational institutions to utilize the Department’s racial and ethnic data collection standard in an effort to “ensure consistency in the categories of data reported to the Department...” (USDOE, 2007, p.59266). The guidance provides the definition of American Indian as “American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment...” (USDOE, 2007, p.59266).

In New York State, the Boards of Cooperative Educational Services (BOCES) is a public organization that provides shared educational programs and services to school districts. BOCES owes its origin to a state legislative enactment authorizing the formation of intermediate school districts. Passed in 1948, the act was aimed at enabling small rural school districts to combine their resources to provide services that otherwise would have been uneconomical, inefficient, or unavailable... (NYSED BOCES, 2012).

The 2010 instructions for the New York State BOCES summary form provides a definition of American Indian or Alaska Native which appears consistent with that used by the federal government, except in this definition only individuals who are indigenous to North America are included in the definition. This form, utilized in 2010, indicates that, “SED is in transition to the Census 2000 categories for race/ethnicity and to the categories that will be required for federal

reporting in the near future...” (NYSED BOCES, 2010, p.4). The questions and answers for the collection and reporting of Race/Ethnicity data in 2010-2011 for SIRS provide a different operational definition. In the questions and answers, the following information is provided:

4.

Q. If a student is from South America or Central America (for example, Guatemala), which racial group in question 2 should be selected?

A. The definition of American Indian or Alaska Native includes South America and Central America. However, to be identified in this category, the student must also maintain cultural identification through tribal affiliations or community recognition, as the definition indicates. If the student does not maintain cultural identification, another racial group should be selected.

7.

Q. If a respondent selects Black and American Indian or Alaska Native for question 2, the student will be reported in the category of “two or more races.” However, there are funds allocated based on counts of American Indian or Alaska Native students. Will this new data collection and reporting process impact the receipt of grant and federal monies for American Indian or Alaska Natives? Will the collected data be able to be disaggregated by each separate race even if the student has more than one racial group reported?

A. The data used to award funding for American Indian or Alaska Native-related grants and programs is gathered through a separate application process that includes its own data collection and reporting rules. These rules contain a requirement that the list of individuals on which the funding is based must receive

tribal approval. As such, data collection in SIRS will not impact the receipt of grant and federal monies for this group.

...The new federal requirement for data collection related to the reporting of race and ethnicity will allow for students who are considered American Indian or Alaska Native to be identified as such on an individual basis. That will give us the capability to determine the number of students who are reported with American Indian or Alaska Native in one of the race fields... (NYSED Collection, 2010, pp.1-2).

While these questions deal with specific situations, presumably asked by a school district, they do reveal that for the SIRS process the definition of American Indian used by NYSED includes Central and South American indigenous people as long as they meet the tribal affiliation test. Additionally, the answer to question seven reveals that the NYS Education Department conducts a separate accounting of American Indian students, whose names are recorded and which “must receive tribal approval...” indicating that SIRS counts would not impact “the receipt of grant and federal monies...” (NYSED, 2010, Collection, p.2). The memo of November 2009, from then Deputy Commissioner Alan Ray reiterates that the department would report using the federal requirements for 2010-2011. Additionally, Ray states that “Districts and schools are strongly encouraged to recanvass the entire student population...” (Ray, 2009). Taking away any sense of urgency or importance, he goes on to say that, “the New York State Education Department will not require schools and districts to recanvass their student populations ...” (Ray, 2009). The guidance in the Ray memo also indicates that the process for dealing with missing race information goes unchanged, requiring observer identification. Thus, the process used under the New York State Student Information Repository System (SIRS), *Dictionary of Reporting Data*

*Elements for use in 2007-2008*, stayed in effect. On page 31, the guidance for reporting race indicates;

For reporting purposes, a student should be reported using the race/ethnicity designation for the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. Race/ethnicity is identified by the student or by the student's parent/guardian. If the student or the parent/guardian will not designate race/ethnicity, select the dominant race/ethnicity. LEAs may institute their own local practices and procedures for identifying the dominant race/ethnicity... (NYSED SIRS Dictionary, 2008, p.31).

So while the NYSED data collection mechanism was, in 2010, in the process of implementing federal definitional standards, according to the revised 2007 federal guidance these definitions had already been in use for the National Center for Educational Statistics. The inconsistencies found in the 2009 guidance and its reliance on the LEA instituting its own procedures for identifying race leads to a potential for massive inconsistency.

### **Archival Data Analysis**

While most research includes the use of referenced materials and compilations of prior research, when examining the operations of government, organizations, programs, it is often in the uncataloged materials that one finds the hidden gems. It is in the internal reports, the unsanitized reviews, or the program reports where the difference between the expressed policy and actual governance occurs. The earlier portion of this study looked at the expression of federal and state educational policy toward American Indians, the difficulty in measuring American Indians, and also the constructed differences between on and off reservation American Indian people under New York State Education Law. The goal of this section was to look for the

actions of government relating to educational policy and process after the 1975 statement of the Board of Regents' policy ending assimilation as the primary educational goal. The presence of an expressed policy change without the corresponding directives to the school districts could be particularly revealing about either the true intended goal, or the resolve expressed by the policy-makers toward true change. A disparity or lack of implementation mechanisms could have meant that there was perhaps a less than full agreement in the change in policy, resistance to the policy change within the administrative staff, conflicting or contradictory administrative guidelines which were not clarified sufficiently to implement, a desire to demonstrate the outward appearance of policy change while maintaining the previous policy, or another reason not yet explored. Likewise, a record of explicit policy and process directives from the requisite program office at the state level to BOCES and district superintendents may also reveal the way in which the department implemented the policy as expressed by the Board of Regents.

The method and process for archival research is different than that of quantitative based research in that archival research has up to this point predominantly been the purview of the historian. Dr. John Stanfield, Professor in the Department of African American and African Diaspora Studies at Indian University Bloomington, explains that “archival materials often contain surprises that shed more light on the subject matter sowing the seeds for a revisionist account...” (Stanfield, 1987, p.366). In explaining the approach of archival research, Hui Wu indicates that, “[f]or historians, methodology means the theorization of the goal of research, the selection of subjects in a particular period (the research topic and focus), and the categories for evaluation of historical evidence...” (L'Eplattenier, 2009, pp.68-69). These days, with the advent of electronic data and document storage and retrieval it is possible to gain access to an exact electronic replica of rare historical records without ever leaving your research space. The

collection and preservation of records carries with it a few interesting assumptions about what items are preserved and how are the items indexed, itemized or simply stored.

Societies institutionalise their collective archives according to their own evidence and memory paradigms. These paradigms influence what is remembered and what is forgotten, what is preserved and what is destroyed, how archival knowledge is defined, what forms archives take, how archives are described and indexed, and who has ownership, custodial and access rights relating to them. They also shape archival notions of reliability, authenticity, and trustworthiness... (McKemmish, Gilliland-Swetland, & Ketelaar, 2005, p.146).

The process of archival research is the method of selecting, locating and utilizing primary source material. Each process of recordkeeping carries with it benefits and liabilities, with today's electronic and paper archives being susceptible to alteration or accidental destruction.

Additionally, each archival record, be it a file, a document, or an electronic record may have multiple uses and critical or no value depending upon the person or organization reviewing it;

Methods are about achieving access to information, about finding aids, about reference materials, about archive locations and restrictions, about the condition of the materials, about the existence of evidence or the lack of evidence, and about the triangulation of information—all the factors that impact our 'systematic method of gathering evidence' and our interpretation of that evidence...

(L'Eplattenier, 2009, pp.68-69).

It appears that archival research reflects the personal nature of the researcher's attachment to the topic and to the materials that is not necessarily required in other methods of research. Because archived materials reflect the mindset of the individual or organization responsible for the



creation and preservation of the record, there is a different level of personal involvement for the researcher in the retrieval process. The archived record provides not only the information contained therein, but also a glimpse into the organization which created it. “Frameworks for the selection, collection, arrangement and description, preservation and accessibility of archives are, therefore, closely linked to societal processes of remembering and forgetting, inclusion and exclusion, and the power relationships they embody...” (McKemmish, Gilliland-Swetland, & Ketelaar, 2005, p.147). Archival research can be viewed as both the solving of a puzzle and the following of a treasure map; because “archival historical work is often so unique—each archive, each situation, each study is different, with different resources, different access, different constraints...” (L’Eplattenier, 2009, p.68). Education, like the fields of the social sciences, is an area where “creative analysis through archival research...” can open up new research areas and paradigms (Stanfield, 1987, p. 366).

The method of archival research provides “a sense of what was examined, how it was examined, and where it is currently located...” (L’Eplattenier, 2009, pp.71-72). The process of archival research should follow a process in which the researcher becomes familiar with the secondary literature of the field. A well developed understanding of the secondary literature of the field “contains enough information to enable the researcher to have a clear idea about a number of critical issues...” (Stanfield, 1987, p. 366). The problem with modern access to data is that while there is quite a bit of available information its organization is “so maze-like and immense” with “hundreds of finding aids, guides, directories and sub-directories” that the prospect of having to begin the search may be in itself exhausting (Anastakis, 2003, p.142). Akin to the problems of negotiating the physical maze of archival materials, are the “ethical concerns cover how one is to handle and work with archived materials...” (Innes, 2010, p.202).

There are ethical concerns in all kinds of research, most often taken into consideration when one is conducting research using human subjects or requiring informed consent. There are, however, ethical concerns when one examines archival materials. The first concern has to do with the sensitivity of the material preserved to the people who are preserved by it. The recording of meeting summaries, community or staff critiques, or other such records, carry with them only a semblance of the original context and therefore should be evaluated not in the abstract, but in as much of the historical picture of the time as can be recreated. Secondly, while oftentimes the official public record is perhaps standardized or sanitized to eliminate the controversy or animosity which was occurring during the events preserved; it is the archival record which may bring to light some of these more difficult aspects. This insight may be exactly what the researcher is looking for, however there is still a responsibility to treat fairly and ethically the materials found or not found. The research cannot ethically make assumptions where the archival record is silent.

The New York State Archives contains the subject and correspondence files for the operation of government in a number of policy areas and time periods. Record #13143, is the catalog number for the State Education Department's Native American Unit, Subject and Correspondence files for the dates 1965-1983. These eight cubic feet of records focus on curricular and financial records for reservation based schools, federal Johnson O'Malley Act files from 1971-1977, and the background files for the Regents' policy paper on Native American education. While the first two collections would be of interest to anyone generally looking at reservation based American Indian education, it is the third collection which will provide insights from the time immediately before, during and after the Regents' Position Paper #22. Of particular interest are the memoranda and documents relating to the creation and

implementation of the Regents' policy as well as the letter received and sent as part of the process.

Before even gaining access to the room where archival materials will be brought, the researcher must apply for and be approved as a registered reviewer. While the process is not arduous, especially because public access to records is guaranteed; it does sit as a first gate in the process between seeking and obtaining. Once admitted to the reading room, the researcher consults the archivist on duty to secure access to the desired materials. In this case, the process was straight forward more so than perhaps for others, as the desired record log numbers were available from the Archives web site enabling a direct submission request. Once the request is made, a circulation clerk will retrieve the record boxes and bring to the reading table to which the researcher has been assigned. Depending upon the time of day, and type of materials, this process can take from fifteen minutes to an hour. The restrictions which are part and parcel to the archival research process include many that would seem extreme to library researchers. The primary concern of the archivist is the preservation of the record, with a secondary concern being that of the record being used. The researcher is allowed only one cart with record boxes at a time and there are no three-ring binders, folders, notebooks with pockets, mechanical pencils, pens, scanners, computer or camera cases, overcoats, briefcases, handbags, pocketbooks, backpacks, or food or drink allowed in the reading room (NYS Archives, 2007).

The researcher has additional specific restrictions including opening only one folder at a time, having the archivist come to your table to answer questions rather than attempting to remove an item from the table, using gloves when handling photographs or maps requiring special protection, and not writing notes near the archive material (NYS Archives, 2007). Some materials are able to be photocopied and this is done by the archivist once the researcher explains

the specific item to be copied, and the archivist determines whether or not the material would suffer damage from the photocopying process. While it may be commonly thought that paper suffers no ill effects from photocopying, records from the 1960s and 1970s, which are the onion skin carbon copies, or faxes printed on the thermal fax paper used in those decades may suffer harm if photocopied. For these types of records, the NYS Archives has specific record preservation protocols to not only preserve the original, but to make the information more accessible.

Through an initial examination of the types of records on American Indian education available, it was possible to discern three types of records. The first types were those records relating to the operation of the remaining American Indian schools, especially records such as class rosters and expenditures. The second type of records focused upon the contracts between the State Education Department and the school districts which received specific funds for providing public education to reservation residents. Finally, the records of most interest were those relating to the operation of the Native American Education Unit of the State Education Department. These records, the smallest subset of the three, were divided into three basic types: brochures and informational material, letters and administrative correspondence, and an extremely small series of folders relating to the Regents position paper. It is from this third subset where the opportunity to glean a sense of the decisions and choices relating to implementing the Regents' position paper. From within this subset, the goal was to seek out communications that expressed activities related to the implementation of the Regents' position paper. In addition to these specific materials relating to the Regents' position paper, the NYS Archives, as a part of the national repository, includes reproductions, originals, and electronic

access to many of the federal government's historical reports and American Indian historical information needed to review the development of American Indian educational policy.

## **Chapter 4**

### **Findings**

#### **Quantitative Findings**

This project sought fundamentally to determine if there are undercounts of American Indian students in New York State public school districts and to place this question within the historical context of the larger historical relationship between the United States and American Indians, and more specifically to the relationship between New York State and American Indian elementary and secondary education since the New York State Board of Regents policy statement in Position Paper #22 in 1975.

The study included both a secondary analysis of existing data that investigated the possible undercount of reported American Indian students in NYS school districts by comparing data obtained from the NCES data base and the NYS School Report Card and a historical review of the description of New York State educational policy regarding American Indians to school districts at the time of a Board of Regents policy change. The NYS school district served as the unit of analysis for the comparison. The standard federal American Indian race category used in both the Census and by NYSED served as the item of comparison. Results from this study include both a historical review of the post-1975 American Indian education policy implementation in New York State with its impact on reporting American Indian students, and an examination of the counts of American Indian students in the two data sets. Undercount of American Indian students is defined as the difference in the number of American Indian students between the two data sets by district, where the NCES number is presumed to be more accurate based upon its reliance on the U.S. Census. In other words, the NYS counts are lower than those reported by NCES for the same student cohorts. The determination of whether there is an undercount by NYS when compared to the NCES data, no difference, or an over count by NYS when compared to NCES data will demonstrate the relative

comparability of two counts of the same population in the same year in the same locations.

These results provide educational leaders at all levels with the information needed to make more informed policy, resource, and curricular decisions impacting American Indian student success.

The quantitative analysis sought to compare the difference between matched pairs of American Indian enrolment data (e.g. data from each data set matched by school district). Of the 666 matched pairs of New York State school districts included in both the NCES and NYSED School Report Card database for 2010: 145 (21.8%) school districts indicate a larger number of American Indian students in the NYSED School Report Card than in the NCES database; 95 (14.3%) school districts indicate the exact same number of American Indian students in both data bases; and 426 (64.0%) school districts indicate an undercount of American Indian students in the NYSED School Report Card when compared to the NCES database. Percentages are rounded up resulting in a total of 100.1%. There are selected school districts for which the undercount or over count can and should be looked at more closely to determine whether there are other factors at work. A complete listing of the 666 school districts and the relationships between the NCES count and the NYSED School Report Card count can be found in Appendix 1. Table 2, below provides an overview of the American Indian student population as reported by NYS in the mid-1980s, the early 1990s, the 2010 school year, and the 2010 NCES count. A simple visual examination shows that while the student count of American Indian students stays relatively stable from the mid 1980s through the early 1990s, there is a dramatic increase in the NYS count by 2010. Given this change in NYS data, the overall count of American Indian students by NCES in 2010 is almost twice that of NYS in 2010.

Table 2  
*New York State Counts of American Indian students*

<u>Year</u>	<u>Data Source</u>	<u>Number of American Indian students</u>
1984-1985*	NYSED	6,339
1991-1992*	NYSED	5,942
2009-2010	NYSED	16,767
2010	NCES	30,491

\*(data from NYSED reported in Curley, 1995, p.3)

The largest single undercount of American Indian students is in the New York City Department of Education which reports an undercount of 13,447 American Indian students. Discounting New York City, the amount of undercount to over count in the rest of the state is 277 students, meaning that while a few districts over count and many districts undercount, it is the major undercount of 13,447 in New York City that produces such a dramatic overall undercount of American Indian students. The undercount in New York City is so dramatic that the computed standard deviation between the two samples is 9,508.46, meaning that the difference is so great between the two counts that it is difficult to imagine that they represent the same jurisdiction and the same population. The NCES count of 17,456 identifies that New York City should represent 57.25% of the total NCES count of American Indian students in public school districts in New York State which is 30,491. The NYSED School Report Card data identify New York City as indicating that they have a mere 4,009 American Indian students or 24% of all American Indian students reported in the NYSED count. Given the overall lack of research on American Indian student counts in eastern states, this result serves as a unique starting point in the literature of American Indian education.

### **Undercounts by NYS**

Those 426 school districts that demonstrate an undercount of American Indian students represent 64% of the school districts included in the sample. The districts with undercounts are divided into several separate categories: those districts with undercounts of more than one



hundred students (Table 3), those districts with undercounts of between fifty to one hundred students (Table 5), those districts with undercounts of between twenty to forty-five students (Table 7), and those districts with undercounts of under twenty but not zero students. The entire data set of 666 matched school districts served as an additional category. Examining first those ten school districts with undercounts of more than one hundred American Indian students; it is important to note that seven of these districts represent cities. Indeed, of those public school districts in New York State commonly called the big five: New York City, Yonkers, Syracuse, Rochester, and Buffalo; each of these except Buffalo had an undercount of more than 100 American Indian students. The undercount in Buffalo is 65 American Indian students placing it into the second tier of district undercounts. Table 3 provides a view of the highest numbers of undercount in NYS school districts. This table includes not only four of the largest school districts in the state, but also districts like White Plains, New Rochelle, and Schenectady where the school district count is under ten with the NCES count well over a hundred.

Table 3  
*New York State School Districts with the ten highest undercounts of American Indian students*

<u>School District</u>	<u>NCES 2010 count</u>	<u>NYSED 2010 School District count</u>	<u>Undercount</u>
New York City Department of Education	17,456	4009	13,447
Yonkers City School District	447	49	398
Brentwood Union Free School District	283	40	243
Newburgh City School District	199	26	173
Rochester City School District	254	100	154
Salmon River Central School District	1,124	971	153
Schenectady City School District	159	8	151
Syracuse City School District	437	288	149
Gowanda Central School District	549	402	147
New Rochelle City School District	131	9	122
White Plains City School District	113	5	108

Table 4 provides an illustration of the Wilcoxon Signed Rank Test results for the school districts contained in Table 3. Under the Wilcoxon test, it would not be possible to reject the null hypothesis; there is no significant difference between the two samples; if the W values were approaching 0. As Table 4 demonstrates, the W+ and W- values, given the N=11, are not approaching 0. This would indicate that the null hypothesis can be rejected, meaning that there is a significant difference between the two student counts.

