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A COMPARATIVE SOCIO-HISTORICAL CONTENT ANALYSIS
OF TREATIES AND CURRENT AMERICAN INDIAN EDUCATION
LEGISLATION WITH IMPLICATIONS FOR THE STATE OF MICHIGAN

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by

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ABSTRACT

This study is focused on the relationship between two historical policy era of American Indian education--the Constitutional/Treaty Provisions Era and the Self-Determination/Revitalization Era. The primary purpose of this study is the clarification of what extent treaty educational obligations may be met by current federal K-12 American Indian education legislation. An historical overview of American Indian education policy is provided to inform the subsequent discussion of the results of a content analysis of sixteen treaties entered into between the United States and the Anishinaabe Three Fires Confederacy, and three pieces of federal Indian education legislation--the Indian Education Act (IEA), the Indian Self-Determination & Education Assistance Act (ISDEA), and the Individuals with Disabilities Education Act (IDEA).

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CHAPTER 1

Introduction

There is a general assumption that the federal government is obligated to provide for the educational interests of American Indian¹ tribal citizens based on the educational provisions contained within treaties entered into between the United States (US) government and American Indian tribal nations. The problem with such an assumption is that it does not take into account that the US did not enter into any comprehensive treaty with all of the American Indian tribes as a single unit. While it is true that there are many educational provisions contained within treaties that have similar language, the fact remains that the treaties were made with different American Indian tribal nations. It would never be assumed that a provision included in a treaty made with France was satisfied by fulfilling a similar provision in a treaty made with Iraq.

Thus, this study is focused on educational provisions contained within treaties made between the U.S. and the Anishinaabe Three Fires Confederacy-an American Indian tribal government that was still intact when the U.S. began infiltrating the Great Lakes Region in the late 1700s, and the cultural predecessor of the federally recognized tribes that remain in Michigan today. While this study is focused on Michigan, it should prove to be a model that can be used to examine the same relationships in other states as well.

The evolution of K-12 American Indian education legislation in Michigan is a story that has never been told in any comprehensive manner. Given Michigan's unique history, as compared to other states, it is important that educational leadership have an awareness of the historical influences on the contemporary status of American Indian

education in the State today. While a complete historical analysis is beyond the scope of this study, an examination of 16 treaties and 3 pieces of federal Indian education legislation was conducted to begin this long overdue discussion.

This chapter presents the purpose and significance of the study, research questions, and limitations. The theoretical framework describes the attributes of approaching a study of American Indian treaties and subsequent Indian education legislation from an American Indian standpoint.

Purpose of the Study

Although, as Porter (1999) suggests, “American colonization has ensured that we will never have the choice to be who we once were” (p.18), it is important to understand who we are now, as Indigenous peoples, so that we can take advantage of opportunities to shape the educational future of our sovereign tribal First Nations. In a legal sense, very little is understood about the relationship between treaties that were signed between the Anishinaabek and the United States and current federal Indian education legislation. Yet, it is these treaties, and others, that gave rise to the federal Indian education obligation in the first place.

The history of Indian education in Michigan is unique, as compared to other states, because it is the only instance where the federal government has entered into an agreement whereby the state has accepted responsibility for providing for Indian education without further cost to the federal government (Comstock, 1934). While recognizing that Michigan tribes retain those aspects of sovereignty that have not been abrogated by treaty or an act of Congress, the State of Michigan has never provided any education services specific to the special cultural and linguistic needs of Native American

students; further recognizing that the federal government has, since 1972, reintroduced federal Indian education programs within the State of Michigan, it remains in question exactly what the federal Indian education obligation was in 1934, and what it is currently as compared to that of the State and Michigan tribes.

With the above points in mind, this study was designed to investigate the linkages between 3 selected current K-12 American Indian education laws and 16 treaties signed between the U.S. government and American Indian tribes (see Appendix A) located within the State of Michigan. The study was intended to produce data that would answer the following research questions:

1. What is the extent of educational obligations set forth by treaty for American Indian tribes located within Michigan?
2. Are current federal K-12 American Indian education laws intended to satisfy any portion of these treaty obligations?
3. If so, how do they satisfy these obligations?
4. Are there any portions of treaty educational obligations that have not been met, or are not addressed by current federal K-12 American Indian education legislation?
5. What is the responsibility of federal, state, and tribal governments in providing for the K-12 educational interests of American Indian tribal citizens within the State of Michigan?