Table 4  
*Results of Wilcoxon Signed Rank Test for New York State School Districts with the ten highest undercounts of American Indian students*

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W+ =	<b>45</b>
W- =	<b>21</b>
N =	<b>11</b>
p<	<b>.0001</b>

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While explanations similar to those presented for racial misclassification in medical and public health studies (Burhansstipanov & Satter, 2000; Ford & Kelly, 2005; Rhodes, 2005; Sugarman, et al.,1993) are most likely the common reasons for some of these undercounts, there may be additional, site specific rationales for such dramatic undercounts. Undercounts such as those found in White Plains, New Rochelle, Newburgh, and Yonkers may reflect current tribal members and descendents from earlier Mohican, Delaware, Pequot, Wappinger, and Munsee (Beale, 1957; Gilbert, 1948; Pollitzer, 1972), emigrants of American Indians from other areas, or the inclusion of South and Central American indigenous people in American Indian counts (Sturtevant & Trigger, 1978). The undercount of 151 found in the Schenectady City School District, is especially difficult to understand. Whether the large undercount is the result of the inclusion of Central and South American indigenous people into the definition of American Indian, a sizeable number of urban American Indians who live in Schenectady, or the American

Indian remnant group called the Yanses, a “dark, swarthy race, with straight hair, high cheek bones and copper complexion” who settled in the Albany Hill area of Schenectady in the beginning of the 19<sup>th</sup> century, (Greene, 1925, pp. 1165-1174) is difficult to illuminate without a more detailed study of the Schenectady City School District.

Table 5 provides an overview of the American Indian student undercounts for NYS school districts where the NYS undercount ranges from fifty to one hundred students. The large number of schools districts fitting into this category (N=16), is not as remarkable as the geographic distribution of the sub-group. 50% of the sub-group represent school districts located on Long Island (8), and 37.5% are located in the mid-Hudson area (6). With only two of the 16 school districts in this sub-group (12.5%) located in the western part of the state. The five school districts who each claimed to have between zero and five American Indian students in their districts, with NCES counts of more than fifty represent an interesting anomaly not simply because of the size of the NYS undercount, but because the district did not appear to have knowledge of the American Indian student population present in the district.

Table 5  
*New York State School Districts with undercounts of American Indian students ranging from 50 to 100 students*

<u>School District</u>	<u>NCES 2010 count</u>	<u>NYSED 2010 School District count</u>	<u>Undercount</u>
Ossining Union Free School District	52	2	50
Amityville Union Free School District	58	7	51
Bay Shore Union Free School District	58	1	57
Hicksville Union Free School District	60	3	57
Randolph Central School District	74	15	59
Hempstead Union Free School District	74	10	64
Buffalo City School District	533	468	65
Uniondale Union Free School District	74	6	68
Mount Vernon City School District	86	13	73
Poughkeepsie City School District	82	9	73
Middletown City School District	80	5	75
William Floyd Union Free School District	125	47	78
Central Islip Union Free School District	97	17	80

Port Chester-Rye Union Free School District	83	0	83
East Ramapo Central School District	104	14	90
Freeport Union Free School District	108	14	94

Table 6 provides the Wilcoxon Signed Ranks Test results for the school districts identified as having undercounts of American Indian students between fifty and one hundred. As with Table 4, under the Wilcoxon test, it would not be possible to reject the null hypothesis; there is no significant difference between the two samples; if the W values were approaching 0. While this is true for the W- value, the W+ value of 136 would indicate that the null hypothesis can be rejected, meaning that there is a significant difference between the two student counts.

Table 6  
*Results of Wilcoxon Signed Rank Test for New York State School Districts with undercounts of American Indian students ranging from 50 to 100 students*

W+ =	<b>136</b>
W- =	<b>0</b>
N =	<b>16</b>
p<	<b>.0001</b>

In addition to the top ten undercount districts, there are another sixteen school districts with undercounts ranging between 50 and 100 American Indian students. The interesting observation with these districts is that almost half are school districts on Long Island, the location in which both the Shinnecock and Unkechaug tribal nations have reservation land holdings. Historically the relationship between the non-Indian residents of Long Island and the American Indian populations has not always been amiable (Strong, 2008; Treadwell, 1992), with occasions where claims over the *Indianess* of the tribal nations, as well as their right to exist as reservation communities have been challenged in the popular media and in court, as already discussed (Strong, 2008; Treadwell, 1992).

Table 7 displays the comparison between the NYS American Indian student counts and those of NCES where the NYS undercount ranges between twenty and forty-five students. This collection of thirty-three school districts shows four school districts where the district claimed that they had no American Indian students at all, where the NCES data shows at least twenty-nine or more. Another eleven school districts claimed to have less than five American Indian students in their district, while the NCES data shows more than twenty in each of these schools.

Table 7  
*New York State School Districts with undercounts of American Indian students ranging from 20 to 45 students*

<u>School District</u>	<u>NCES 2010 count</u>	<u>NYSED 2010 School District count</u>	<u>Undercount</u>
Onondaga Central School District	61	41	20
Salamanca City School District	487	467	20
Deer Park Union Free School District	22	1	21
East Meadow Union Free School District	26	5	21
Middle Country Central School District	30	9	21
Pine Bush Central School District	34	13	21
Fallsburg Central School District	23	1	22
Lawrence Union Free School District	29	7	22
Riverhead Central School District	44	22	22
Baldwin Union Free School District	30	7	23
Carmel Central School District	27	4	23
Clarkstown Central School District	39	16	23
Troy City School District	34	11	23
Copiague Union Free School District	28	4	24
Beacon City School District	27	2	25
Central Square Central School District	40	15	25
Kenmore-Tonawanda Union Free School District	97	71	26
Dunkirk City School District	38	11	27
Kingston City School District	54	25	29
Long Beach City School District	29	0	29
Oneida City School District	73	43	30
Patchogue-Medford Union Free School District	48	18	30
Amsterdam City School District	32	0	32
Utica City School District	44	12	32
The Tarrytowns Union Free School District	34	1	33
Peekskill City School District	36	1	35
South Country Central School District	67	32	35
South Huntington Union Free School District	41	3	38
Longwood Central School District	68	27	41

Roosevelt Union Free School District	42	0	42
Wyandanch Union Free School District	45	2	43
Westbury Union Free School District	47	3	44
Huntington Union Free School District	45	0	45

Table 8 provides the Wilcoxon Signed Rank Test for the sub-group of school districts whose NYS undercount of American Indian students' ranges between twenty and forty-five. As with the data reported in Tables 4 and 6, the W values are not approaching zero, therefore it is possible to reject the null hypothesis. The strength of the relationship shows that the difference between the two samples is strongly significant making this occurrence by chance unlikely.

Table 8

*Results of Wilcoxon Signed Rank Test for New York State School Districts with undercounts of American Indian students ranging from 20 to 45 students*

W+ =	<b>561</b>
W- =	<b>0</b>
N =	<b>33</b>
p<	<b>.0001</b>

Those school districts with undercounts, ranging between twenty and forty-five can be found in most regions of the state; however it is important to notice that many of those with the highest undercounts are again located on Long Island.

The 365 school districts with undercounts of fewer than twenty represent over half of the total sample of school districts, yet it is important to note that 426 of the 666 school districts (63.96%) undercount the numbers of their American Indian students in their NYS School District Report Card. This in itself may indicate at the bare minimum a lack of attention by most school districts in collecting their student demographics regarding American Indian student correct.

For those 95 school districts or 14.26% of the sample which have the same numbers of American Indian students in both the NCES and NYSED School Report Card counts it is

important to note, 58 districts (61%) of this sub-set record no American Indian students at all. Indeed, of this group of 95 school districts, only one district, Watertown identifies over 30 American Indian students, actually 41, making this number a reportable sub-group. Only two other districts have American Indian student counts over 20 and only three have American Indian student counts over ten.

### **Over Counts by NYS**

While a much smaller sub-set of the sample, those 145 school districts, or 21.77% of the total, in which the NCES count is smaller than the NYSED School Report Card count constitute an interesting anomaly. It should not be too surprising that some school districts would have School Report Card counts greater than that of the NCES data set, and it should be noted that 123 of these districts, or 84.83% of the over count sub-set, have over counts of less than 10. This means that similar to those with severe undercounts, those school districts with severe over counts represent a clearly identifiable group. This group looks quite different than those with larger undercounts in that these districts each have NYSED School Report Cards claiming more than 20 American Indian students, in some cases several hundred American Indian students. The strange anomaly in these cases appears to be that of a greater knowledge of their student populations than the NCES database reveals. As an example, it is important to examine two of these over count districts. Center Moriches has earlier been identified as the district in which the Unkechaug Indians of the Poosapatuck Reservation predominantly attend school. In this case, the NCES data count of 4 American Indian students is understandably low. The reason why this number is low may have more to do with the reluctance of the Unkechaug to respond to the U.S. Census, or perhaps an irregularity in the methodology for counting American Indians of mixed race, than that of a lack of American Indians attending schools in the district. Likewise,

Lafayette Central has a special contract with the New York State Education Department to educate reservation residents and therefore has a financial incentive to record all American Indian students on their school report card. Districts such as North Tonawanda, Massena, Niagara-Wheatfield, and Niagara Falls City each border either nearby reservation communities or are urban areas where a sizeable American Indian population has been reported in the U.S. Census. It is not surprising that the districts in these areas may be more vigilant in counting American Indian students, and general Census avoidance or misreporting issues, especially in what constitutes an American Indian household, may be the cause of the relative over count.

Table 9 identifies the NYS districts where the NYS count of American Indian students is larger than that contained in the NCES count. These districts are generally in the Central, Finger Lakes, and Western portions of the state.

Table 9  
*New York State School Districts with over counts of American Indian students 10 and larger*

<u>School District</u>	<u>NCES 2010 count</u>	<u>NYSED 2010 School District count</u>	<u>Difference</u>
LaFayette Central School District	44	233	-189
Massena Central School District	184	318	-134
Niagara-Wheatfield Central School District	169	291	-122
Silver Creek Central School District	49	139	-90
North Tonawanda City School District	23	94	-71
Evans-Brant Central School District	229	297	-68
Center Moriches Union Free School District	4	70	-66
North Syracuse Central School District	67	132	-65
West Genesee Central School District	34	77	-43
East Syracuse-Minoa Central School District	33	65	-32
Niagara Falls City School District	260	284	-24
Clarence Central School District	2	25	-23
Oxford Academy and Central School District	1	17	-16
Red Creek Central School District	9	25	-16
Norwood-Norfolk Central School District	7	22	-15
Cato-Meridian Central School District	1	15	-14
Rush-Henrietta Central School District	22	36	-14
Binghamton City School District	19	32	-13
Indian River Central School District	17	30	-13



Elmira Heights Central School District	1	13	-12
Williamsville Central School District	21	33	-12
West Irondequoit Central School District	9	20	-11

Table 10 provides the Wilcoxon Signed Rank Test results for the districts reporting an over count by NYS in comparison to the NCES data. As with the data reported in Tables 4, 6, and 8, the W values are not approaching zero, therefore it is possible to reject the null hypothesis. The p value indicates that there is a significant difference between the two counts of American Indian students attending school districts in New York State in 2010. The strength of the relationship shows that the difference between the two samples is strongly significant making this occurrence by chance unlikely.

Table 10

*Results of Wilcoxon Signed Rank Test for New York State School Districts with over counts of American Indian students 10 and larger*

W+ =	<b>0</b>
W- =	<b>253</b>
N =	<b>22</b>
p<	<b>.0001</b>

The findings therefore demonstrate that it is possible to reject the null hypothesis for each sub-group, while the results of two of the sub-groups show a strong level of significance, one being an undercount by NYS and the other being an over count by NYS.

It is important, in examining the present situation of American Indian student counts in NYS school districts to examine the particular counts of those school districts with which New York State contracts for the education of reservation residents. The general focus has been the counting of those school districts which educate off-reservation residents in order to determine how well they are being counted in the public school districts, but for those school districts where the State Education Department provides specific funds, it is also critical to examine

possible undercounts or over counts. Table 11 provides the data for those school districts indicated by the NYS Education Department as being a contract school for a particular reservation. The data provided includes not only the NYS and NCES American Indian student counts for 2010, but also the NYS count for 1991 as a reference point.

Table 11  
*American Indian Student Counts for School Districts Contracting with New York State for American Indian Education by Reservation and American Indian Tribal Nation*

<u>Contract School District</u>	<u>NYSED Count 1991*</u>	<u>NCES Count 2010</u>	<u>NYSED Student Count 2010</u>	<u>2010 Difference</u>	<u>Reservation</u>	<u>American Indian Tribal Nation</u>
Salamanca City School District	334	487	467	20	Allegany	Seneca Nation
Gowanda Central School District	399	549	402	147	Cattaraugus	Seneca Nation
Silver Creek Central School District	156	49	139	-90	Cattaraugus	Seneca Nation
Evans-Brant Central School District	148	229	297	-68	Cattaraugus	Seneca Nation
Stockbridge Valley Central School District	-	14	18	-4	Oneida	Oneida Nation
LaFayette Central School District	298	44	233	-189	Onondaga	Onondaga Nation
Onondaga Central School District	-	61	41	20	Onondaga	Onondaga Nation
Center Moriches Union Free School District	51	4	70	-66	Poosepatuck	Unkechaug Nation
Southampton Union Free School District	81	131	119	12	Shinnecock	Shinnecock Nation St. Regis Mohawk Tribe
Massena Central School District	77	184	318	-134	St. Regis	St. Regis Mohawk Tribe
Salmon River Central School District	821	1,124	971	153	St. Regis	Tonawanda Band of Seneca
Akron Central School District	116	165	162	3	Tonawanda	Seneca
Niagara-Wheatfield Central School District	226	169	291	-122	Tuscarora	Tuscarora Nation

\*(1991 data from NYSED reported in Curley, 1995, p.19)

Table 12 provides the Wilcoxon signed Rank Test for the data on those school districts receiving NYS contracts for providing education to American Indian students from reservation communities. As with the data reported in Tables 4, 6, and 8, the W values are not approaching zero, therefore it is possible to reject the null hypothesis.

Table 12  
*Results of Wilcoxon Signed Rank Test for American Indian Student Counts for School Districts Contracting with New York State for American Indian Education comparing NYSED count from 1991 with NYSED count from 2010*

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W+ =	<b>10</b>
W- =	<b>68</b>
N =	<b>12</b>
p<	<b>.0001</b>

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It would be understandable if those school districts in contract with the NYS Education Department to provide schooling for on-reservation residents had a discernible pattern in the count of students on the NYS School District Report Card. If, for example the districts all had extremely high over counts, like LaFayette Central, Massena, Silver Creek, Evans-Brant, and Niagara-Wheatfield, one could surmise that because they are paid specifically for the number of American Indians, then perhaps they would be more vigilant in the counting process. However, this is not clearly the case for all contracting districts. Some, specifically Gowanda and Salmon River report extremely high undercounts of American Indian students, either indicating that they are not concerned with the additional funds, or that the School District Report Cards are not relevant to the receipt of additional dollars. It may also be plausible that the school districts are simply not proficient at collecting or reporting demographic data.

In the earlier review of the method of gathering data, it was discovered that counts of American Indian students for these contracts is gathered through a different mechanism. It would be interesting to see how closely the School District Report Cards counts equate to the counts used for billing purposes. Because of the method used by the state to provide contract funds for education for reservation resident American Indian students, their incentive is to count everyone they can. If American Indian students were removed from the contact districts;

...the apparent wealth of these school districts on a per pupil basis would rise significantly and those State aids distributed on the basis of school district wealth would diminish. The local taxpayers would be obliged to pick up a greater share of the cost of education in their schools and at the same time diseconomies of scale would be introduced... (Curley, 1995, p.16).

The other interesting examination is the differences between the data from 1991 and that of 2010. While there has been a change in the definition of American Indian during this time period, the most recent by NYSED in 2009, the data reflect some interesting relationships. Silver Creek, Center Moriches, Niagara-Wheatfield, and Lafayette school districts all show closer NYSED counts between their 1991 and 2010 number than with the NCES 2010 counts. Additionally, all of these districts reflect an over count when compared to the NCES data for 2010. There is less consistency among the other school districts including those with undercounts. With NYSED conducting a separate count for those districts with American Indian education contracts, the relationships between the numbers of American Indian students may present themselves more easily when examining the contract payment student counts.

The non-parametric procedure, the Wilcoxon Signed Rank Test was used to compare the two measures because it was not possible to be assured that the data were distributed normally. This test, which serves as the non-parametric companion to the t-Test for significance between the means of two correlated samples, was chosen because the data do not necessarily meet the assumptions needed for parametric tests. As indicated earlier, it would be expected “that on the null hypothesis we would expect the value of  $W$  to approximate zero, within the limits of random variability. This is tantamount to saying that any particular observed value of  $W$  belongs to a sampling distribution whose mean is equal to zero...” (Lowry, 2012, chpt. 12a).

With an N=666, it is possible to compute the W value for the paired samples, however a step in the process eliminates those 95 school districts where the absolute difference between the NCES and NYSED counts is zero. This results in  $n_{s/r} = 571$ . By utilizing the Wilcoxon Matched-Pairs Signed-Ranks Test found on the website of the University of Amsterdam (Univ. of Amsterdam, 2012), the resulting calculation of the W utilizing the paired data from the NCES and NYSED student counts indicates that within the limits of random variability, the W is not approaching 0. This finding indicates for the entire sample that the null hypothesis, of no significant difference, cannot be upheld. There is a significant difference between the two counts of American Indian students attending school districts in New York State in 2010. As indicated above, the delineation of the Wilcoxon Signed Rank Test results by specific subsets of the sample of NYS school districts shows the specific sample of school districts where the difference is significant. Table 13 provides the Wilcoxon Signed Rank Test results for the entire sample.

Table 13  
Results of Wilcoxon Signed Rank Test for the Total Sample

W+ =	<b>128946.50</b>
W- =	<b>34359.50</b>
N =	<b>666</b>
$n_{s/r}$ =	<b>571</b>
<u>p &lt;</u>	<u><b>.0001</b></u>

The results indicate that because the W values are not approaching zero and that the null hypothesis can be rejected and that the significant difference between the NCES American Indian student counts and those of the NYSED School District Report Cards is not by chance. Given the design of this study, it is not possible to determine the cause of the difference; however there are certainly possibly explanations which could account for the individual differences in particular school districts or the difference more globally.

## **Archival Findings**

The secondary research question asks if the educational policy of assimilating American Indian students into the dominant culture has continued after the delivery and adoption of the New York State Board of Regents Position Paper #22 in 1975. This question seeks to determine the likelihood of whether there might be yet another explanation for the disparity between the NCES and NYSED American Indian student count data, one more akin to isolation and invisibility. The reason explored here is that there is an implicit or explicit process which ignores the Board of Regents' specific reversal of the assimilation policy and continues the practices of assimilation. This question is considered in the broader context of assimilation policies toward American Indians nationally and at the state level which has been discussed earlier in the federal and state educational policies impacting American Indians.