A content analysis was conducted to produce data that addresses these questions. The three pieces of legislation include: (a) The Indian Education Act (IEA) of 1972, as amended; (b) The Indian Self-Determination and Education Assistance Act (ISDEA) of 1975, as amended; and (c) The Individuals with Disabilities Educational Assistance Act (IDEA) of 1997.

Significance of the Study

This study will contribute to the body of literature surrounding the history and current status of American Indian education. It will help clarify the extent to which Anishinaabe/U.S. treaty obligations may remain in effect today and any linkages between these treaties and current federal K-12 American Indian education legislation. The study will lend to an ongoing discussion about tribal, federal, and state responsibilities and jurisdictions regarding American Indian education in Michigan, although the findings may be applicable to other states as well. Educators, legislators, and administrators may find this study useful in that it will provide information on the legal responsibilities of tribal, federal, and state governments within American Indian education in Michigan.

Finally, the study will contribute to the body of literature surrounding standpoint theory, by providing data that can then be used to develop a greater understanding of educational policy from an American Indian tribal perspective. Up to this point, the literature has been little informed about the government-to-government relationships between the U.S. and American Indian tribes and tribal citizens. The bulk of the literature surrounding historical interactions between the US and American Indian tribes and individuals has been written primarily by non-Indians. Only recently, within the last 30 years, has there been a major emphasis on developing a comparative body of literature produced by American Indian scholars themselves.

Theoretical Framework

In 1987, Dorothy Smith proposed that, as a society, we have come to accept a “one-sided standpoint” (p. 20) as natural. She was referring to the dominant place of males in our society, and the effect that has had on our conceptions of our social reality—

especially as it impacts female self-concept and social interaction. Wallace and Wolf (1995) point out, however, that “a standpoint theory could take the perspectives of other subordinated individuals [as well]” (p. 270). In this study, it is proposed that standpoint theory can also be used to represent not only the perspective of subordinated individuals, but also subordinated governments like those of American Indian tribes. As a society, our conceptualization of the history and current condition of American Indian education has been influenced largely by non-American Indian governmental perspectives on history and interpretations of aboriginal and treaty rights regarding education. This study will add to the growing body of American Indian authored literature surrounding the historical treatment of American Indian aboriginal and treaty rights to education.

While there is clear evidence of treaty provisions for education, aboriginal educational rights have not been as clearly documented for many tribes. Because American Indian tribes retain those aspects of sovereignty that have not been clearly signed away in treaties, or have not been legislated away by an act of Congress, it is important to develop a greater understanding of those rights in our society. Korsmo (1996) suggests that,

proving the existence of aboriginal rights in common law requires a reconstruction of a people's past presented in a way that satisfies Western legal traditions. Evidence must be internally consistent, chronological, and documented. Crucial gaps in time or knowledge must be explained (p. 71).

While this study is focused on the clarification of the relationship between treaty educational provisions and federal Indian education legislation, it is important to point

out that it is the very relationship between treaty making and other politically sovereign governmental powers that ultimately speaks to the existence of aboriginal rights to self-education² for these tribes (Claiborne, 1997; Gross, 1989; Lomawaima, 1998).

One of the primary reasons aboriginal rights to self-education have not been documented, to any great extent, is that American Indian people have been shut-out of the literature surrounding their own history. According to Fixico (1998), American Indian people have long been absent in the process of recording the American Indian component of American history. This is most obvious when reviewing the body of literature surrounding American Indian aboriginal rights to self-education in the United States—it is practically non-existent. An American Indian standpoint approach to studying the history of American Indian education law, therefore, may produce data that has not yet been considered to any great extent in the literature.

From a governmental standpoint perspective, American Indian tribes in Michigan have been shut out of the educational policy writing process for a number of years. Only recently have Michigan tribes come to experience any sort of political power, and thus the ability to influence decision making about the future of their citizens' education. While this assertion of tribal authority over tribal education is most apparent in the tribally controlled schools movement, given the opportunity it may also manifest itself within the greater statewide public education system. For example, see Alaska Standards for Culturally Responsive Schools (Alaska Native Knowledge Network, 1998).

Individual accounts of Michigan Indian education history have impacted Michigan Indian education policy, as is the case in Helen Tanner's testimony in 1978 during the Children of the Chippewa, Ottawa, and Potawatomi versus the University of

Michigan court case (Reinhardt, 1998). The decision, primarily based on her testimony, was that a trust responsibility had not been created between the University and the tribes by the Treaty of 1817. Policy has also influenced subsequent views on history and the future of Michigan Indian education, as in the case of the PA 174 of 1976, the Michigan Indian Tuition Waiver Act, which is seen by the Michigan Federal Tribes Education Consortium (1996) as being linked to treaty rights (including the Treaty of 1817) and the Comstock Agreement (see Appendix C).

Gross (1989) explains that current views of American Indian tribal self-determination within U.S. Indian policy have been shaped and reshaped by legal and political forces since the beginning of the treaty making period. She suggests that there are at least three prevailing perspectives on American Indian tribal sovereignty in place today which include: legal sovereignty, political sovereignty, and constitutional sovereignty. “The legal sovereignty perspective emphasizes honoring the treaties, preserving the land base, and enforcing the trust relationship. Political sovereignty focuses on obtaining independence or separate nation status for the tribes” (Gross, 1989, p. 33). The constitutional sovereignty perspective “holds that the tribes are like the states and local governments in that they, too, have sovereign rights under the Constitution of the United States” (Gross, 1989, p. 34).

Although all three perspectives on tribal sovereignty still impact American Indian policy, it is the constitutional perspective that grew out of American Indian policy debates of the 1970s, and continues to be the primary perspective held by policymakers today (Gross, 1989). This perspective “can be traced to four origins: President Nixon’s 1970 Message to the Congress, post-1975 Congressional legislation, the American Indian

Review Committee's Final Report, and the ongoing jurisdictional issues between the tribes and the states" (Gross, 1989, p. 34).

Not only do we have multiple perspectives at work in the shaping and reshaping of American Indian education policy, but we also have multiple forms of tribal governments that may approach the idea of Indian education quite differently. Porter (1999) explains, that there are basically three different forms of tribal governments in existence today, they include: "(1) traditional governments, (2) autonomous constitutional governments, and (3) dependent constitutional or corporate governments" (p. 19). The form of a tribal government may have affected, or affects, the relationships between the tribal government and state, federal, or even other tribal governments.

The traditional form of tribal government is the oldest and most ingrained form of governance in American Indian cultures. Porter (1999) explains that "traditional governments are those in which the method of governance has not formally changed since the colonization of the American continent" (p. 19). This form of governance, he explains, is not dependent on written structure and procedure, and is "not subject to any overriding governmental authority in the exercise of their governing powers" (p. 19). In this form of tribal government, laws are passed down from generation to generation through an oral tradition of communication (Porter, 1999, p. 19). Because traditional forms of tribal governments may not have an extensive written body of law regarding past and current educational practices, it might be difficult to identify the exact nature of traditional education policies and procedures short of relying on interpretive works like modern accounts of oral traditional teachings or written ethnographic accounts. In any case, further investigation in this area of research should be conducted.

Autonomous constitutional tribal governments, although rooted in traditional values, have adopted a written form of constitutional law. Porter (1999) explains that these types of tribal governments “have changed not as the result of some forced colonial influence, but rather as the result of deliberate internal effort to transform the method of government organization” (p. 19). Like the traditional form of governance, this form is also “not subject to any overriding authority in the exercise of their governing powers” (Porter, 1999, p. 19). In this case, it may be possible to find written reference, within the tribal constitution and subsequent resolutions or codes, to a tribal government's assertion of sovereignty over the education of its citizens.

The form of tribal government that is subject to the most scrutiny by the United States is the dependent constitutional or corporate form of government. Porter (1999) explains that these governments “are inherently sovereign and thus may establish their own forms of government” (pp. 19-20), but they are established as tribal governments by federal or state laws, “and may even require approval by the federal government to take official action” (p. 20). The two primary federal laws that established this form of tribal government are the Indian Reorganization Act of 1934, and the Alaska Native Claims Settlement Act of 1971.

On a national level, there are currently “554 groups of indigenous people officially recognized by the United States as possessing sovereign authority and with whom it has a government-to-government relationship” (Porter, 1999, p. 19). This number does not include those tribal groups that are only recognized by state governments, or not recognized by either the states or federal government. This means that within the United States there are potentially over 554 different tribal education

systems currently operating independently of one another. When we consider the fact that between 91 – 92% of all American Indian students attend state operated public schools that fall under the jurisdiction of State Education Agencies (SEAs) (National Center for Educational Statistics, 1997; Wells, 1991), we can add another 50 state education systems to that number. Finally, considering the current 187 federal government Bureau of Indian Affairs (BIA) schools, we can add yet another system to that mix. Thus, one could safely assert that there are at least 605 governmental entities (554 tribes, 50 states, and one federal/BIA) within the United States that are responsible for educating American Indian tribal citizens. With the ongoing federal recognition process of American Indian tribes the number of systems will increase.