By reviewing the documentation in the New York State Education Department, the NYS Library and the NYS Archives relating to American Indian education it is possible to know whether or not specific policy directives, guidance memoranda, or other directives were issued to public school superintendents and school districts which were meant to implement the non-assimilationist approach espoused by the Board of Regents. As this question has not been asked before, it represents a new research step into the examination of American Indian educational policy at the state level. Additionally, it is also possible to explore whether there have been alternatives to the assimilation methodology in the off-reservation public education of American Indian students.

The Regents' position paper #22 contains the fundamental policy statement relating to how and why American Indian education should be conducted after 1975. While the position paper's introduction by Commissioner Ewald Nyquist states that it is a "guide for policy

whereby educational opportunities can be improved for present and future generations of Native Americans in New York State...” it also indicates that the state's educational services “enable Native Americans to move into the mainstream of American society...” (NYS Board of Regents, 1975, p.3). Before the new policy is even officially stated, the implicit role of New York State in providing educational programs that mainstream American Indians is already reconfirmed. The Commissioner continues by saying that “it is evident that success has been limited...” (NYS Board of Regents, 1975, p.3). While almost everything done by the State is directed toward reservation residents, language used by the Board of Regents explicitly includes all American Indian students.

The Regents recognize that the off-reservation and generally urban Native Americans are entitled to receive the same special considerations; hence, directions advocated herein pertain in a different degree to Native American education wherever it may occur, on or off reservations. However, it is recognized that considerable local adaptation must occur in different situations and particularly where the Native American population is dispersed and in consequence removed from the tribal communities... (NYS Board of Regents, 1975, p.4).

With the adoption of the Regents’ new policy on American Indian education which categorically refuted assimilation, there were great expectations that the structure and process of American Indian education for both on-reservation and off-reservation students would change (Burke, 1976; Hauptman, 1988; Sheldon, 1975). In 1975, the NYSED Bureau of Educational Data Systems indicated that 5,830 American Indian children were enrolled in 46 different school districts (NYS Board of Regents, 1975, p. 5). The department only considered itself responsible

for the 2,990 students enrolled in reservation schools and the 312 students receiving post-secondary grants-in aid (NYS Board of Regents, 1975, pp.5-6). This leaves, even at the time of the implementation of the new policy, 49% of the elementary and secondary American Indian population to be educated by the public school districts of NYS. As part of its reply to specific inquiries by Helen Scheirbeck chairwoman of the Indian Education Task force of the federal American Indian Policy Review Commission that in 1976, the NYS Education Department reported that there were 6,591 American Indian students in 31 public school districts (Nyquist, 1976, Question #1). The questions asked by Ms. Scheirbeck are not only specific but solicit specific answers which do not to lend themselves to bureaucratic answers. When asking about American Indian involvement in educational decision-making, Commissioner Nyquist is forced to acknowledge, “there are no Native Americans serving on the State Board of Regents, nor is there a statewide Advisory Committee...” (Nyquist, 1976, Question #5). When responding specifically to a question on the role of the state government in American Indian education, Commissioner Nyquist states openly, “[s]ince the State provides funds for basic educational needs of Native American students, it can continue these programs... in providing these opportunities...it was assumed that Native Americans wished to be assimilated into mainstream society...” (Nyquist, 1976, Question #8).

The nine substantive areas of the Regents’ policy, including; [1] Statewide Native American Education Advisory Committee; [2] greater participation by American Indians in school district decision making; [3] increased hiring of American Indian teachers and support personnel in school districts; [4] American Indian cultural training for NYS school teachers; [5] changed elementary and secondary school curriculum; [6] development of continuing education programs for adult American Indians; [7] expansion of the post-secondary grant-in aid for off-



reservation residents; [8] American Indian school guidance services for secondary school students; and [9] solicitation and use of federal funds to meet educational needs of American Indians; required that the “concerned parties . . . cooperate in a spirit of dedication and mutual trust...” (NYS Board of Regents, 1975, p. 8).

The impact of educational curriculum, especially the role of assimilation in the construction and implementation of educational materials and standards has been an issue of serious concern for American Indian parents in New York State. The revision of the curriculum to include more American Indian historical and modern cultural information, to correct stereotypes and discriminatory images, and to reduce the overarching tenor of assimilation lead to curricular reform and teacher training being included as two major objectives of the Board of Regents in Position Paper #22. Currently NYS, like many states are in the process of adopting and implementing the Common Core standards for elementary, middle and secondary education. After a cursory view, it is possible to see that the adoption of the Common Core Standards, especially those in Social Studies, constitutes, at least on the surface, a desire for all students to be taught the same curriculum and to ensure that they possess an adequate understanding to pass requisite standardized examinations. This philosophy as being implemented may not take into account the unique status of American Indian tribal nations as separate sovereigns, and therefore could harkens back to policies and subsequent processes very similar to the earlier assimilation processes abandoned specifically by the Board of Regents in 1975. An examination of the issues surrounding the implementation of the Regents policy as espoused in the 1975 position paper may provide guidance for those educators seeking to implement the Common core without violating the earlier policy statement.

“Although much of the Regents Position Paper No. 22 was either needlessly delayed or never implemented, there have, nevertheless, been substantial changes in Indian education since 1975...” (Hauptman, 1988, p.82). In acknowledging the Governor’s copy of the Regents’ position paper, David Burke, Secretary to the Governor, indicates that the “Governor supports efforts of the Regents and the State Education Department to restructure opportunities and programs to better meet the educational needs of the State’s Native Americans...” (Burke, 1976). While Hauptman was writing in 1987, he was examining the record of accomplishment which had occurred in those twelve years since the landmark change in policy. Indeed, in those first twelve years, some substantive activities did occur; however practically all of the accomplishments were directed at that portion of the American Indian population, the reservation residents, where the state decided it already had responsibility and ignored the remainder of American Indian students, those attending non-contract public schools. While the promise of Position Paper #22 was meant for all American Indian students, including improved curricular options for American Indian students and improved training and preparation for those teacher teaching American Indian students, the focus was on improvements directed elsewhere. In the decade from 1979 to 1988, Hauptman reports that the state support for Indian schools rose from \$3,581,107 to \$8,000,000 (Hauptman, 1988, p.83); but it is difficult to determine what was happening in improving the educational services received by American Indian students off the reservation.

In a move directed at assisting off-reservation high school graduates, and in specific response to item 7 of the policy, the Postsecondary Aid “was changed to include off reservation students; the program was later extended to include ... the child of an enrolled member of a New York State tribe...” (Hauptman, 1988, p.83). This program change while not requiring an

increase in funding in relation to the cost of higher education, did in fact occur through a change to Commissioner's regulations sec. 145-4, and has been available to those qualifying American Indians since that time (NYSED Indian Aid, 2012).

The newly created Native American Education Unit was soon the subject of bureaucratic neglect as well as the subject of discussions regarding bureaucratic control and external suspicion. In a 1975 letter from Chief Irving Powless Jr. to Governor Hugh Cary, Chief Powless indicates rather pointedly that "the Onondaga Nation... will not abide interference with the internal affairs of our Nation or Nations of the Houdenosaunee..." (Powless, 1975). He specifically identifies both Anna Lewis and Lincoln White, who he said "overlap and transgress into what our nations consider our authority and responsibility..." (Powless, 1975). The real criticism appears to be directed not at these two staff members but at John Hawthorne, whom Chief Powless calls "a political appointee who we have always considered incompetent, insensitive to the Indian people, and at times openly hostile to the Houdenosaunee..." (Powless, 1975). This letter to the Governor was forwarded on to the State Education Department and in a transmittal memo to the Native American Education Unit, Dr. Thomas Sheldon states,

I am very positive that our Unit's activities have stayed clear of any political involvement with the Six Nations. As you fully realize, it is difficult to assist the Onondaga Nation, but we hold firmly to our responsibility of helping them improve the educational opportunities of their children... (Sheldon, 1975).

The Native American Education Unit also became the subject of internal concerns by NYSED executives in 1976. In a series of memoranda between Dr. Stanley Raub and Dr. Leo Soucy, regarding a study being undertaken by Anna Lewis, the two discuss the possible implications of Ms. Lewis' outreach activities. Dr. Soucy was serving as Assistant Commissioner of District

Organization and Services, so the actions or inactions of school districts were his responsibility. Dr. Raub, seems particularly concerned about vetting, as he says, “I assumed that all studies would go to your office before they are released to the field and if they are controversial, I would assume that we would discuss them before sending them...”(Raub, 1976). In Dr. Soucy’s response to an inquiry by Dr. Raub, he states, “Ann is under direct orders to pass everything to me for approval before sending to the field...” (Soucy, 1976). So after only four years, having been created in 1973, the Native American Education Unit, by 1977 was pushed first into controversy and then into bureaucratic obscurity. The external political complications of being challenged by a Chief of the Onondaga coupled with challenges from within on following proper procedures for the vetting of work products prior to release to the field served to eliminate both external allies and internal supporters. In a 1977 policy memo, then unit head Anna Lewis describes the issues faced by the unit.

Low priority within S.E.D

Limited staffing.

Organizationally placed within S.E.D. with units that have no relevance to responsibilities.

Lack clearly defined policies relating to Native American education.

Position Paper recommendations not implemented... (Lewis, 1977).

Hauptman reports that as of Lewis’ retirement in 1984, each of her concerns had been ignored (Hauptman, 1988, p.83). So in a period where the percentage of workforce employed by government rose in New York State from 17% to 18.2%, the Native American Unit was plagued by limited staffing (Tucker, 1981). Likewise in a period marked by a nine point Board of

Regent's policy statement on American Indian education, the Native American Unit lacked defined policies regarding educational priorities (Lewis, 1977).

One of the cornerstones for the new post 1975 Regents' anti-assimilation policy was the creation of the commissioner's advisory committee. While announced with grand fanfare as part of the policy, the actual creation of the committee was delayed for approximately ten years and only organized "after Commissioner Ambach feared that one of the planned Board of Regents Bicentennial meetings would be disrupted..." (Hauptman, 1988, p.84).

Despite repeated calls by American Indians for involvement in the education of their children, the first meeting of the commissioner's Native American Education Advisory Committee meeting was convened on January 6, 1986... (Hauptman, 1988, p.79).

The failure to organize the Commissioner's Advisory Committee and the complete abandonment of the teacher training promise counted as a cost savings of nearly \$1,000,000 for the ten years from 1975-1985 (Hauptman, 1988, p.84). Since these activities have not been a part of SED operations, it can be assumed that whatever funds originally planned for their implementation have been absorbed by the department elsewhere.

Curriculum issues which had been previously identified were not addressed by the NYSED leadership resulting in two major issues in the 1980s where information on American Indians was missing or simply wrong. The 1986 SED funded and published dance curriculum, "contained inaccurate and culturally insensitive materials about Native Americans and virtually nothing about American Indians in New York State..." (Hauptman, 1988, p. 85). Also in 1986, the then Bureau of Curriculum Development distributed a new social studies curriculum that "contained historical inaccuracies about the Iroquois Confederacy, deemphasized the role of the

Indian in state history, and made no mention that Native Americans are still vibrant cultures in New York State...”(Hauptman, 1988, p. 85). American Indian representatives and members of the board of Regents meet in 1987, resulting in an agreement by NYSED to “make revisions...and develop more supplementary educational materials...” (Hauptman, 1988, p. 85). If the Regents’ policy adopted in 1975 had been implemented, these errors and resulting follow up meetings would not have been necessary, especially in year twelve of the American Indian educational policy. In a review of the New York State Curricular Materials K-12, written in 1988, Dr. Leonard Jeffries, then a Department Chair and Professor at the City College of New York writes, that in the curriculum in place thirteen years after the change of the Regents’ policy the “Eurocentric perspective prevails and the White Anglo-Saxon Protestant (WASP) value system and norms dominate...” (Jeffries, 1988).

It is imperative that the education system take the lead in searching for and presenting accurate information and truth about the much maligned Native American population. The image of the "Noble Savage," a reverend Tarzan in the wilds of America, reinforced by the tragic myth of the Lone Ranger and faithful Tonto, must be destroyed if an accurate portrayal and serious understanding of native American civilization is to become reality. Similarly, the erroneous and racist attribution of Christopher Columbus as so-called "discoverer" and "civilizer" of Native Americans can be exposed as an essential part of the ideology of "White nationalism" designed to justify the exploitation and eventual genocide of indigenous Americans... (Jeffries, 1988).

The sole later reference for a discussion of American Indians in the curricular pursuits of the Department appears to be a 2003 NYSED publication for pre-kindergarten through grade six entitled, *Social Studies Instructional Strategies and Resources*, where appendix B covers

“Sensitivity Guidelines for Discussing Native American Indians...” (NYSED Instructional, 2003). These guidelines use basic approaches to explain to teachers how to avoid using derogatory, dehumanizing, and insulting terms when the subject of American Indians is discussed in the classroom, especially not always referring to American Indians in the past tense (NYSED Instructional, 2003). It seems strange that teachers need a special section in the guidance on how to avoid dehumanizing American Indians, but no curricular initiatives discussing American Indians in the present. With the Board of Regents policy being formally adopted in 1975, the fact that there were major controversies relating to the curriculum in public schools eleven and twelve years later for issues of Euro-American bias, and special guidance for teacher on how not to demean American Indians, should reflect that perhaps the policy was not being disseminated through the agency.

A search of the NYSED website for the term ‘Native American Education Advisory Committee’ produced no matches, with the only indication of anyone representing Native peoples being the 2008 Appointments to the New York State Rehabilitation Council, showing “Jason McDonald, Project Director, St. Regis Mohawk Tribe Vocational Rehabilitation Program...” as the “Representative of Native American Projects (Section 121)...” (Cort, 2008). This inclusion of an American Indian representative is ongoing as evidenced by the inclusion of this role by current Deputy Commissioner of the Office of Adult Career and Continuing Education Services (ACCES), Kevin Smith (Smith, K., 2011).

As Dr. John Curley, a member of the NYSED, identified in 1995, his impressions for the future directions of American Indian education included both an American Indian college and greater tribal control of elementary and secondary education (Curley, 1995). While acknowledging the lack of a substantial federal relationship, Curley identifies that during the

period of the 1980s, the American Indian population grew in New York State. From 1980 to 1990, New York saw an increase of 58.3% in American Indians well above the 37.9% national average (Curley, 1995, p.3). Strangely, “at the same time there was this increase in the overall Indian population in New York, the number of Indian children needing to be educated... declined...” (Curley, 1995, p. 4). The obvious question is whether the real number of American Indian students declined, or the method of counting American Indian students changed. If the process included only reservation residents (NYS Ed Law, 2012; NYS Education Department SIRS, 2012; NYS Education Department SIRS, 2010; NYS Education Department Collecting and Reporting, 2010; Ray, 2009), then the political nature of the status of reservations could have measurably impacted the count. If it were based upon counts from contract school districts, then once again the bias away from counting off reservation American Indian students continued.

In the decades following the Regents’ policy statement of 1975, American Indian children continued to be under represented in programs for the gifted, even more so than Black and Hispanic students, and over represented in “programs for the learning disabled...” (Curley, 1995, p.4) Additionally, it was acknowledged that “American Indian students in New York living off the reservations are, ...cut off from many aspects of their cultural heritage...” and “there are no additional State funds to pay for the special supplementary services Indian students may need...” (Curley, 1995, p. 4 & p. 7). In approximately 1988, through the efforts of both staff at the State Education Department and many members of the Haudenosaunee community statewide a unique syllabus was created for native language. *Ögwehöwe:ka:?: native languages for communication : New York State syllabus* which was produced by the University of the State of New York, sought to provide educators “a working document for educators at the district and classroom level to use ... [to] develop their local district curriculum...” (University of the State



of New York, 1988, p. i). The College Entrance Examination Board, through a national dialogue on Indian education in 1988 concluded that;

Indian people want their children to value their culture and traditions, but they also want their children to have basic academic competencies and subject-matter knowledge when they emerge from the educational pipeline...(College Entrance Examination Board, 1989, p. 1).

In 1990, the Institute for Educational Leadership identified that one of the greatest problems facing American Indians was cultural extinction (Institute for Educational Leadership, 1990).

While the effort to create a syllabus for use by school districts, other than making the publication available if requested, there is no evidence of active promotion of American Indian languages among school district personnel especially in off-reservation communities. These realities require one to ask the, perhaps rhetorical, question; just what did the Regents' policy statement ending assimilationist education actually mean for American Indian students? If there was acknowledgement of the isolation faced by off-reservation American Indian students, the over tracking of American Indian students into learning disability programs, and no appropriated funds for supplemental programs, just what changed in the decades following the Regents' change in policy? While existing state law covered those American Indian students living on reservations, the apparent disregard for those American Indian students in public schools appears complete. Dr. John Curley, identified two methods for how the Regents' policy could have been realized;

One way to achieve this end is to send Indian students to public schools where they will learn non-Indians skills and ways but then to provide supplemental teaching about Indian history, language and traditions outside the regular school

day. Or another approach is to incorporate Indian values and culture into the curriculum of those public schools the Indian children attend. To be successful, this latter approach requires an understanding and cooperative board of education and school administration... Perhaps the most promising possibilities for Indian input into the educational process would exist in tribally controlled schools in which the curriculum would be designed to teach both modern learning and cultural traditions... (Curley, 1995, p. 11 & p. 14).

As exemplified by the southern tier issue of the 1990s, specifically the lease of Seneca lands for the City of Salamanca, sometimes the political issues and the resulting resentment, in this case ending formally in the Federal *Seneca Nation Settlement Act* (P.L. 101-503) and Chapter 528 of the New York State Laws of 1991, have not really ended in the minds of both American Indian and non-Indians in the area.

Allowing American Indians the right to serve on school boards throughout the state was an important but mostly symbolic step since the limited size of Indian populations makes the likelihood of their election to school boards slim indeed. Although a few American Indians have won election, their voices will still be limited under this arrangement because of state demographics... (Hauptman, 1988, p. 85).

The NYSED reported specifically about the situation in Salamanca, that “in an apparent backlash, no Seneca candidate could then win a seat on the local board of education...” (Curley, 1995, p. 12).

In the absence of additional state appropriated funds, another mechanism for instituting a shift in educational practice is through the strategic use of federal dollars to leverage school

districts into undertaking processes for American Indian education which more closely carry out the Regents' policy. As previously examined, there are a number of federal Indian education programs available to American Indian tribal nations elsewhere, but they are not taken to full advantage in New York State. Only the Mohawk and Seneca have received funds under the 1934 federal *Johnson-O'Malley Act* and "no school districts in New York appl[ied] for Federal Impact Aid for children living on Indian lands..." (Curley, 1995, p. 8). The Title V of P.L. 100-297, *Hawkins-Stafford amendments of 1988* provided yet another opportunity for school districts in New York State. These funds were "formula grants to tribes and to schools having 10 or more Indian students; special enrichment grants to improve opportunities of Indian students; and programs for Indian adult and post-secondary education..." (Curley, 1995, p. 9). Perhaps these federal funding programs were to be the avenue for fundamentally altering the structure and mission of American Indian education in New York State as identified in the 1975 policy shift. If so, the Regents or the NYSED would have pushed of the application these funds for the purpose of carrying out of the Regents' policy. In 1991, "only 15 [school districts] received a Title V formula grant...[f]ourteen of them... are among the twenty school districts with the largest numbers of Indian students..." (Curley, 1995, p. 9). The reasons why some American Indian tribal nations do not seek out federal funds may relate to past experiences with federal process and administrative and political entanglements; however this reason does not really apply to school districts or the state education department. The reasoning related to these types of institutions generally falls into two categories; either they do not know about the funding opportunity, or they see no value in pursuing the funds. "Students from Indian families could be assisted in these areas by Federally funded educational services if they were sought out more fully..." (Curley, 1995, p. 10). Through an examination of the records available on the

implementation of the Regents 1975 policy, there were no available records demonstrating that the Department or the school districts discussed in writing or took steps to seek out additional federal funding for American Indian education.