There are currently 12 federally recognized tribes within the State of Michigan. There are also three state historical tribes and urban Indian communities within the state. Although the reservation areas for each federally recognized tribe are acknowledged to be under tribal jurisdiction, the majority of tribal students attend schools off the reservations. The evolution of tribal governments in Michigan has included recognition under treaties, the Indian Reorganization Act, Acts of Congress, a proclamation by the Secretary of the Interior, and most recently through the federal acknowledgment process (Van Alstine, 1998). All of the tribes currently located within the State of Michigan would best fit into Porter's (1999) third category of types of tribal governments.

Given the complex history of American Indian education policy, it is understandable that many of our elected officials and school personnel do not have a good working knowledge of the issues that arise among tribes, the federal government and the states. Deyhle and Swisher (1997) state that “based on principles of sovereignty

and trust responsibility, the history of Indian education is unique, complex, and not clearly understood by the majority of mainstream America” (p. 114). While most educators would agree that policy provides a basis for educational reform in the United States, most have never had to consider the place of Indian education policy in the current reform movement.

Tippeconnic and Swisher (1992) propose that “treaties and subsequent executive orders, congressional acts, and court decisions formed the legal basis for federal recognition and responsibility for Indian education” (p. 75). While the federal responsibility has continued to evolve, it has been delegated down to the states in many respects. It is important to spell out how aboriginal rights to self-education and treaty educational provisions have, or have not, been addressed by the current status of the federal responsibility.

According to Deloria (1974), American Indian people must question the condition of tribal communities against a backdrop of legal doctrines, cultural attitudes, and historical accounts in order to gain any type of clarity on the complex set of issues that they face. Deloria (1974) also points out that although the relationship between American Indian tribes and the United States is rooted in federal/tribal interactions, it is the relationships between tribes and states that are of the most immediate importance to American Indian people. He suggests that there must be a clarification of tribal citizens “rights with respect to state governments” (Deloria, 1974, p. 254).

With respect to Michigan Indian education, it is the State of Michigan that provides the greatest amount of educational services to the greatest percentage of American Indian students in the state. While this study does not focus on the quality of

education, it does center on the legal and political origin of governmental responsibility for Indian education in Michigan. Chapter Two provides a brief history of the evolution of Michigan Indian education, while Chapter Four expands on the history in reference to treaties and current federal Indian education legislation.

Conceptual Model

Drawing on Deloria's (1974) suggestion that there must be clarification of the rights of tribal citizens in their relations with state governments, and Petoskey's (2000) conceptual model used to show the relationship between tribal, federal, and state governments, the legal educational responsibilities of each government for American Indian tribes and people are placed in the appropriate areas of the figure shown on the following page.

Figure 1-1 provides a conceptual model from which to view such a complex American Indian education super-system. Included in the figure are three concentric circles representing the three members of our national family of governments (tribal, federal and state), and seven blocks representing the different areas of governmental responsibility for Michigan Indian education (tribal/federal, federal/state, state/tribal, and the area of tri-lateral responsibility or tribal/federal/state). This model could also be used to show the agencies that are responsible for Michigan Indian education under each government. For instance, tribal departments of education or whatever agency represents education for the tribes and the Bureau of Indian Affairs (BIA) could be included in the tribal/federal area, or the U.S. Department of Education (DOE) and the State Education

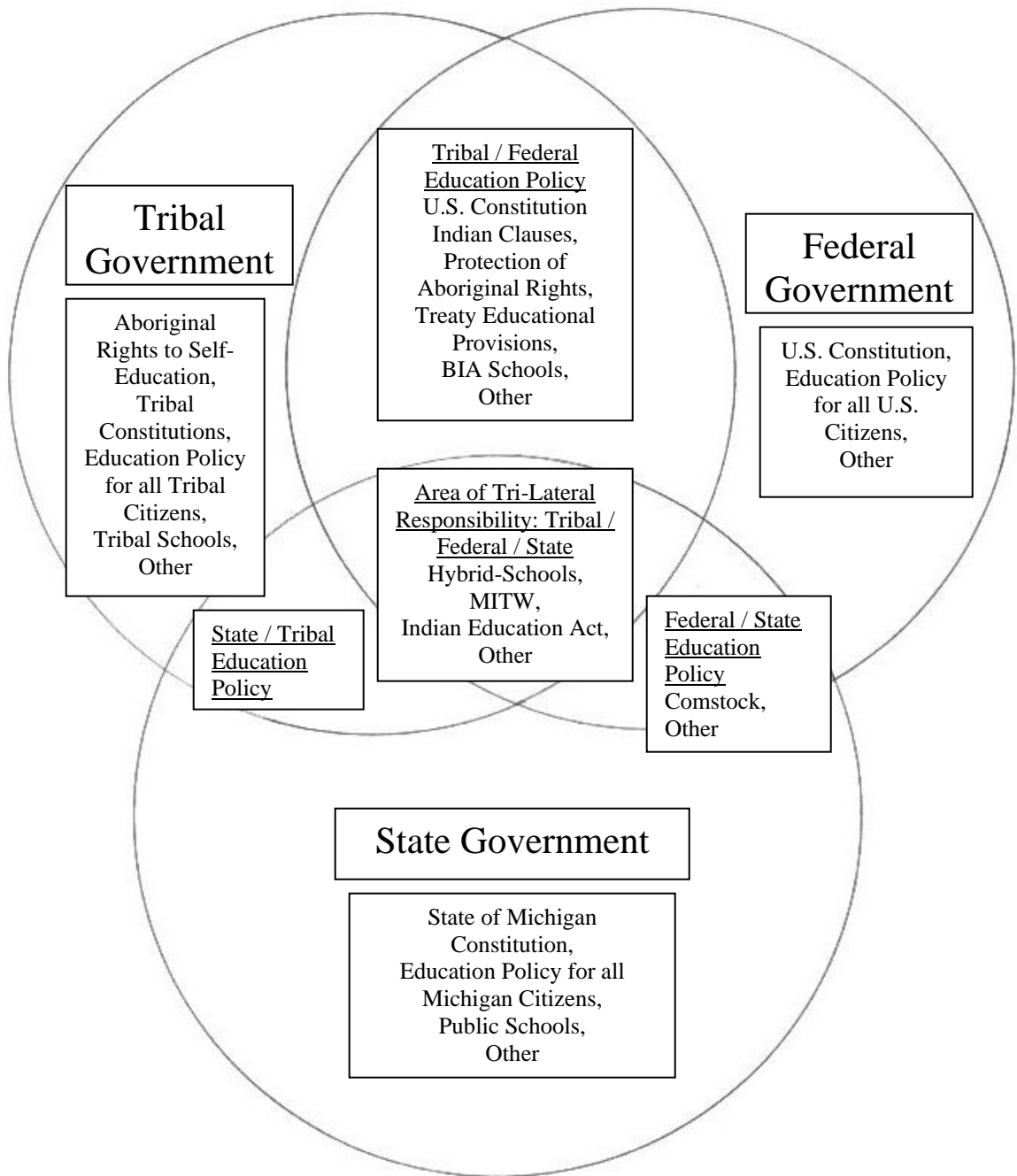


Figure 1-1. Areas of Governmental Responsibility for Michigan Indian Education

Agency (SEA) in the federal/state area. The area of *tri-lateral responsibility*, is arguably the most important area as far as its implications for the future of American Indian education in Michigan, since most tribal citizens are educated in public schools operated by the state, and the federal government continues to encourage tribal/state agreements. This area also represents the area of primary growth during the current era. Due to the nature of this area, it is perhaps also the grayest area of responsibility for American Indian education in Michigan, as it has yet to be debated--who has jurisdiction over what--in this mix.

While it isn't as easy to provide clear examples of agencies or policies that fall into the area of tri-lateral responsibility as it is in the other areas, there are a few examples that should be considered. One example is the combined tribal/federal/state schools that have appeared on the scene recently, like the Bahweting Anishinabe Public School Academy (PSA) in Sault Ste. Marie, Michigan. This school is owned by the Sault Ste. Marie Tribe of Chippewa Indians, governed by tribal citizens, received a charter and receives funding from the Bureau of Indian Affairs, and received a charter and funding from the State of Michigan. According to both school administrators and BIA representatives, the lines of jurisdiction are unclear, overlapping, and the focus of ongoing investigations (Oshelski, personal communication, 1999; Van Alstine, personal communication, 1999; Whitehorn, personal communication, 1999). Another example is the Indian Education Act, which provides funding for American Indian student educational programming at tribal, federal, and state operated institutions. When combined with a scenario such as that indicated in the Bahweting Anishinabe PSA, it is

obvious that all three governmental units are responsible for some aspect of Indian education under this act.