In attempting to carry out the requirements under the 1975 Regents' policy, even NYSED acknowledged twenty years later, that "it may be that the education now generally being provided to Indian children in New York, does not and can not entirely meet their needs..." (Curley, 1995, p. 4). The New York State Education Department in a 1990 report to the State Division of the Budget indicated that American Indian tribal nations have some common concerns about education. These include: greater school district contact with tribes, tribal involvement in school district budgeting, greater fiscal accountability by school districts, preservation of American Indian culture, accurate presentation of American Indians in curriculum, inclusion of American Indian languages, support and guidance for American Indian students, in-service training for school district personnel, more American Indian people in teaching and non-teaching positions, support of the self-esteem of American Indians children, and improvement in educational programs for American Indian children (NYSED Education of Children, 1990). Clearly, fifteen years after the 1975 Board of Regent's policy statement, the State Education Department reported the same issues of concern in the area of American Indian education.

One particular educational anomaly of note is the City of Buffalo's Native American Magnet School, PS#19. "The school was established as a Native American Magnet School in 1976, although the school building itself is very old, over one hundred years..." (Hollowell & Jeffries, 2004, p. 767). Since the operation of this educational alternative comes shortly after the Regents' Position Paper #22, it should be seen as at least influenced by this public change in

policy. While the concept and initial development of the Native American Magnet School must surely predate 1975, the ability to have a Native American Resource Program appears to represent, at least locally, a desire to move past an assimilation model of education. This school's program is benefiting a substantial portion of the students in a culturally and academically meaningful way. The "Native American population constitutes one-third of the entire student body and comes from the six Iroquois tribes: Oneida, Seneca, Mohawk, Cayuga, Onondaga, and Tuscarora, with the majority being Seneca and Mohawk..." (Hollowell & Jeffries, 2004, pp. 764-765). This school seeks to eliminate many of the negative aspects which American Indian urban children bring into a classroom, including 90% eligibility for free lunch and;

...a poor neighborhood in which few homes are owner occupied...The neighborhood is visibly deteriorating with burnt buildings, boarded-up windows, graffiti, burglar bars, and vacant lots full of trash. Corner stores have riot gates, and the streets are poorly maintained. When it snows (as it does frequently in Buffalo), the West Side is one of the last urban communities to be plowed. In milder weather West Side streets have visible potholes...and one teacher told the researchers, "I don't come down here at night..." (Hollowell & Jeffries, 2004, pp. 764-767).

The point of the Native American Magnet schools is that it represents a level of persistence of those dedicated faculty of the Native American Resource Program and Haudenosaunee parents and children to effectively serve non-reservation American Indian students.

They persist despite overt and covert resentment of aid to Native American children, despite scathing criticism of their ethnocentric programs from historian/scholars... As Fran Hill, director of the Native American Resources Program, said on the first day of classes, "We need someone to convey our beliefs, values, and traditions to others..." (Hollowell & Jeffries, 2004, pp. 767-765).

The school, in addition to its educational enhancement mission, serves as a cultural connection between the American Indian student and the American Indian culture. While the school was partially funded from a five-year grant from the federal Office of Indian Education, it represents a single step by the federal government into the off-reservation education of American Indian children in New York State.

The grant provides funding for supplies, personnel, and benefits and annual travel for one person to the National Indian Education Association annual conference. In order to be funded, a grantee must have codified bylaws and a parent advisory committee. They must conduct annual evaluations and meet state curriculum standards...All Native and non-Native lessons are aligned with academic standards in place for public elementary schools in New York... (Hollowell & Jeffries, 2004, pp. 770-771).

The landmark impact of the Native American Resource Program is that it provided Native studies instruction to both American Indian and non-Indian students; however the native students, who are identified by American Indian tribal nation, have a pull-out program that allows specialization on specific Haudenosaunee ceremonies and cultural discussion (Hollowell & Jeffries, 2004). Most of the faculty members of the Native American Resource Program are American Indian, and those who are not have long close ties with the Iroquois community, who

take on the task of teaching academic and cultural content while negotiating the minefield of negativity about American Indians found in the dominant culture. As one teacher put it,

I go into the classrooms and teach the non-Native students about Iroquois culture. I try to sensitize them, rid them of stereotypes. I tell them about the way of life of the Iroquois... For a long time, being Native was not a good thing... People didn't want to be identified as Native. Parents didn't want their kids in Native studies class because of things taught in school, the stereotyping of Native children as savages in the movies, in Hollywood. Those images made Native children feel ashamed... (Hollowell & Jeffries, 2004, p. 771).

While it is possible to explore at great length the education curriculum and teaching methods used in the program, it is more important in this context to see that this one program is a singular and successful attempt, lead by people who are personally dedicated, to impact off-reservation American Indian education. There is no evidence that this model has been embraced and replicated by other school districts in New York State. This program is part of the educational curriculum literature as “studies that have been conducted at P.S. #19 are quantitative. Columbia University psychologists conducted one study at P.S. #19 on ethnic differences in social expectations. Another study, done by Research for Better Schools, focused on ethnic differences in learning styles...” (Hollowell & Jeffries, 2004, p. 769). In spite of these studies and the fact that P.S. #19 is the basis for similar schools in Milwaukee, Wisconsin and St. Paul, Minnesota, there is no available evidence that this model for off-reservation American Indian education was adopted in New York State by other districts with sizeable American Indian populations.

In an effort to take greater tribal control over educational issues, the Unkechaug have undertaken, with resources from their business success efforts to provide education to tribal children in not only regular school subjects, but also in Unkechaug language, history and culture. The tutoring program is paid for by funds from a federal Title V grant and consists of “[c]ertified teachers [who] come to the reservation four days a week to work with elementary and secondary school children...” (Strong, 2008, p. 123). This program works in cooperation with the Moriches school district and reflect Chief Harry Wallace’s more aggressive stance in “pressing the school to provide services for the Unkechaug children...” (Strong, 2008, p. 123).

The records available for review fail to provide evidence that the Regents policy was disseminated to the Department, that the policy was disseminated to the school districts, or that the unit established to improve American Indian education was organizationally and politically supported. While there are periodic changes in organizational leadership, membership on the Board of Regents, and certainly political leadership in both the executive and legislative branches, there is little to show that the policy was implemented except for the eligibility for Indian student aid for higher education being extended to off-reservation residents. This was done early through a change in regulation; however the other items identified as major goals of the Regents policy do not appear to have been implemented. Additionally, there is a lack of evidence to show that the curricular issues were corrected or that safeguards were put in place within the Department to ensure that curriculums less bias. Since the Board of Regents specifically included activities such as increased American Indian involvement in education, increased hiring of American Indians as teachers, and professional development for teachers on American Indians, these items should be documented in program activities and expenditure



records. These types of records were not found within the records of the Native American Unit of the State Education Department.

### **Summary**

Through the examination of the quantitative record and that of the policy contained in Position Paper #22, it can be reported that in many areas relating to ending the process of assimilation in education, “SED has delayed, not implemented, or ignored Indian concerns...” (Hauptman, 1988, p. 83). The realizations that while the policy in Position Paper #22 proposed far reaching procedural and curricular changes, changing course away from the centuries long assimilationist approach to American Indian education; the archival records simply do not demonstrate a commitment to the accomplishment of these goals. Prof. Laurence Hauptman concludes that “SED has not created the necessary administrative structure... to service the educational needs of the state’s Indian population...” (Hauptman, 1988, p. 88).

The count of American Indian students, especially the undercount of American Indian students in public schools who are not receiving contract funds for educating reservation residents, shows a disparity in the recording of American Indian students when compared to the NCES data for the same time period. The fact that the null hypothesis, that there was no significant difference, could be rejected in every comparison shows the need for greater attention to the collection and reporting of demographic data. Without accurate demographics, and with setting the NCLB reportable level at thirty students in a school, the educational attainment and possible educational disparity may not be accurately reported in many school districts. The possibility for continuing issues relating to the educational curriculum as reported in the mid 1980s could subject the American Indian student to a less than advantageous educational experience.

## Chapter 5

### Conclusions and Recommendations

It is true that after they have been reassured and have lost this fear; they are so artless and so free with all they possess, that no one would believe it without having seen it. Of anything they have, if you ask them for it, they never say no; rather they invite the person to share it, and show as much love as if they were giving their hearts... (Columbus to the Sovereigns, 4 March 1493, in Morison, 1963, p. 183).

It is a pity that so many Americans today think of the Indian as a romantic or comic figure in American history without contemporary significance. In fact, the Indian plays much the same role in our American society that the Jews played in Germany. Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith... (Cohen, 1953, p. 390).

In an article written in 1995, I predicted the demise of self-governing sovereign American Indian tribes to be completed by 2075. I have now reduced my estimate by 25 years. The future does not look to good for tribal governments, and sadly, they will have had a part in their own destruction... (Savilla, 2008, p. 6).

The West won the world not by the superiority of its ideas or values or religion, but rather by its superiority in applying organized violence. Westerners often forget this fact, non-Westerners never do... (Huntington, 1996, p. 51).

This study examined the history of the assimilation based educational agenda as seen in the actions of the United States federal government and the policies of the State of New York on the American Indian tribal nations and American Indian students. The review of available literature also explored the theories related to international sovereignty and democratization, concepts of American Indian identity, and the issues related to problems in capturing counts of American Indians accurately in both the Census and medical fields. The lack of comparable studies relating to American Indian education data in the eastern states and utilizing reviews of state and federal data make this study exploratory. Additionally, archival explorations revealed the existence of other non-recognized groups of American Indians and bi-racial and tri-racial isolate groups with American Indian ties which are generally not included in discussions of American Indians in present day New York State. An exploration of these groups could result in a more complete picture of American Indians in New York State. The quantitative analysis showed a significant difference between the American Indian student counts generated by NYS school district and the NCES data covering the same time period. Finally, there was a desire to determine whether the long history of assimilation educational policy was really halted after the 1975 Board of Regents' Position Paper #22.

### **Possible Factors in Data Collection**

The quantitative research is important in that it not only demonstrates the problem of comparability between two data sets collected by different levels of government which is supposed to measure the same population in the same time period, but because it provides a

starting point for further study relating to collection, analysis and reliability of student data. Since many decisions in educational policy are made using racial and ethnic data, especially those policies meant to address an achievement gap between races and ethnic groups, it is important that the data be comparable. It is important in addition to examine possible reasons why the data collected and reported by NYS school districts is significantly different than that reported by NCES. The following possible explanations may serve as areas of future research or the analysis of existing data collection and reporting methods by the State Education Department.

It is impossible to determine, given existing data, which, if either of the data sets, either NCES or NYSED are correct, or if neither are correct, what a correct count of American Indian students would be. This conclusion comes from examining the data sets, the data collection and data aggregation decisions, and the fact that the two data sets, which are supposedly counting the same students in the same places, in the same year, are drastically different in many school districts. There are sufficient concerns about data consistency, ranging from the data collection at the district level, to the removal from American Indian counts at the federal level of anyone who identifies themselves as Hispanic, to warrant a substantial overhaul of the American Indian data collection and aggregation process.

A first possible explanation is simply the lack of data quality standards within the NYSED data collection system. This is, by no means, a criticism of that portion of the NYSED that secures and manages the data, but instead may be the result of a lack of adequate training and data collection oversight. It is critical at this point to determine whether school district personnel are accurately administering the race/ethnicity data collection process and are knowledgeable on the definitions and the application of those definitions to individual students. This reason assumes either a lack of knowledge, a lack of management emphasis, or a lack of

professionalism or detail orientation on the part of school district staff. If this lack of attention to detail is the case, then proper training and supervision of the data collection process at the school district level may be the best method for improving the data quality contained in the state's system. While NYSED Deputy Commissioner Alan Ray suggested in 2009 that the districts recanvass their entire student population to ensure accurate race/ethnicity data, there was no specific requirement to do so. It is doubtful that this was done in most cases. The cost, in both staff and outreach, would be difficult to justify given the size of fiscal reductions being handed to public school districts. Perhaps the best method for ensuring accurate basic demographic data would be to actually perform the complete recanvass of students. The first possible reason relies on the assumption that if American Indian data has error problems, then perhaps the problem is systemic. While this assumption may be correct, it also may not be correct, as the variability in the reporting is inconsistent between districts.

A second possible reason places the responsibility on the parents and students themselves. While it may be easy and perhaps convenient to place the responsibility on the school district, each student and by extension each parent of a school district student has the responsibility to ensure that their race/ethnicity is recorded accurately on all official records. The process of informing parents and students of the race/ethnicity options and giving them the opportunity to correct inaccurate records, including explanations why the data is needed and how it is used, may be the solution for some districts.

A third possible reason or at least a third location to place responsibility for the data error is in the hands of the American Indian tribal governments. While the definition of American Indian can include Central and South American indigenous people, who are organized in regions not tribes, and North American Indians from tribal nations outside of New York State, including

Canada, the American Indian tribal nations who have a governmental presence within the borders of New York State have a greater responsibility to their off-reservation public school students. The governments of the St. Regis Mohawk, Seneca Nation, Tonawanda Band of Seneca, Tuscarora Nation, Oneida Nation, Cayuga Nation, Onondaga Nation, Shinnecock Nation, and Unkechaug Nation, as well as the un-recognized American Indian tribal organizations should be playing a more integral part in the education of their children. One aspect of sovereignty is a serious and consistent role in ensuring the preservation and teaching of the native language, religious and cultural traditions and ceremonies, and the transmission of culture to the next generation. As already indicated, it is from these off-reservation public school students, constituting the majority of the future adult population of these American Indian tribal nations, which will emerge the future leadership of these nations. As an act of self-preservation, the American Indian tribal nation must be more involved.

A fourth possible reason for the difference may relate to the incentives used to evaluate the performance of public schools under the No Child Left Behind Act, P.L. 107-110 (NYSED Monitoring, 2010). The NYS Education Department guidance indicates that effective Annual Measurable Objective (AMO) is only available for an accountability group of 30 or more students (NYSED Confidence, 2012). While all students are supposed to be accurately recorded in their school district's data submission, it appears that the key students are those in groups of 30 or more as these relate directly to a school making annual yearly progress (AYP). Students not in accountability groups become by procedure less emphasized, therefore the fewer the accountability groups the less pressure on the school district. Since American Indians are generally accepted to constitute a small number of students, a lack of vigilance in ensuring accurate American Indian counts, especially if it reduces the number of accountability groups

does not penalize the district. In their NYS School District Report Cards 621 school districts identify less than thirty American Indian students; while the NCES data shows that number at 584 districts, meaning that thirty-seven school districts should have AMO for American Indian students that currently do not. This realization may lead to other questions relating to the accuracy of data concerning American Indian student counts. Specifically, the data accuracy issue could be seen as follows: if a group must have thirty or more members in the school to have an Annual Measurable Objective (AMO); and if the AMO is directly related to the group, and by extension the school and district, to making Adequate Yearly Progress; then there might be an incentive to undercount the groups with poorer academic progress to ensure that there is no AMO for that group, thus protecting the school and district from being penalized for not making AYP for that group. While this is not something that can be proven, it does rest as a possible explanation, especially in those thirty-seven districts where the difference in the number of American Indian students between the NCES and NYSED data results in the number of American Indian students falling below thirty in the district or in any single school.

The data issues appear to involve both systemic and singularly local issues, however it is important to see this study as an emerging field of academic and policy attention, not simply a onetime examination of a data phenomenon. Follow-up studies into the role of American Indian students and parents in the big five school districts and the other districts with the largest undercounts; the need for greater data collection and verification standards both centrally and locally; and individual qualitative studies on the particular local issues surrounding the identification and cultural support of American Indian students in off-reservation public school districts are topics deserving attention. It is also critical to take further steps in the research on the counting of American Indian students in New York State public schools, and indeed, in

examining where American Indians and American Indian tribal nations fit into the larger question of New York's public education and public policy agendas.

## **Conclusions**

While the facts, analysis, and issues raised in the topical review of the literature will be used to inform the recommendations for American Indian tribal leadership and the recommendations for educational leadership, it is first important to discuss the results from the quantitative findings and policy impact of Regents Position Paper #22. The first area of interest is that of the definition of American Indian and the determination of whom or what constitutes an American Indian tribal nation. While this study used the U.S. Census definition of American Indian, which was utilized by both the NCES and NYSED, the multiplicity of statutory and regulatory American Indian definitions and variations both in tribal citizenship and American Indian tribal nation recognition results in a high level of confusion about who is an American Indian and what constitutes an American Indian community. It is therefore critical for the federal and state government to be identical and clear about what constitutes an American Indian community, and for them both to acknowledge that American Indian tribal nation citizenship does not end at the reservation or Indian country boundary (18 USC §1151). There is no practical reason for the existence of different delineations of American Indian tribal recognition. The two tiered American Indian status situation we currently have, where an individual may be an American Indian in one setting but not another is inconsistent with indigenous rights as outlined by the United Nations, and serves only to make American Indians even more invisible in their own homeland.

The process used by the United States Department of the Interior, 25 CFR Part 83, specifically 83.7, could be reasonably view as arbitrary in its standards, overly costly to



American Indian communities, lasting decades without a timeline for action, and without any precedent in international relations. There are political reasons and historical reasons for the United States to desire to withhold or deny recognition which focus on the ability of the United States to dominate the internal as well as external affairs of the indigenous community, generally in the areas of land and natural resources. Additionally, there are reasons; both fiscal and political, why one American Indian tribal nation would lobby against the recognition of another or even attempted to challenge their Indianess. Without expanding on the circumstances of the over 350 American Indian communities awaiting examination by the Bureau of Indian Affairs (US DOI OFA, 2012), it is critical to understand that “indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples...” (United Nations, 2007, p. 3). The role of the United States as a signatory of the United Nations Charter, and as a force in both international affairs and in the promulgation of human rights, requires that the United States acknowledge all American Indian tribal nations, ending the era of tiered levels of American Indian recognition.

Historically, the individual states have been the most inimical adversary which any American Indian community possessed. Through actions by individual state legislatures, several states have taken steps to recognize specific American Indian communities as tribal nations (Koenig and Stein, 2007). The ability of the states to recognize American Indian nations has been validated in federal statutes like the Indian Arts and Crafts Act of 1990 (P.L. 101-644). The ability of a state government to reach a position of political maturity capable of officially recognizing the legal existence of an American Indian tribe should serve as the necessary step for the President of the United States to issue an Executive Order acknowledging the federal

recognition of the American Indian tribal nation. Relying on a multiple decade long process mired in the politics of Washington, DC, tribal politics, and fear over federal funding priorities and insufficient Bureau of Indian Affairs and Indian Health Service appropriations, not only fails to uphold the international rights of indigenous communities, but pits one American Indian tribal nation against another for the crumbs of a shrinking federal appropriation pie. The federal recognition of all state-recognized tribes, through Presidential Executive Order would end the current problem of two tiered American Indian recognition, and will aid in reconciling not only the singular political status of American Indians, but also the collection of data on American Indian students under one easily understood definition. A single status of American Indian tribal nations would also assist federal agencies who work with American Indian peoples to focus on the agency's area of expertise rather than the fickle politics of tiered American Indian recognition and would improve the interrelationships between American Indian tribal nations by placing all on the same level.

At the state level, a process of modernizing the data collection and aggregation process would begin with the overhaul of NYS ED Law §111. This section of law identifies that the education department is responsible for “the education of children upon the Indian reservations...” (NYS ED Law §111). The United Nation Declaration of the Rights on Indigenous People requires a reconsideration of this state statute under a new international standard. EDL §111 in its wording seeks to treat reservation residents differently than off-reservation residents, effectively eliminating off-reservation American Indian students from the responsibility of the education department. Article 8 of the Declaration indicates that “States shall provide effective mechanisms for prevention of, and redress for ... Any form of forced assimilation or integration...” (United Nations, 2007, p. 5). It appears that the segmenting of the

indigenous population, refusing to acknowledge the responsibility of the department for a portion of it, could be viewed as forced assimilation, especially if the curricular and administrative actions by individual school districts do not uphold indigenous rights. It is therefore critical for the legislature of the State of New York to amend the State Education Law, in not only §111 but in other sections as well to eliminate the artificial barrier between on and off reservation residents. There is no longer room for the idea in New York State that one's American Indian identity or rights stop at the reservation border. It is also not possible to act as if the collective rights of American Indian tribal nations stop at the school district door, or at the door to the state capital.

Given the record of delay and abandonment of the major recommendations of the 1975 Regents' policy and the significant undercount of American Indians students in NYS school districts as reported by the 2010 data, one must wonder whether the assimilationist nature of education in New York State, challenged by the Regents 1975 policy ever truly changed. What can be determined from the review of the available record is, while the Governor and the Education Department both signaled unreserved support and the Board of Regents adopted the American Indian educational policy and action items contained in Position Paper #22 in 1975, there was insufficient dedication or momentum to make these action items a reality. In addition, the comparison of the 2010 American Indian student counts demonstrates that there is a significant difference in the count of American Indian students between the federal and state data collection mechanisms. The concepts and propositions outlined in the 1975 Regent's Position paper not only acknowledged a responsibility for off-reservation American Indian students, but showed real progress toward addressing the achievement gap created by the existing educational infrastructure.

The quick abandonment of the principles in the Regents 1975 policy paper or more precisely, the failure to act on these principles for thirty-seven years must be reversed by the New York State Board of Regents. In a time where the achievement gap is once again news, and the desire is to measure and hold schools and districts accountable for student progress; the activities outlined by the Board in 1975 still contain the essential elements of success in American Indian education. The nine substantive areas of the Regents' policy include: [1] Statewide Native American Education Advisory Committee; [2] greater participation by American Indians in school district decision making; [3] increased hiring of American Indian teachers and support personnel in school districts; [4] American Indian cultural training for NYS school teachers; [5] changed elementary and secondary school curriculum; [6] development of continuing education programs for adult American Indians; [7] expansion of the post-secondary grant-in aid for off-reservation residents; [8] American Indian school guidance services for secondary school students; and [9] solicitation and use of federal funds to meet educational needs of American Indians (NYS Board of Regents, 1975). While it may be difficult, at least initially, for American Indian tribal nations to trust the motives and actions of the state, it is possible for the State Education Department to utilize the mechanism of the Race to the Top and other aspects of the Regent's reform initiatives to carry out these initiatives. The Education Department is still bound by the Board of Regent's last statement on American Indian education issued in 1975 in that the 1975 findings support the core ideas of the Regents Reform Agenda including: an effective K-12 curriculum, effective instructional data systems, and effective teachers and school leaders (NYSED Regents Reform, 2012).

Given the need for a Presidential solution to the problem of tiered American Indian recognition (e.g. the federal recognition of state-recognized tribes), for state legislative solutions

to discriminatory and outdated statutes, and for the NYS Board of Regents to embrace and implement their own American Indian education policy, there are still specific actions by both American Indian tribal leadership and educational leadership at all levels to improve the situation in American Indian education.

### **Recommendations for American Indian Tribal Leadership**

The issue of education for American Indian students in New York State is at a critical stage, not only in the constancy of the push for assimilation, but also in the destruction that assimilation pressures have on American Indian tribal nations and native culture. The review of available sources has revealed the purpose behind the educational policy administered by the United States and New York State towards American Indians over the past two centuries. From the earliest treaties, the United States inserted provisions for the provision of non-Indian education and from 1802 onward, provided funds to carry out the task (Szasz and Ryan, 1988, p.288). The desire to assimilate American Indians into the larger American society has dominated American Indian educational policy by both the federal and state governments, with the side impact of separating American Indian people from their land and culture (Hauptman, 1995; Szasz, 1999; Washburn, 1988). K. Tsianina Lomawaima, identifies that the "history of American Indian education can be summarized in three simple words: battle for power..." (Lomawaima, 2000, p. 1). The explorations into the questions of authority and sovereignty, found in chapter 2 of this study, seek to illuminate the philosophical basis for this struggle; while the exploration of the history of federal and state educational policy illuminate the struggle itself. Finally, the review of the archival materials available relating to Regents position paper #22, the 1975 American Indian educational policy in New York State, shows that while the struggle appeared to have taken a turn in favor of the American Indian the lack of implementation proved

that it did not. The implementation difficulties of the Regent's proposals, with the exception of the regulatory change allowing off reservation tribal members access to higher education student aid, demonstrate that reforming K-12 education for American Indian students was not a Board priority. Perhaps based upon the long history of the use of education as a tool for the assimilation, erosion of tribal sovereignty, and dispossession from tribal land, it is appropriate to assume that Professor K. Tsianina Lomawaima, Head & Interim Director, American Indian Studies at the University of Arizona is correct, this really is a "battle for power..." (Lomawaima, 2000, p. 1). If so, based upon what was seen in both the implementation of the 1975 American Indian educational reform in New York State and the organizational relationship of the Native American Unit within the Education Department, it may be time for American Indian leadership to look to a different model for their educational needs than the one provided to them.

Given the history of federal and state American Indian education policy and the political and social goals of these policies it appears that it may be important for American Indian tribal nations to exert their collective rights. These rights under existing state and federal law and especially under the United Nations Declaration of the Rights of Indigenous Peoples could help gain control over not only the counting of American Indian children, but the curriculum being taught to them. Challenging the exclusivity of the federal government to dictate how American Indians will be governed and the exclusivity of New York State to dictate American Indian educational organization and curriculum are both steps which address the promises of 1975 and the data issues found in the review of student counts from 2010. Without control over the education and acculturation process, the majority of American Indian children in New York State, especially those in off-reservation school districts will continue to be educated under an assimilation mandate and educated out of their American Indian culture.

## **American Indian Recommendation One**

The first recommendation to American Indian Tribal leadership is to become more actively engaged as a government in the educational options and institutions impacting both on and off reservation American Indian students in New York State. It is critical to move proactively as a sovereign rather than to be the object of the policies carried out by another government which has a history of actively seeking both your territory and the destruction of your culture. If the international community truly champions the cause of self-determination for people worldwide, then American Indian people should have the opportunity to direct their own political future without the overt federal and state led challenges to sovereignty and American Indian identity.

In a practical sense each American Indian tribal nation needs to actively engage and challenge the educational product that is being provided to off-reservation American Indian students. This need not be antagonistic, but as a consumer of the educational product, the American Indian student, equal to the non-Indian student, has the right to a quality education. In addition as a citizen of an indigenous sovereign nation, the American Indian student has the right to an education that does not seek as its price, the elimination of his or her American Indian persona and identity. Unfortunately for many non-Indians and American Indian leaders alike, the belief is that American Indian rights end at the reservation boundary. American Indian tribal nations cannot accept this externally imposed limitation on their authority or interest.

American Indian tribal nations have a governmental role in the life of every American Indian child. The Indian Child Welfare Act of 1978 (ICWA) ((Pub.L. 95-608, 93 Stat. 3071), codified as 25 U.S.C. §§1901–1963), expresses that the American Indian tribal nation has a unique interest in the welfare of its children. Under 25 U.S.C. §1901, the Congress finds that

"there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children..." (US Congress ICWA, 1978, 25 U.S.C. §1901). While this statute applies to child custody cases, the principle addressing the importance of children to the continuation of the American Indian tribe could be viewed the same in the arena of education. The American Indian tribal nation has the legal and moral authority and a historical legacy compelling a more activist governmental role in ensuring that the education provided to its citizens and the citizens of other American Indian tribal communities who reside in its ancestral territory is protected. The American Indian tribal nation needs to reach out to its citizens in every locality of the State of New York and elsewhere on the continent and insist upon an educational product that enhances the American Indian child's sense of self, their native identity, and a curriculum that includes accurate American Indian information as well as western oriented academic subjects. It must be clearly understood by every federal, state, and local educational official that each American Indian child is valued as a citizen of their indigenous nation.

### **American Indian Recommendation Two**

The second recommendation for American Indian Tribal leadership is to actively rebuild the tribal and cultural connections between reservation and off-reservation school age children. Samuel Huntington states that most poor societies will remain undemocratic so long as they remain poor (Huntington, 1991). He also says economic development makes democracy possible, political leadership makes it real (Huntington, 1991). The improvement of the critical mass needed for greater economic and political advances within the American Indian community can be built through active political and cultural reconnections with American Indians living off the reservation. The rebuilding of the tribal and cultural connections between reservation



residents and off-reservation residents through an increased governmental role by American Indian tribal nations in the education of their off-reservation children could be a beginning.

The development of specific American Indian tribal outreach efforts to their own children who reside off the reservation is fundamental to the survival of the American Indian community. The loss of language and cultural knowledge is an area of critical concern among American Indians. Providing American Indian youth with tribal roots, reinvigorating the child's sense of their identity and culture as American Indians, and building stronger connections between the off-reservation resident and the reservation community is critical to national survival.

American Indian tribal nations and legitimate urban American Indian organizations should focus their energies on rebuilding cultural and familial ties between the young and their tribal traditions. Given the high percentage of American Indians living off reservation and in urban areas, the need for cultural connections is paramount. American Indians are at a tipping point in the areas of language preservation, preserving traditional herbal and medicinal knowledge, preserving cultural knowledge and oral histories, and in building the ingrained connections between the American Indian person and the tribe. The children, especially the off reservation children are at severe risk of having at best only a tangential relationship to their own people and tribal nation. The assimilation model has not only been carried out in the classroom but also in the off-reservation neighborhood. The loss of a tribal sense of self by the children is perhaps more devastating a loss to American Indian tribal nations than would be land, natural resources, and religious sites. What are land, natural resources and religious sites, if the people that grow up have no personal connection to them, if they cannot understand their own language, and if they are ignorant of their familial and cultural traditions? It must be the priority of American Indian tribal nations to bring the off and on reservation children to the cultural

traditions in a meaningful way. It is also important to reconnect the parents who have drifted away from the culture as young and middle aged adults back into connection with their American Indian identity. This can be done through tribal history and culture programs in all regions of New York State, language and cultural immersion programs for American Indians, and increased economic opportunity for parents to find work in tribal enterprises or tribal not-for-profits thus reuniting the community. Additionally programs to bring children back to the tribal government to see and participate in tribal governance and life (like the model United Nations), mechanisms for tribal or tribal not-for-profit purchase of fee simple lands, meaning land with absolute title, in the historical homeland where off reservation families reside thus building satellite tribal communities, and other mechanisms such as marking historical sites with tribal historical markers, might help create a sense of tribal unity among on and off reservation American Indians.

Finally, the problem that seems to sit as the unspoken question in many American Indian communities, especially in ones where mechanisms other than straight descent is used for citizenship, is that of tribal enrollment. The decisions relating to who is and who is not a citizen of an American Indian tribal nation are both central to governmental autonomy and central to continued existence. On a continent where all people were American Indians it was possible to be assured that a child would be acknowledged in the native community of either their mother or their father depending upon local traditions and customs. The emergence of multi-racial American Indians and questions over their acceptance and status has been the case for over three hundred years, and increasingly has become a problem that rips families apart. Sometimes children are called descendents of members, sometimes seen as non-blood right, sometimes raised on the edge of the native community, and sometimes cut off all together. The real issue

for some American Indian tribal nations is the problem of restricting citizenship through tradition and politics to the degree that the nation will cease to exist because no one meets the strict criteria for citizenship. This is another area where American Indian tribal nations need to look at the future and not the idealized past.

American Indian tribal nations need to reconcile the existence of their own children and make decisions about citizenship in their American Indian tribal nation, not as membership in a club or association, or even a family, but as citizens of a sovereign country. It is incumbent on American Indian tribal nations to hold discussions on citizenship open to all members and the quazi-members of the community. The issues are not how it used to be, or how it would be in a perfect world, but what mechanisms and methods are consistent with ensuring that a thousand years from now a community of American Indians will exist that celebrates the language, culture, and traditions which are celebrated by the present traditional elders. Other communities of people have been able to do this. One example is the re-establishment of the Nation of Israel after a global diaspora of nearly two thousand years. The task is difficult and it requires both vision and compromise but is not beyond the leadership capabilities of American Indian leaders.

### **American Indian Recommendation Three**

The final recommendation for American Indian Tribal leadership is to be willing to utilize unconventional methods to address longstanding concerns with assimilation based national and state educational policy. Operating within the federal and state systems and utilizing the role assigned and permitted for American Indian tribal government by the federal government and state has not produced consistent and long term improvements in the educational system that were promised. It is therefore time for the American Indian tribal

nations to use the regulations and administrative procedures of the federal government and state to secure a more favorable system in which American Indians must live.

Steven Paul McSloy indicates in a Buffalo Law Review essay in 1998 that many of the landmark cases impacting American Indian tribal nations could more accurately be described as the American Indian tribal nation being the object of federalism debates between the national government and individual states (McSloy, 1998). This means that even if the subject of the case is an American Indian tribal nation, the real issues are more generally power plays between the federal government and states for jurisdiction or the exercise of plenary power. Therefore, appealing to either the federal government or the state for either fairness or consideration has tended to result in yet another attempt at diminishing tribal authority. It is therefore incumbent upon the American Indian tribal nation to fundamentally change the nature of the interaction between itself and its citizens and the state and federal governments. Rather than acting as if both parties are adhering to the provisions of the two-row wampum, the Guswhenta, it is time to understand that the state and federal government, as colonial powers, will not live up to those provisions and must be actively challenged through unique approaches which avoid open conflict but express the American Indian tribal nation's needs and the desires of its citizens.

As the U.N. Declaration of the Rights of Indigenous People provides the international standing to challenge the historical failures in American Indian educational policy, especially the failure of the 1975 Regents policy, it is time that American Indian tribal governments utilize alternative methods of changing the system. The development of non-profit organizational mechanisms which can act without challenges to tribal sovereignty, and new mechanisms at post-industrial economic development serve as the initial steps to securing a positive cash flow for American Indian communities (Rose, 2011). It is important for American Indians to

demonstrate to themselves and others that they are able to stand as a civilization on the world stage. Only then can true decolonization be seen as a viable option for indigenous people. For an American Indian tribal nation to make major strides toward asserting an international voice, it must first be economically viable and secondly act sovereign. Acting sovereign means that rather than simply espousing sovereignty and idly sitting by as the colonial powers destroy them piece by piece, each action perpetuates the governmental authority and power of the indigenous nation. This is the key premise of Samuel Huntington that links his work on democratization with his work on the civilization paradigm. In his work he shows how, once they are achieved, these factors will enable a people to substantially alter the face of the world political stage by restructuring the international arena around the concept of civilizations (Huntington, 1996).

As noted author and spokesman for conservation, Peter Farb once said;

All over the world today primitive cultures are disappearing and at an accelerating pace... Little is being done to preserve the numerous cultures that have so much to tell modern man... Millions of dollars have been expended to excavate and transport to museums the tools, weapons, and other artifacts of Indians – but scarcely a penny has been spent to save the living descendents of those who made them... To do nothing now is to let our children lament that they never knew the magnificent diversity of mankind because our generation let disappear those who might have taught them... (Farb, 1968, p.294).

Steps in acting sovereign need not be huge but can consist of a series of small victories each advancing the ability of the American Indian tribal nation to act unilaterally. An example of redefining the rules of the administrative game to benefit the American Indian is in the area of concern related to the definition of American Indian. While American Indian tribal nations are

often in a reactive mode given the policies of the United States and the State of New York, enrollment is one area that is in the hands of the American Indian tribal nations to solve.

Without initially addressing the larger issues of blood quantum or clan affiliation it is possible to take small steps to secure more resources for American Indians. The first problem to address is that of eligibility for NYS Indian Aid for higher education for members of the larger Haudenosaunee community who are on the band list of an Iroquois community in Canada, and yet live and are being educated in the United States. Under current New York State regulations (Commissioner's Regulations 145-4),

The student must be a resident of New York State and be on an official tribal roll of a New York State tribe or be the child of an enrolled member of a New York State tribe. New York State tribes include members of the Iroquoian tribes (St. Regis Mohawk, Oneida, Onondaga, Cayuga, Seneca Nation, Tonawanda Band of Seneca, and Tuscorora), the Shinnecock tribe, and the Poospatuck tribe. (NYSED Indian Aid, 2012. p.1)

While Education Law section 4118 does contain a provision that indicates that students be "from the several Indian tribes located within this state..." (NYS ED Law, 2012, Sec. 4118), there is no statement on how this is to be determined. The determination is left to the Haudenosaunee. The current problem is that Haudenosaunee who are historically from the reserves on the Canadian side of the border are not considered under NYS Commissioner's Regulations as eligible for Indian aid regardless of whether they were born and or attended high school in the United States. The reason being that the Haudenosaunee communities located on the southern side of this international border do not acknowledge those Haudenosaunee both on the northern side of the border as their citizens. The issue is therefore both an issue of political recognition of Haudenosaunee as the same Indians on either side of the superimposed international border, and

an example of the lack of cooperation between the American Indian communities and Haudenosaunee clans on either side. This problem is completely in the control of the Haudenosaunee and can be rectified by them.

Under Article Three of the Treaty of Amity, Commerce and Navigation, more commonly called Jay's Treaty of 1794, American Indians possess the right to "freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America..." (Miller, 1931, Art.3). By this treaty between the United States and Great Britain, speaking on behalf of Canada, there essentially is no international border to restrict the movement residency. The U.S. Code of Federal Regulations allows for permanent residency for Canadian Indians based on Section 289 of the Immigration and Naturalization Act. 8 C.F.R. 289.2 (1999) indicates that "[a]ny American Indian born in Canada who at the time of entry was entitled to the exemption provided . . . by . . . section 289 of the Act, and has maintained residence in the United States since his entry, shall be regarded as having been lawfully admitted for permanent residence..." (U.S. DHHS, 2012, §289.2) The solution to the problem of Haudenosaunee from reserves in Canada who are permanent residents in New York State being eligible for NYS Indian Aid would be for the respective clans and governments of those tribal nations identified in Commissioner's Regulations 145-4 to cross enroll any Haudenosaunee from Canada enabling them to meet the membership definition in the NYS regulation. This process would not diminish the funds available for other Haudenosaunee in New York State, nor would it diminish the sovereignty or tribal status of either the Canadian band or federally-recognized tribe. Indeed this action would aid in brining the clans of the Haudenosaunee closer, aid in resolving the historical splits stemming from before and after the American Revolutionary War and could serve as a mechanism to help preserve cultural traditions and language.

Another area where an unconventional approach may prove to redefine the rules of the regulatory game is in the area of ensuring that the common core curriculum and the larger issues of off-reservation education of American Indian students. The current disparities in the counts of American Indian students and the lack of resolve and action to follow the Regent's policy statement of 1975 implies that it is not possible to trust that the State government desires to improve situation of American Indians, especially as long as those American Indian tribal governments continue to espouse their inherent sovereignty. The legal history between the State and specific individual localities and the American Indian tribal nations is evidence of the European side having troubles living up to the 1613 agreement called the Guswhenta, or the Two Row Wampum.

It is therefore important to bring all concerns directly to the President of the United States and to the General Assembly of the United Nations. Bringing concerns to the President of the United States comes under the authority of the Article 7 of the 1794 Treaty at Canandaigua;

Article 7. Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and Six Nations agree, that, for injuries done by individuals, on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other; by the Six Nations, or any of them, to the President of the United States, or the superintendent by him appointed; and by the superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs; and such prudent measures shall then be pursued, as shall be necessary to preserve our peace and friendship unbroken, until the Legislature (or great council) of the United States shall



make other equitable provisions for the purpose (Treaty of Canandaigua, Nov. 11, 1794, U.S.-Six Nations (American Indians), 7 Stat. 44).

Likewise the United Nations Charter explains the purpose of the United Nations as designed “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained...” (United Nations, 1945, Preamble). It is therefore both right and proper that concerns over the common core curriculum as a continuing education of assimilation instituted as a national priority, and the failure to provide educational programs consistent with Article 4 of the United Nations Declaration of the Rights of Indigenous Peoples be brought directly to the attention of the President of the United States and the General Secretary of the United Nations, and to make these concerns a central theme in the World Conference on Indigenous Peoples’ to be held in 2014. In a May 14, 2012, press conference Myrna Cunningham Kain, a Nicaraguan member of the Permanent Forum on Indigenous Issues indicated that the conference framework “should be used to discuss important and challenging issues that indigenous peoples are facing in different parts of the world...” (United Nations, 2012, pg.1). It seems that the education of the child citizens of American Indian tribal nations is perhaps one of the most challenging issues.

### **Recommendations for Educational Leadership**

These days the development of a national educational agenda is accepted almost without question. Since the time of the No Child Left Behind Act, instituted under the President George W. Bush administration, the United States has changed direction in education toward zealously administered assessments, funding penalties on public schools, and easier processes for privatized elementary and secondary education paid for by public funds, called charter schools. While policy researchers and educational experts have debated the successes and failures of

these initiatives, it is clear to see a greater federal role in what were once local educational policies and standards, paid for by local funds. The United States Constitution does not provide for a national educational system (U.S. Constitution, 1789). It could perhaps be possible to utilize the phrase in the Preamble of “promote the general welfare...” (U.S. Constitution, 1789, Preamble) as the support for any number of social programs but the expressed power to establish national educational standards is not found either in the powers of Congress, Article 1 Sec. 8, or the powers of the President, Article 2 Sec. 2 and Sec. 3 (U.S. Constitution, 1789). On January 11, 1944, in his *State of the Union address to Congress*, President Franklin Roosevelt proposed what would become known as the second bill of rights. President Roosevelt’s proposals centered on eight rights he believed would propel the United States forward after the close of the Second World War. Among these proposals was the “right to a good education...” (Roosevelt, 1944).

Whether education was left out by the founders because of the way education was done in the 18<sup>th</sup> century, or because the founders believed that local communities should have the power over what is taught locally, it is not possible to know. It is known that in Federalist 41, James Madison, writing to the people of the State of New York, describes the powers of the federal government generally fitting into six categories:

1. Security against foreign danger;
2. Regulation of the intercourse with foreign nations;
3. Maintenance of harmony and proper intercourse among the States;
4. Certain miscellaneous objects of general utility;
5. Restraint of the States from certain injurious acts;
6. Provisions for giving due efficacy to all these powers...

(Madison, 1788).

Whether the federal government considers the creation of a national educational curriculum either an object of general utility, or perhaps our inability to internationally compete

economically triggers the need for security against a foreign danger, is difficult to tell. What can be seen is that the federal government, in concert with the states is actively pursuing the creation and imposition of a national educational curriculum, without an active discussion about whether a national curriculum is supported by local government.

NYSED Commissioner John King identifies the crisis as the need “to build a workforce ready to take on the economic challenges of the global economy...” (King, 2011). In defending the need for the Common Core, there are global and national interests in play. The goal is to not only secure America’s economic future, but to secure its social identity and political future as well.

The knowledge and skills that today’s young people need to succeed in the 21<sup>st</sup> Century far exceed those that were enough for their counterparts a mere generation ago... But we must keep in mind that we are not just preparing workers, we are preparing citizens. It is our own interest, then, as much as our responsibility to make sure that all of our young people are prepared for the future, whatever it brings... (Barth, 2003, p.33).

Those districts and states who served as the pilots for this initiative in the first decade of this century, now seen as advocates, “are beginning to teach us that the curriculum... now represents the educationally sound course of action for all of our students...” (Barth, 2003, p.33). As NYSED Commissioner John King said in November 2011, “[t]he Common Core State Standards, which have been adopted by 47 states and the District of Columbia, provide a consistent, clear understanding of what students are expected to learn, so teachers and parents know what they need to do to help them...” (King , 2011). The common core curriculum, in which New York State is fully involved “signals society’s expectation that all young people can and should be

prepared not for college or for work, but for both...” (Barth, 2003, p.33). The approach taken by New York State, as described by Commissioner King involves a “[h]igh accountability and a high level of support...” (King, 2011).

Some individuals champion the common core as a means of ensuring educational quality and to improve standardized test results of students across the nation (Barth, 2003). Others complain that with only a stick and no carrot, this mechanism will be a rehashing of the No Child Left Behind policy where, without resources, many children were left behind (Strauss, 2010). While education in the 21<sup>st</sup> century United States may be in crisis, perhaps the crisis has to do with the structural problems impacting the system. Educational products, those people called graduates, need to be able address and solve global economic and social needs and priorities. This is accomplished with national laws and policies supported by modest funding, state laws and policies also hopefully supported by modest funding and localities funding the majority of the program. The local school districts and the residents of cities, towns, villages and rural communities are then held accountable for measures they had no voice in creating; based upon policies in which they may not even believe. If one is seeking to have a single national educational process, which is interchangeable, meaning that a student could go to any school in the country and received the same education, then the fundamental structure of education in the United States needs to change.

### **Educational Recommendation One**

The first recommendation of federal, state and local level educational leadership is to ensure that American Indian tribal governments are actively included in the development and implementation of educational policy at all levels. The inclusion of American Indian tribal leadership, a concept guaranteed in the Regents 1975 policy statement, as item one, and a

concept that serves as the foundation of President Clinton's 1998 Executive Order (Clinton, 1998) should only serve to improve the quality of education available to American Indian students. The government to government relationship between the federal government and American Indian tribal nations (Tippeconnic, 1999), requires a level of governmental cooperation and consultation. Regardless of whether or not the State chooses to follow its own advice regarding an American Indian Advisory Committee, the federal government is bound by Treaty (Treaty of Canandaigua, Nov. 11, 1794, U.S.-Six Nations (American Indians), 7 Stat. 44), the U.S. Constitution (Article VI), and legal tradition and precedence (Cohen, 1982), to have a fully functional working relationship with American Indian tribal nations especially around the topic of education.

The elimination of the Bureau of Indian Affairs office in Syracuse (Coin, 2003) is an example of the federal government's further isolation of eastern American Indians and an erosion of the legal and historical relationship between the various governments. Likewise, while Governor Andrew Cuomo has publicly continued his father's Executive Order 147, which created the Office of Indian Relations through his own Executive Order 2 (Cuomo, 2011), he has not taken any steps to staff the office, thereby demonstrating his apparent rejection of the need to work cooperatively with American Indian tribal nations. While the Governor and the Board of Regents have established mechanisms for state consultation, and the federal government has a mechanism for federal government-to-government coordination, neither party has anything functional in New York State. This situation needs to be rectified by all three parties.

If the Common Core initiative is supposed to finally implement the changes in the elementary and secondary school curriculum guaranteed under item five of the 1975 Regents policy, then a greater involvement of American Indians is critical. The Statewide Native

American Education Advisory Committee, as guaranteed under item one of the 1975 Regents policy, and a greater participation by American Indians in school district decision making, as guaranteed under item two, could also help address the current issues. Some might argue that the American Indian tribal nations should simply provide to the Governor of New York a list of participants in a state level educational advisory committee. While perhaps a functional alternative among immigrant groups, this approach would effectively to place American Indian tribal nations under the jurisdiction of the state and violate the principles of government-to-government relationships. It is incumbent for the federal government to ensure that this type of tribal consultation exists in the eastern states, as well as in the west.

Implementing the policy proposals, already passed by the Board of Regents, is completely within the control of the Commissioner of Education of the State of New York. The Commissioner, on his own volition, using the authority already granted by the Board of Regents thirty-seven years ago can infuse American Indian education in New York State with a new sense of mission and vision. This is an area where real progress is possible, where real gains can be made, and where the future of a larger more comprehensive educational program for New York State's varied population can begin. What is needed by the Commissioner now is one thing which has been missing all these many years: the courage of conviction. Many have talked the talk, but no one has walked the walk. If an educational leader at the state level truly wants to be seen leading educational reform, the place to act is in following through on the reforms in American Indian education promised back in 1975 by the Board of Regents.

### **Educational Recommendation Two**

The second recommendation for state level educational leadership in New York State and for federal level educational leadership is to ensure that the common core curriculum as currently

configured in the New York State and in other states nationally is inclusive of both on and off reservation American Indian students and does not violate the U.N. Declaration of the Rights of Indigenous People. The adoption of a common core of academic subjects and educational standards is meant and should function as a leveling process, seeking to resolve the perpetual achievement gap experienced between different ethnic and immigrant groups. For immigrant groups, the common core may resolve some of their learning adjustment issues, but only time and data will show for sure. The major problem with the common core is its structural need to make everyone the same. The Indian Citizenship Act of 1924 did unilaterally make American Indians citizens of the United States, but it neither took away their right to exist as indigenous peoples nor as indigenous communities and governments. The goal for immigrants may be to seek to be part of the American ‘melting pot’, however for citizens of American Indian tribal nations who have been subjected to assimilationist educational practices since at least 1846 the common core may not hold the same sense of promise. In varying aspects of the common core the portrayal of American Indians continues to show not only racial stereotyping but a desire to assimilate the Indian (Reese, 2012).

While the Commissioner of the NYS Education Department seeks to inspire both college faculty in teacher preparation and the K-12 teachers in the classroom, there is one important aspect he has either missed or ignored, the impact on American Indian students, particularly in the context of them being citizens of American Indian tribal nations. An increased hiring of American Indian teachers and support personnel in school districts, as guaranteed in the 1975 Regents policy under item three and American Indian cultural training for NYS school teachers as guaranteed under item four of the 1975 Regents policy could help mitigate some of these issues. Additionally, the provision of school guidance services for secondary school American

Indian students, as guaranteed under item eight of the 1975 Regents policy could substantially improve educational success by American Indian students. Likewise the adoption of the Common Core in New York State has been without the considered input and modification done by both the State of Montana and the State of New Mexico with regards to American Indians in the curriculum (see Montana Common Core Standards, 2011 and New Mexico Common Core Implementation Plan, 2011).

The federal government plays an important role in ensuring that the common core curriculum, a federal policy initiative, is neither assimilationist in its design, nor violates the UN Declaration of the Rights of Indigenous People in its implementation. The lack of direct federal involvement of American Indian tribal nations continent wide on such an issue as the development of a defacto national educational curriculum shows the invisibility of American Indian students to federal policy makers and the disregard of the government-to-government relationship in areas of national policy outside of gaming and natural resources. Participation by American Indian tribal governments on issues of the curriculum itself and the implementation of standards, assessments, and data collection are all areas specifically covered under the Article Four of the UN Declaration of the Rights of Indigenous People. It is the federal government's responsibility, under Article VI of the U.S. Constitution to ensure that the United States abides by all treaties. As the United States is a signatory of the United Nations Charter the federal government is thereby bound to uphold its provisions. It is therefore a federal responsibility to ensure that the common core curriculum as supported by the federal government through funding to states includes involvement by American Indian tribal nations and does not violate the provisions of the United Nations. This is not an issue of the sovereignty of the United States in



making domestic educational policy, but is instead an issue of the sovereignty of American Indian tribal nations in surviving the latest step in the colonial process.

### **Educational Recommendation Three**

The third recommendation for state and local level educational leadership in New York State is to actively join the larger educational policy conversations regarding the common core and American Indian education occurring elsewhere and ensure that those conversations occur in New York State. The lack of New York State participation and leadership in educational forums dealing with American Indian education also speaks volumes about the missed opportunities that could have occurred if the department had sought to fully implement the 1975 policy. Participation in these types of discussions would suggest that perhaps the American Indian student is not completely invisible to the governing bodies of their school district and the state. One of the major consequences of the lack of follow through in the Regent's 1975 policies is the continued invisibility of the American Indian, especially the off-reservation American Indian, to the educational leadership at the State level, and by extension at the level of most school districts.

The 2011, Native American Student Advocacy Institute, included two presenters from the eastern half of the nation; even one from New York, Dr. Stephanie Waterman, Onondaga, turtle clan, from the University of Rochester. The national advisory committee includes only one person from the east, and none from the northeast (College Board, 2011). With New York State being in the top ten nationally in the population numbers of American Indians (U.S. Census, 2012) and having an explicit policy in place for since 1975 recognizing the importance of progressive American Indian education, it might have been expected that New York educators would have substantial a part of the national discussion of American Indian student success.

In places outside of New York the conversation is much different. A conversation is actually occurring within the state and local level educational leaders regarding the impact of common core on American Indian education. As previously indicated the states of Montana and New Mexico have modified the common core standards to recognize and support American Indian cultural and educational goals, rather than substitute the dominant society's goals for those of the American Indian leadership. A January 12-13, 2012 National Conference on Common Core Standards & Children of Hope, had an entire session entitled: *Indigenous Education for Wholeness: Integrating Culturally Based Learning for American Indian Children*. A second session entitled *Common Core Standards – Challenges for school districts with Native American students*, also tried to reframe the discussion to include not only the cultural issues, but the tribal government issues as well. Finally, a third session entitled, *Walking Both Sides of the Feather: Empowering our Native Students Through Traditional Knowledge in the 21st Century Classroom*, spoke to the methods teachers use to interact with American Indian children to work toward academic success (Common Core Institute, 2012). Clearly, the expertise and skills are out there to make the common core curriculum movement, not just another mechanism for cultural isolation and assimilation.

The new common core curriculum in New York State fails to have anything specific to reinforce American Indian culture for the American Indian students, and fails to respect the students as citizens of American Indian tribal nations. The curriculum, into which all public school students in New York State will be immersed, appears to be yet an updated attempt at assimilation; four decades after the Board of Regents disavowed that policy goal. Indeed the purpose, to show “how such diverse peoples have been able to create a strong and united nation...” and to demonstrate the “development of common democratic values, institutions, and

traditions...” culminating in “a people committed to a united, national identity while preserving many of their individual cultural traditions...” (NYSED Common, 2012, pp.3-5) are antithetical to the protection of sovereignty for American Indian tribal nations. The overall theme of “Who are we as a nation...” (NYSED Common, 2012, p.3) speaks not of the American Indian tribal nation, but in a continuation of the assimilation tradition of absorbing the sovereign American Indian tribal nations into the United States, without political distinction, treaty rights, or a separate political and national future. The United States as a signatory of the United Nations charter is bound to follow the direction of the U.N. Declaration of the Rights of Indigenous peoples, including those prohibitions against forced assimilation.

One aspect of NYS joining the larger discussion of American Indian education and the impact of the common core on sovereign American Indian nations would include not only participation in these larger academic discussions, but also being receptive to the political discussions occurring elsewhere regarding the impacts of the common core on the larger questions of American Indian education and the government-to-government relationship between American Indian tribal nations and the United States. In 2009, the National Caucus of Native American State Legislators passed a resolution on the common core standards that, while recognizing the academic intent, requires that “the inherent sovereignty of Tribes as recognized through historical treaties and legal relationships that exist between Tribal Nations and the United States of American is undeniable ...” (NCNASL, 2009). In addition to the basic statement of American Indian tribal nation sovereignty, the state legislators also the National Governors Association and Council of Chief State School Officers include a process “that will insure that the history, culture and languages of America’s first people are included...” (NCNASL, 2009).

In his 1989 Catherine Molony Memorial Lecture before the City College Workshop Center, one of the leading experts on educational anthropology, Dr. John Ogbu, Professor of Anthropology at the University of California, Berkeley, discussed the cultural models and educational strategies of, what he calls non-dominant peoples. While his view looks at various groups of people around the world, one of his identified groups of people is American Indians (Ogbu, 1989). Dr. Ogbu explains that “Indians ... usually conclude that they are worse off than they ought to be for no other reason than that they belong to disparaged minorities...” (Ogbu, 1989, p.15). The American Indians, which he calls involuntary minorities, tend not to see the barriers against them as temporary but as institutional, thus while school credentials and hard work are important, they are not “enough to solve their problem...” (Ogbu, 1989, p.15). Additionally as Prof Ogbu states,

In the case of involuntary minorities, many things seem to work against their maximization of academic effort, including a negative dual status comparison with whites that makes them conclude that they are worse off in spite of their education and ability.

Thus in their comparison, the role of education is not very strong... (Ogbu, 1989, p.22). Finally, Dr. Ogbu, indicates that it is ones relationship to their own culture that allows for success in a classroom. The individual must find the educational process to be, as Prof Ogbu calls it, “additive learning”, meaning that those students “who realize that they don’t have to change their identity or culture by knowing the white man’s thing, improve their school performance...” (Ogbu, 1989, p.28). This is the relationship which needs to be created for American Indian students in New York State, not only in relation to the common core curriculum, but for the entire educational system impacting American Indian students. In the Regents 1975 policy statement, they committed to changes in curriculum and training for teachers, both of

which could have set the ground work for a successful implementation of a common core for American Indian students. Without this ground work and without the cultural awareness to consider, as other states have done, an American Indian curricular component, a great opportunity may have been missed.

Finally, the National Caucus of Native American State Legislators resolved that “tribal governments have the right to exercise tribal sovereignty with respect to the education of their students while Tribes ... develop their own standards and cannot be mandated to adopt CCS...” (NCNASL, 2009). This right of sovereignty therefore is the challenge to educators and educational leaders in New York State and to the leadership of the American Indian tribal nations.

There would be a large risk to the American Indian people if they controlled their own schools because they would have the burden of success or failure resting principally on themselves. Still, the opportunity to exert leadership on their own behalf and that of their children and to more fully direct their own destiny has to be appealing... (Curley, 1995, p.16-17).

It is not only sound educationally to participate as both a district leader and a state educational leader, but it makes sense in that the curriculum developed would have a more substantial impact on improving the educational outcomes of these American Indian students rendered invisible by yet another forty years of assimilation based educational policy.

#### **Educational Recommendation Four**

The final recommendation for educational leadership is to fundamentally improve the reporting, collection and analysis of student demographic data at the federal, state and local

levels to ensure that accurate information is used in evaluating educational policy and process at the individual and institutional levels. The problems of accurate and comparable counts of American Indian students in the school districts of New York show that our educational leadership at the district level and the state level, not to mention federal educational leadership, cannot accurately even assess the problems in American Indian education. It is critical that from bottom to top, meaning from the smallest school district to the data utilized at the national level by the various Departments of the United States government, the same definition of American Indian, the same data collection and data quality protocols, and the same data aggregation protocols should be used. It is not acceptable for the American Indian student who also identifies as “Hispanic” to be eliminated from the count of American Indian students especially through a data aggregation mechanism where the student herself does not even know that this choice is being made for her. Additionally, the federal government needs to become aware of the vast majority of American Indian students who are off-reservation, and in the east, and therefore because of federal policy decisions, not often considered in the development of federal American Indian educational policy.

The review of the literature on educational policy has shown the history of assimilationist educational practices in the United States and the State of New York. The 1975 Board of Regents policy represented the single effort to reject assimilation based education. Eight of the nine program goals of the 1975 Regents’ Native American Education policy statement were not fully accomplished; the one having been achieved by a single regulatory change. While a couple of policy areas showed some promising activity, all activity related to this policy statement has faded with time. The 1975 statement remains the last Board policy statement, having never been officially modified or repealed, yet appears to have been abandoned almost before the ink was

dry. The support of the Governor, promised so heartily in 1975 never really materialized, and it is therefore possible to conclude that the real policy of assimilation in American Indian education in New York State may have slowed briefly in the mid-1970s, but did not really change course. In the years that have passed since 1975, the Regents' promise of constant movement away from assimilationist educational practices and more avenues for involvement by American Indians in educational decision-making have largely gone forgotten by State educational leaders, and may have never been a part of the discussion with school district leadership at anytime in the last four decades. This may be partially due to the loss of American Indian students in the conversation of educational policy and practice in New York State. It may have become so easy to overlook American Indian students by utilizing the category 'other' that educational policy makers simply do not think of American Indians. American Indians then become statistically lost and educationally forgotten.

The federal government can no longer be a participant in the invisibility of American Indian students especially in eastern off-reservation communities. The problems in the data aggregation and questions on the accuracy of the federal NCES data also require that some substantial work be done in those data mechanisms as well. What mechanism does the federal government utilize to stay abreast of the policies of eastern states regarding American Indian students? Perhaps the main issue is that like other bureaucracies, federal educational entities have become focused on the western reservation populations which exert the largest political pressure, have seemingly bought into the myth of the vanishing Indian in the east, and have deferred long needed efforts which would greatly improve the situation for American Indian students in the east in order to avoid political complications with states.

Have American Indian students in the east become as invisible to the federal government as it appears they have become to their own school districts and the States? If the states in the east are unresponsive in applying for and utilizing federal funds for American Indian education, then in the eastern states specific outreach should be done by the federal government directed to the school districts with American Indian students, legitimate urban American Indian centers, and American Indian tribal nations. This outreach needs to ensure that traditional academic skills and also language preservation and cultural revitalization are fostered in the educational experience of these off-reservation American Indian children.

In 2009, the NYS Education Department sent information to each school district regarding implementing changes in the race/ethnic data collection at the district level (Ray, 2009). This information could have included clear guidelines for data collection, including the elimination of the district's option of making a visual determination, and a requirement to recanvass the district's population, but it did not. There is no regular on-going training of district level staff responsible for race/ethnic data collection. This type of data quality training for race and ethnic data needs to be instituted. Additionally, clear data aggregation protocols that are transparent and which do not remove American Indian students from the count need to be made available to school districts and parents. It is important that parents know if their racial categories are going to be disregarded or rolled up into a category such as "other" or something similar. Clearly, the state government relies on quality data for educational decision making and the inconsistencies displayed in the data of American Indian student counts show that perhaps the educational decisions based upon this data are flawed.

As a symbolic statement the 1975 Regents' position paper #22, could become the avenue for American Indian tribal leadership in cooperation with educational leaders in New York State



to redefine the education present and future of American Indian students in every school district whether it be on or off reservation. Using the guarantees of the Board of Regents policy and the guarantees of the United Nations Declaration of the Rights of Indigenous Peoples as the impetus for American Indian education reform, interested urban Indian organizations and especially American Indian tribal nations could interject themselves into the operations of targeted school districts with substantial numbers of American Indian students regardless of whether or not that district has a specific American Indian education contract with the State Education Department.

The future of American Indian education in New York State especially for those American Indian off-reservation students seems perpetually at a critical stage. With such a large percentage of American Indians living off-reservation, but still within historic homelands, the American Indian tribal governments could make the preservation of tribal culture and sovereignty their litmus test for a successful educational system. A redefinition of American Indian education, if momentum is maintained, could serve to heal the tremendous wounds assimilation based education has caused and help build the American Indian tribal nations of the next generation. Without immediate attention, the American Indian student will continue to be statistically lost and educationally forgotten, and the impact on American Indian tribal nations will be devastating.

### **Areas of Future Research**

This project has opened up a series of questions regarding the history of educational policy towards the American Indian population, problems of educational policy implementation at the state level, inconsistencies between the federal government and the state government regarding the collection of racial and ethnic data, and the roles that international

agreements and American Indian tribal nations play in both federal and state educational policy. Once one is aware of the historical timeline, legal status, educational policy, and international circumstances of the complex relationships between the American Indian tribal nation, the American Indian school student, the state government, the local district, the federal government, and the larger body of international community, it is impossible to justify considering American Indians as just another small minority population. The uniqueness of the American Indian tribal nation, its relationship to its citizens, and the complexities of internal and external definitions of American Indian make further study of these topics critical.

In addition, there are additional areas where this study may have tangentially touched a subject which could be explored on its own. It is possible to expand the type of federal and state comparison of data performed here into a comparison across other or all racial minority groups. Do the discrepancies found in an examination of American Indian student data predict similar discrepancies in the data of other racial groups? The study could be expanded into a comparison of similar state federal comparisons for other Mid-Atlantic or New England states. The question here would be whether similar discrepancies exist between federal data and the American Indian student counts collected by other regional states? Since a portion of the study relates to state level American Indian educational policy, it could be possible to conduct an examination and comparison of the American Indian educational policy of other state comprising the original thirteen colonies to determine how similar state educational policy has been in relation to American Indians.

A major question in the study suggests irreconcilable problems in state and federal data collection, especially when compared within specific school districts. It could be possible to conduct a qualitative case study on one or more of the school districts in New York State with

NYS undercounts of over 100 to determine the actions or omissions at the district level which contribute to the data discrepancies.

Finally, while not the last area of additional research, it should be possible to qualitatively examine the structure, organization, mission and activities of an American Indian tribal nation educational entity. It should be able to determine the extent to which it possesses an educational policy, vision, and infrastructure capable of meeting the needs of the tribal citizenry. Because this study serves as an exploration into a previously understudied area of educational policy and procedure; that of the intersection of student data, state policy, government policy history, and national and international mandates; this study serves as a doorway through which many future researchers may travel.

## Appendices

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Appendix 1

*Matched Pairs of NYS School Districts with American Indian student counts*

<u>District Name</u>	<u>NCES 2010 American Indian student count</u>	<u>NYSED School Report Card 2010 American Indian student count</u>	<u>Difference</u>
LaFayette Central School District	44	233	-189
Massena Central School District	184	318	-134
Niagara-Wheatfield Central School District	169	291	-122
Silver Creek Central School District	49	139	-90
North Tonawanda City School District	23	94	-71
Evans-Brant Central School District	229	297	-68
Center Moriches Union Free School District	4	70	-66
North Syracuse Central School District	67	132	-65
West Genesee Central School District	34	77	-43
East Syracuse-Minoa Central School District	33	65	-32
Niagara Falls City School District	260	284	-24
Clarence Central School District	2	25	-23
Oxford Academy and Central School District	1	17	-16
Red Creek Central School District	9	25	-16
Norwood-Norfolk Central School District	7	22	-15
Cato-Meridian Central School District	1	15	-14
Rush-Henrietta Central School District	22	36	-14
Binghamton City School District	19	32	-13
Indian River Central School District	17	30	-13
Elmira Heights Central School District	1	13	-12
Williamsville Central School District	21	33	-12
West Irondequoit Central School District	9	20	-11
Baldwinsville Central School District	25	34	-9
Millbrook Central School District	2	11	-9
Potsdam Central School District	2	11	-9
Waterville Central School District	1	9	-8
Wallkill Central School District	7	14	-7
Westmoreland Central School District	0	7	-7
Albion Central School District	18	24	-6
Rondout Valley Central School District	6	12	-6
Union-Endicott Central School District	7	13	-6
Barker Central School District	13	18	-5
Churchville-Chili Central School District	6	11	-5
Honeoye Falls-Lima Central School District	5	10	-5
Lancaster Central School District	20	25	-5
Naples Central School District	0	5	-5
Olean City School District	27	32	-5
Queensbury Union Free School District	10	15	-5
Thousand Islands Central School District	2	7	-5

Brasher Falls Central School District	31	35	-4
Delhi Central School District	5	9	-4
Deposit Central School District	2	6	-4
Ellicottville Central School District	2	6	-4
General Brown Central School District	1	5	-4
Greenport Union Free School District	4	8	-4
Marcus Whitman Central School District	1	5	-4
North Collins Central School District	7	11	-4
Shenendehowa Central School District	23	27	-4
Stockbridge Valley Central School District	14	18	-4
Auburn City School District	21	24	-3
Avon Central School District	1	4	-3
Bayport-Blue Point Union Free School District	2	5	-3
Canaseraga Central School District	0	3	-3
Chatham Central School District	1	4	-3
Cheektowaga-Sloan Union Free School District	8	11	-3
Elwood Union Free School District	7	10	-3
Greenwood Lake Union Free School District	2	5	-3
Hudson Falls Central School District	3	6	-3
Lansing Central School District	8	11	-3
Liverpool Central School District	38	41	-3
Lockport City School District	42	45	-3
Mexico Central School District	9	12	-3
Phoenix Central School District	27	30	-3
Pine Plains Central School District	5	8	-3
Ramapo Central School District	36	39	-3
Raquette Lake Union Free School District	0	3	-3
Saratoga Springs City School District	16	19	-3
Spencer-Van Etten Central School District	0	3	-3
Victor Central School District	15	18	-3
Wayne Central School District	3	6	-3
West Islip Union Free School District	1	4	-3
Westfield Central School District	0	3	-3
Adirondack Central School District	1	3	-2
Alexander Central School District	0	2	-2
Belleville Henderson Central School District	1	3	-2
Canisteo-Greenwood Central School District	0	2	-2
Cheektowaga Central School District	14	16	-2
Clinton Central School District	2	4	-2
Connetquot Central School District	10	12	-2
East Greenbush Central School District	8	10	-2
East Islip Union Free School District	8	10	-2
Eastchester Union Free School District	9	11	-2
Elizabethtown-Lewis Central School District	1	3	-2
Fonda-Fultonville Central School District	3	5	-2
Georgetown-South Otselic Central School District	0	2	-2
Harpursville Central School District	2	4	-2
Hilton Central School District	14	16	-2
Jamesville-DeWitt Central School District	19	21	-2
Lyme Central School District	0	2	-2

Maine-Endwell Central School District	4	6	-2
Odessa-Montour Central School District	1	3	-2
Penn Yan Central School District	1	3	-2
Port Byron Central School District	1	3	-2
Sherburne-Earlville Central School District	1	3	-2
Spackenkill Union Free School District	5	7	-2
Tully Central School District	5	7	-2
Warsaw Central School District	0	2	-2
Watervliet City School District	12	14	-2
Weedsport Central School District	1	3	-2
Wellsville Central School District	4	6	-2
Whitehall Central School District	0	2	-2
Addison Central School District	3	4	-1
Arkport Central School District	0	1	-1
Beaver River Central School District	0	1	-1
Byram Hills Central School District	0	1	-1
Cambridge Central School District	2	3	-1
Canandaigua City School District	21	22	-1
Cattaraugus-Little Valley Central School District	15	16	-1
Cazenovia Central School District	5	6	-1
Chittenango Central School District	10	11	-1
Clymer Central School District	0	1	-1
Cold Spring Harbor Central School District	0	1	-1
Copenhagen Central School District	0	1	-1
Corinth Central School District	1	2	-1
Cuba-Rushford Central School District	1	2	-1
Gouverneur Central School District	5	6	-1
Haldane Central School District	1	2	-1
Hamburg Central School District	12	13	-1
Hammondsport Central School District	0	1	-1
Hinsdale Central School District	0	1	-1
Johnstown City School District	2	3	-1
Keene Central School District	0	1	-1
Lackawanna City School District	11	12	-1
Laurens Central School District	0	1	-1
Madison Central School District	0	1	-1
Marathon Central School District	0	1	-1
Milford Central School District	1	2	-1
New Hartford Central School District	1	2	-1
Newark Valley Central School District	3	4	-1
North Salem Central School District	1	2	-1
North Shore Central School District	1	2	-1
Otego-Unadilla Central School District	0	1	-1
Pembroke Central School District	5	6	-1
Peru Central School District	1	2	-1
Sherman Central School District	0	1	-1
Smithtown Central School District	12	13	-1
Susquehanna Valley Central School District	4	5	-1
Ticonderoga Central School District	2	3	-1
Tupper Lake Central School District	3	4	-1

Tuxedo Union Free School District	0	1	-1
Unadilla Valley Central School District	2	3	-1
Watkins Glen Central School District	1	2	-1
Wheatland-Chili Central School District	6	7	-1
Whitesboro Central School District	2	3	-1
Whitney Point Central School District	1	2	-1
Alexandria Central School District	0	0	0
Andes Central School District	0	0	0
Andover Central School District	0	0	0
Ardsley Union Free School District	0	0	0
Belfast Central School District	0	0	0
Bemus Point Central School District	0	0	0
Berne-Knox-Westerlo Central School District	1	1	0
Bolton Central School District	0	0	0
Bridgehampton Union Free School District	0	0	0
Brockport Central School District	16	16	0
Bronxville Union Free School District	0	0	0
Brookfield Central School District	0	0	0
Chappaqua Central School District	1	1	0
Chenango Forks Central School District	5	5	0
Cleveland Hill Union Free School District	5	5	0
Colton-Pierrepont Central School District	0	0	0
Crown Point Central School District	0	0	0
DeRuyter Central School District	0	0	0
Downsville Central School District	0	0	0
Duanesburg Central School District	0	0	0
Edgemont Union Free School District	2	2	0
Edinburg Common School District	0	0	0
Edmeston Central School District	0	0	0
Eldred Central School District	0	0	0
Fire Island Union Free School District	0	0	0
Fishers Island Union Free School District	0	0	0
Florida Union Free School District	1	1	0
Fort Plain Central School District	2	2	0
Franklin Central School District	0	0	0
Friendship Central School District	0	0	0
Galway Central School District	3	3	0
Garrison Union Free School District	0	0	0
Gilbertsville-Mount Upton Central School District	0	0	0
Gilboa-Conesville Central School District	0	0	0
Hamilton Central School District	0	0	0
Hewlett-Woodmere Union Free School District	0	0	0
Homer Central School District	1	1	0
Indian Lake Central School District	0	0	0
Inlet Common School District	0	0	0
Jefferson Central School District	0	0	0
Jericho Union Free School District	3	3	0
Little Falls City School District	2	2	0
Long Lake Central School District	0	0	0
Manchester-Shortsville Central School District	6	6	0



Marlboro Central School District	5	5	0
Mattituck-Cutchogue Union Free School District	0	0	0
Mayfield Central School District	1	1	0
Mechanicville City School District	1	1	0
Minisink Valley Central School District	13	13	0
Morris Central School District	0	0	0
New York Mills Union Free School District	1	1	0
Newcomb Central School District	0	0	0
North Greenbush Common School District	0	0	0
North Warren Central School District	0	0	0
Northeastern Clinton Central School District	8	8	0
Northport-East Northport Union Free School District	3	3	0
Oriskany Central School District	2	2	0
Oysterponds Union Free School District	0	0	0
Phelps-Clifton Springs Central School District	5	5	0
Piseco Common School District	0	0	0
Plainedge Union Free School District	4	4	0
Putnam Central School District	0	0	0
Quogue Union Free School District	0	0	0
Remsen Central School District	0	0	0
Ripley Central School District	0	0	0
Romulus Central School District	2	2	0
Sackets Harbor Central School District	0	0	0
Sag Harbor Union Free School District	4	4	0
Sagaponack Common School District	0	0	0
Salem Central School District	0	0	0
Schenevus Central School District	0	0	0
Schroon Lake Central School District	0	0	0
Scio Central School District	1	1	0
Sharon Springs Central School District	0	0	0
Shoreham-Wading River Central School District	1	1	0
Sidney Central School District	0	0	0
Solvay Union Free School District	28	28	0
South Lewis Central School District	0	0	0
Southold Union Free School District	0	0	0
Springville-Griffith Institute Central School District	22	22	0
Stamford Central School District	0	0	0
Taconic Hills Central School District	3	3	0
Tioga Central School District	0	0	0
Valley Central School District	16	16	0
Warrensburg Central School District	6	6	0
Waterloo Central School District	5	5	0
Watertown City School District	41	41	0
Wayland-Cohocton Central School District	4	4	0
Webb Town Union Free School District	0	0	0
Wells Central School District	0	0	0
Westport Central School District	0	0	0
Whitesville Central School District	0	0	0
Willsboro Central School District	2	2	0
Wyoming Central School District	0	0	0

York Central School District	1	1	0
Alfred-Almond Central School District	1	0	1
Argyle Central School District	1	0	1
Attica Central School District	6	5	1
Bainbridge-Guilford Central School District	1	0	1
Beekmantown Central School District	4	3	1
Blind Brook-Rye Union Free School District	1	0	1
Bolivar-Richburg Central School District	3	2	1
Bradford Central School District	1	0	1
Briarcliff Manor Union Free School District	1	0	1
Brocton Central School District	4	3	1
Cairo-Durham Central School District	7	6	1
Caledonia-Mumford Central School District	1	0	1
Canajoharie Central School District	1	0	1
Candor Central School District	3	2	1
Canton Central School District	8	7	1
Catskill Central School District	8	7	1
Charlotte Valley Central School District	1	0	1
Chateaugay Central School District	6	5	1
Chautauqua Lake Central School District	4	3	1
Chazy Union Free School District	1	0	1
Cincinnatus Central School District	3	2	1
Depew Union Free School District	4	3	1
Dundee Central School District	2	1	1
East Aurora Union Free School District	3	2	1
Elba Central School District	2	1	1
Fayetteville-Manlius Central School District	8	7	1
Forestville Central School District	6	5	1
Fort Ann Central School District	2	1	1
Frewsburg Central School District	10	9	1
Glens Falls Common School District	1	0	1
Granville Central School District	1	0	1
Greenwich Central School District	1	0	1
Hannibal Central School District	9	8	1
Harrisville Central School District	3	2	1
Herkimer Central School District	4	3	1
Hunter-Tannersville Central School District	1	0	1
Jasper-Troupsburg Central School District	1	0	1
Kiryas Joel Village Union Free School District	1	0	1
Lowville Academy and Central School District	1	0	1
Manhasset Union Free School District	3	2	1
Montauk Union Free School District	1	0	1
New Paltz Central School District	10	9	1
New Suffolk Common School District	1	0	1
Newfield Central School District	8	7	1
Pleasantville Union Free School District	2	1	1
Poland Central School District	5	4	1
Portville Central School District	3	2	1
Prattsburgh Central School District	1	0	1
Rhinebeck Central School District	2	1	1

Richfield Springs Central School District	1	0	1
Roxbury Central School District	2	1	1
Saugerties Central School District	6	5	1
Schoharie Central School District	1	0	1
Scotia-Glenville Central School District	6	5	1
Seneca Falls Central School District	11	10	1
South Jefferson Central School District	10	9	1
Southwestern Central School District	7	6	1
Spencerport Central School District	13	12	1
Tuckahoe Union Free School District	1	0	1
Vestal Central School District	14	13	1
Waterford-Halfmoon Union Free School District	1	0	1
Waverly Central School District	4	3	1
West Canada Valley Central School District	1	0	1
Westhill Central School District	9	8	1
Windham-Ashland-Jewett Central School District	1	0	1
Windsor Central School District	2	1	1
Wynantskill Union Free School District	2	1	1
Yorkshire-Pioneer Central School District	16	15	1
Amagansett Union Free School District	2	0	2
AuSable Valley Central School District	2	0	2
Avoca Central School District	2	0	2
Batavia City School District	9	7	2
Berlin Central School District	3	1	2
Campbell-Savona Central School District	2	0	2
Carle Place Union Free School District	4	2	2
Cobleskill-Richmondville Central School District	5	3	2
Cornwall Central School District	7	5	2
Dryden Central School District	11	9	2
East Rochester Union Free School District	7	5	2
East Williston Union Free School District	3	1	2
Fabius-Pompey Central School District	6	4	2
Fairport Central School District	9	7	2
Fort Edward Union Free School District	2	0	2
Frankfort-Schuyler Central School District	2	0	2
Gananda Central School District	3	1	2
Genesee Valley Central School District at Angelica-Belmont	5	3	2
Geneseo Central School District	2	0	2
Germantown Central School District	2	0	2
Hammond Central School District	2	0	2
Hancock Central School District	3	1	2
Hartford Central School District	2	0	2
Hendrick Hudson Central School District	3	1	2
Hermon-DeKalb Central School District	4	2	2
Highland Central School District	10	8	2
Holland Patent Central School District	2	0	2
Holley Central School District	4	2	2
Irvington Union Free School District	5	3	2
Johnson City Central School District	10	8	2
Jordan-Elbridge Central School District	7	5	2

Katonah-Lewisboro Union Free School District	5	3	2
Keshequa Central School District	2	0	2
LaFargeville Central School District	4	2	2
Lisbon Central School District	2	0	2
Livonia Central School District	5	3	2
Massapequa Union Free School District	6	4	2
Minerva Central School District	2	0	2
Monroe-Woodbury Central School District	27	25	2
Moriah Central School District	2	0	2
Morristown Central School District	2	0	2
New Lebanon Central School District	2	0	2
Onteora Central School District	10	8	2
Oppenheim-Ephratah Central School District	2	0	2
Palmyra-Macedon Central School District	9	7	2
Panama Central School District	4	2	2
Parishville-Hopkinton Central School District	2	0	2
Pavilion Central School District	3	1	2
Plainview-Old Bethpage Central School District	6	4	2
Roscoe Central School District	2	0	2
Rotterdam-Mohonasen Central School District	13	11	2
Sandy Creek Central School District	6	4	2
Saranac Central School District	4	2	2
Scarsdale Union Free School District	2	0	2
Sodus Central School District	4	2	2
South Seneca Central School District	3	1	2
St. Johnsville Central School District	2	0	2
Tri-Valley Central School District	2	0	2
Voorheesville Central School District	5	3	2
West Seneca Central School District	37	35	2
Westhampton Beach Union Free School District	4	2	2
Williamson Central School District	7	5	2
Worcester Central School District	2	0	2
Afton Central School District	5	2	3
Akron Central School District	165	162	3
Amherst Central School District	10	7	3
Averill Park Central School District	6	3	3
Babylon Union Free School District	3	0	3
Burnt Hills-Ballston Lake Central School District	6	3	3
Cohoes City School District	4	1	3
Dansville Central School District	7	4	3
Dobbs Ferry Union Free School District	3	0	3
Dover Union Free School District	6	3	3
East Irondequoit Central School District	10	7	3
East Quogue Union Free School District	3	0	3
East Rockaway Union Free School District	3	0	3
Eastport-South Manor Central School District	8	5	3
Edwards-Knox Central School District	5	2	3
Fulton City School District	15	12	3
Goshen Central School District	11	8	3
Greene Central School District	7	4	3

Greenville Central School District	4	1	3
Hampton Bays Union Free School District	5	2	3
Heuvelton Central School District	3	0	3
Island Park Union Free School District	3	0	3
Island Trees Union Free School District	3	0	3
Islip Union Free School District	11	8	3
Johnsburg Central School District	3	0	3
Lake Placid Central School District	3	0	3
Le Roy Central School District	3	0	3
Malone Central School District	28	25	3
Medina Central School District	16	13	3
Middleburgh Central School District	5	2	3
Miller Place Union Free School District	8	5	3
Mount Pleasant Central School District	4	1	3
Oswego City School District	19	16	3
Owen D. Young Central School District	3	0	3
Pearl River Union Free School District	7	4	3
Pelham Union Free School District	3	0	3
Pocantico Hills Central School District	3	0	3
Pulaski Central School District	6	3	3
Rome City School District	23	20	3
Rye Neck Union Free School District	3	0	3
Schodack Central School District	3	0	3
Somers Central School District	4	1	3
South Kortright Central School District	3	0	3
Southern Cayuga Central School District	9	6	3
St. Regis Falls Central School District	5	2	3
Trumansburg Central School District	3	0	3
Wainscott Common School District	3	0	3
Wantagh Union Free School District	3	0	3
Yorktown Central School District	6	3	3
Alden Central School District	9	5	4
Bath Central School District	5	1	4
Brunswick Central School District (Brittonkill)	5	1	4
Byron-Bergen Central School District	5	1	4
Camden Central School District	5	1	4
Carthage Central School District	22	18	4
Cassadaga Valley Central School District	6	2	4
Cheektowaga-Maryvale Union Free School District	8	4	4
Cherry Valley-Springfield Central School District	4	0	4
Cooperstown Central School District	4	0	4
Dolgeville Central School District	5	1	4
Fredonia Central School District	8	4	4
Green Island Union Free School District	6	2	4
Harborfields Central School District	7	3	4
Honeoye Central School District	4	0	4
Hoosick Falls Central School District	5	1	4
Hornell City School District	7	3	4
Horseheads Central School District	17	13	4
Jamestown City School District	62	58	4

Kings Park Central School District	5	1	4
Letchworth Central School District	4	0	4
Madrid-Waddington Central School District	9	5	4
Menands Union Free School District	4	0	4
Mohawk Central School District	6	2	4
Mount Sinai Union Free School District	7	3	4
North Rose-Wolcott Central School District	4	0	4
Northville Central School District	4	0	4
Oakfield-Alabama Central School District	12	8	4
Oyster Bay-East Norwich Central School District	7	3	4
Pittsford Central School District	6	2	4
Putnam Valley Central School District	5	1	4
Ravena-Coeymans-Selkirk Central School District	6	2	4
Sauquoit Valley Central School District	4	0	4
Sayville Union Free School District	5	1	4
Schuylerville Central School District	4	0	4
Sullivan West Central School District	6	2	4
West Hempstead Union Free School District	5	1	4
West Valley Central School District	4	0	4
Bloomfield Central School District	5	0	5
Brighton Central School District	11	6	5
Broadalbin-Perth Central School District	7	2	5
Chenango Valley Central School District	5	0	5
Clifton-Fine Central School District	5	0	5
Clyde-Savannah Central School District	6	1	5
East Moriches Union Free School District	5	0	5
Farmingdale Union Free School District	13	8	5
Fillmore Central School District	6	1	5
Franklinville Central School District	6	1	5
Garden City Union Free School District	7	2	5
Groton Central School District	5	0	5
Hadley-Luzerne Central School District	5	0	5
Hastings-on-Hudson Union Free School District	6	1	5
Hoosic Valley Central School District	6	1	5
Hudson City School District	6	1	5
Lake George Central School District	5	0	5
Lyncourt Union Free School District	5	0	5
Lyndonville Central School District	9	4	5
Lyons Central School District	5	0	5
Marcellus Central School District	9	4	5
Marion Central School District	8	3	5
Newfane Central School District	9	4	5
Perry Central School District	5	0	5
Pine Valley Central School District	9	4	5
Plattsburgh City School District	10	5	5
Red Hook Central School District	5	0	5
Rocky Point Union Free School District	6	1	5
Rye City School District	7	2	5
South Colonie Central School District	9	4	5
Stillwater Central School District	5	0	5

Chester Union Free School District	6	0	6
Croton-Harmon Union Free School District	7	1	6
Glens Falls City School District	8	2	6
Hauppauge Union Free School District	11	5	6
Herricks Union Free School District	14	8	6
Lansingburgh Central School District	14	8	6
Lindenhurst Union Free School District	17	11	6
Livingston Manor Central School District	6	0	6
McGraw Central School District	9	3	6
Morrisville-Eaton Central School District	8	2	6
Northern Adirondack Central School District	7	1	6
Oceanside Union Free School District	14	8	6
Oneonta City School District	9	3	6
Orchard Park Central School District	24	18	6
Port Jefferson Union Free School District	7	1	6
Roslyn Union Free School District	6	0	6
Schalmont Central School District	8	2	6
Shelter Island Union Free School District	6	0	6
Skaneateles Central School District	6	0	6
South Glens Falls Central School District	8	2	6
Starpoint Central School District	17	11	6
Coxsackie-Athens Central School District	7	0	7
Grand Island Central School District	32	25	7
Liberty Central School District	11	4	7
Lynbrook Union Free School District	9	2	7
Mahopac Central School District	8	1	7
Moravia Central School District	7	0	7
Niskayuna Central School District	9	2	7
Northeast Central School District	7	0	7
Penfield Central School District	10	3	7
Rensselaer City School District	9	2	7
Seaford Union Free School District	7	0	7
Sherrill City School District	22	15	7
South Orangetown Central School District	10	3	7
Tonawanda City School District	12	5	7
Union Springs Central School District	7	0	7
Valhalla Union Free School District	11	4	7
Allegany-Limestone Central School District	18	10	8
Bethlehem Central School District	15	7	8
Cortland City School District	11	3	8
Eden Central School District	13	5	8
Haverstraw-Stony Point Central School District	44	36	8
Kendall Central School District	10	2	8
Owego-Apalachin Central School District	8	0	8
Port Jervis City School District	27	19	8
Sweet Home Central School District	18	10	8
Syosset Central School District	11	3	8
Three Village Central School District	17	9	8
Walton Central School District	8	0	8
West Babylon Union Free School District	9	1	8

Wilson Central School District	19	11	8
Brookhaven-Comsewogue Union Free School District	14	5	9
Brushton-Moira Central School District	12	3	9
Corning City School District	30	21	9
East Hampton Union Free School District	12	3	9
Geneva City School District	10	1	9
Gloversville City School District	14	5	9
Guilderland Central School District	12	3	9
Holland Central School District	12	3	9
Iroquois Central School District	10	1	9
Kinderhook Central School District	10	1	9
North Babylon Union Free School District	13	4	9
Norwich City School District	10	1	9
Rockville Centre Union Free School District	9	0	9
Saranac Lake Central School District	10	1	9
Brewster Central School District	14	4	10
Commack Union Free School District	18	8	10
Ellenville Central School District	20	10	10
Falconer Central School District	11	1	10
Hyde Park Central School District	12	2	10
Locust Valley Central School District	10	0	10
Mount Morris Central School District	10	0	10
North Colonie Central School District	15	5	10
Ogdensburg City School District	10	0	10
Webster Central School District	28	18	10
Bethpage Union Free School District	16	5	11
Canastota Central School District	17	6	11
Half Hollow Hills Central School District	18	7	11
Harrison Central School District	17	6	11
Monticello Central School District	22	11	11
Mount Markham Central School District	12	1	11
Royalton-Hartland Central School District	21	10	11
Springs Union Free School District	11	0	11
Altmar-Parish-Williamstown Central School District	13	1	12
Mamaroneck Union Free School District	13	1	12
Mineola Union Free School District	12	0	12
Nanuet Union Free School District	12	0	12
Pawling Central School District	14	2	12
Southampton Union Free School District	131	119	12
Tuckahoe Common School District	12	0	12
Wappingers Central School District	30	18	12
Albany City School District	57	44	13
Elmsford Union Free School District	13	0	13
Ilion Central School District	13	0	13
Bedford Central School District	16	2	14
Elmira City School District	27	13	14
Great Neck Union Free School District	14	0	14
Greece Central School District	51	37	14
Newark Central School District	15	1	14
Frontier Central School District	32	17	15



Highland Falls Central School District	15	0	15
Ithaca City School District	56	41	15
Margaretville Central School District	19	4	15
Port Washington Union Free School District	15	0	15
Warwick Valley Central School District	15	0	15
Glen Cove City School District	31	14	17
Gates-Chili Central School District	29	11	18
Sachem Central School District	35	17	18
Arlington Central School District	37	18	19
Ballston Spa Central School District	22	3	19
Greenburgh Central School District	19	0	19
Lakeland Central School District	24	5	19
Lewiston-Porter Central School District	38	19	19
Malverne Union Free School District	19	0	19
Nyack Union Free School District	22	3	19
Washingtonville Central School District	29	10	19
Levittown Union Free School District	21	1	20
Onondaga Central School District	61	41	20
Salamanca City School District	487	467	20
Deer Park Union Free School District	22	1	21
East Meadow Union Free School District	26	5	21
Middle Country Central School District	30	9	21
Pine Bush Central School District	34	13	21
Fallsburg Central School District	23	1	22
Lawrence Union Free School District	29	7	22
Riverhead Central School District	44	22	22
Baldwin Union Free School District	30	7	23
Carmel Central School District	27	4	23
Clarkstown Central School District	39	16	23
Troy City School District	34	11	23
Copiague Union Free School District	28	4	24
Beacon City School District	27	2	25
Central Square Central School District	40	15	25
Kenmore-Tonawanda Union Free School District	97	71	26
Dunkirk City School District	38	11	27
Kingston City School District	54	25	29
Long Beach City School District	29	0	29
Oneida City School District	73	43	30
Patchogue-Medford Union Free School District	48	18	30
Amsterdam City School District	32	0	32
Utica City School District	44	12	32
The Tarrytowns Union Free School District	34	1	33
Peekskill City School District	36	1	35
South Country Central School District	67	32	35
South Huntington Union Free School District	41	3	38
Longwood Central School District	68	27	41
Roosevelt Union Free School District	42	0	42
Wyandanch Union Free School District	45	2	43
Westbury Union Free School District	47	3	44
Huntington Union Free School District	45	0	45

Ossining Union Free School District	52	2	50
Amityville Union Free School District	58	7	51
Bay Shore Union Free School District	58	1	57
Hicksville Union Free School District	60	3	57
Randolph Central School District	74	15	59
Hempstead Union Free School District	74	10	64
Buffalo City School District	533	468	65
Uniondale Union Free School District	74	6	68
Mount Vernon City School District	86	13	73
Poughkeepsie City School District	82	9	73
Middletown City School District	80	5	75
William Floyd Union Free School District	125	47	78
Central Islip Union Free School District	97	17	80
Port Chester-Rye Union Free School District	83	0	83
East Ramapo Central School District	104	14	90
Freeport Union Free School District	108	14	94
White Plains City School District	113	5	108
New Rochelle City School District	131	9	122
Gowanda Central School District	549	402	147
Syracuse City School District	437	288	149
Schenectady City School District	159	8	151
Salmon River Central School District	1,124	971	153
Rochester City School District	254	100	154
Newburgh City School District	199	26	173
Brentwood Union Free School District	283	40	243
Yonkers City School District	447	49	398
New York City Department Of Education	17,456	4009	13,447
<b>TOTAL</b>	<b>30,491</b>	<b>16,767</b>	<b>13,724</b>

Appendix 2

*NYSED School Districts Not Used in the Study Due to No Matching NCES District*

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<b><u>School District Name</u></b>	<b><u>2010 NYSED American Indian student count</u></b>
Abbott Union Free School District	0
Bellmore Union Free School District	0
Bellemore-Merrick Central High School District	1
Berkshire Union Free School District	0
Eelmont Union Free School District	1
Floral Park-Bellerose Union Free School District	0
Franklin Square Union Free School District	0
George Junior Republic Union Free School District	0
Greenbush Eleven Union Free School District	0
Greenbush-Graham Union Free School District	0
Greenbush-North Castle Union Free School District	0
Hawthorne-Cedar Knolls Union Free School District	0
Hopevale Union Free School District at Hamburg	5
Lake Pleasant Central School District	0
Little Flower Union Free School District	0
Merrick Union Free School District	2
Mount Pleasant-Blythedale Union Free School District	0
Mount Pleasant-Cottage Union Free School District	1
New Hyde Park-Garden City Park Union Free School District	2
North Bellmore Union Free School District	5
North Merrick Union Free School District	0
Randolph Academy Union Free School District	5
Sewanhaka Central High School District	1
Valley Stream 13 Union Free School District	2
Valley Stream 24 Union Free School District	0
Valley Stream 30 Union Free School District	0
Valley Stream Central High School District	0
West Park Union Free School District	0
Wheelerville Union Free School District	2
<b>Total</b>	<b>27</b>

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