Chapter Summary

This chapter presents the purpose, limitations and significance of the study, along with a conceptual model that provides a visual comparison of governmental responsibilities for Michigan Indian education. The purpose of the study is essentially to produce data on the relationship between 16 treaties signed between the Anishinaabe Three Fires Confederacy and the U.S. government, and 3 pieces of federal Indian education legislation including the Indian Education Act, the Indian Self-Determination & Education Assistance Act, and the Individuals with Disabilities Education Act, that can then be used to develop a clearer picture of federal, state, and tribal responsibilities for Michigan Indian education. This study goes beyond the body of treaties that is commonly considered relevant to Michigan tribes, but is at the same time not intended to encompass all federal Indian education legislation. This study is significant in that it will provide information that will lead to a greater understanding of the evolution of Michigan Indian education from an American Indian standpoint. Subsequent chapters provide: a historical backdrop for the study, an explanation of the methods used, a detailed account of the actual analysis of the treaties and federal Indian education legislation, a discussion of findings in theoretical perspective, and conclusions and recommendations for further research.

CHAPTER 2

Historical Overview and Statistical Abstract

Included in this chapter is: a brief historical overview of both federal (U.S.) and state (Michigan) American Indian education policies and a statistical abstract of K-12 American Indian education today. The brief historical overview helps provide general information on the history of American Indian education (including a focus on Indian education as a trust responsibility) in order to be better able to understand the relevance of the study in a broader context. For a synopsis of the evolution of the federal Indian education trust responsibility, see Appendix D. For a synopsis of the history of American Indian education in Michigan, see Appendix E.

A Brief Historical Overview of Federal American Indian Education Policy

When addressing the history of U.S. American Indian education policy, two important points must be considered: (a) American Indian tribes are sovereign units of government that may retain Aboriginal rights, exercise treaty rights, and have unique government-to-government relationships with the United States and/or the states in which they are located; and (b) American Indian individuals may be citizens of American Indian tribes, the United States, and the states in which they live (Canby, 1988; Utter, 1993). These points are considered in this study as they apply throughout succeeding eras of Indian education.

According to Petoskey (1988, p. 367), the history of U.S. federal American Indian policy can be divided into six basic eras:

1532-1789	Pre-Constitutional Precedents
1789-1871	The Formative Years
1871-1928	Allotments and Assimilation
1928-1942	Indian Reorganization
1942-1961	Termination
1961-present	Self-Determination

This section of the study includes examples of federal American Indian education policies from each of these eras.

Former Indian Education Officer of the BIA Michigan Agency, Robert Van Alstine

(1998) describes the eras of Michigan Indian education as follows:

Pre-Colonial (prior to 1615)
Early Colonial (1615-1776)
Early U.S. (1776-1891)
Boarding Schools (1891-1934)
The Abyss (1934-1972)
Revitalization (1972-present)

These eras correspond with major turning points in Michigan Indian educational history, although aspects of each era may overlap with other subsequent eras. As denoted in Chapter One, the two eras of particular focus in this study are the Early U.S. era and the Revitalization era.

The roots of U.S. American Indian education policies extend far back into the original interactions between the sovereign governments of Europe and the Indigenous peoples of this continent. While American Indian tribes have had their own education systems in place since before European exploration of this continent, a description of those systems is beyond the scope of this section given the vast amount of diversity that exists between tribes. Thus, this section is focused on policies that helped shape the current relationship between the U.S. and American Indian tribes in the area of education.

The federal trust responsibility for Indian education is legally and politically rooted in the doctrine of discovery, specifically Alexander the VI's papal bull *Inter Caetera* (Papal Bull, 1493) which required training and instruction for the Indigenous peoples of the Americas along with a grant of authority to colonize such lands (Deloria & Wilkins, 1999). An assumption of this responsibility is implicit in the subsequent transfer of claim from one sovereign to another throughout American history. The United States inherited this responsibility from Great Britain in the *Treaty of Paris* (1783). This marks the first instance of a general trust relationship between the legal and political predecessors of the United States of America and the Indigenous peoples of North America as a whole (Deloria & Wilkins, 1999).

Missionary perspectives on American Indian education defined the earliest policies in this area. As early as 1512, the *Law of the Burgos* held that all American Indian people under Spanish rule would have “the virtues of Christianity and civilization” (Utter, 1993, p. 195) impressed upon them. By 1568, Jesuit missionaries had begun “the long history of non-Indian education of Indian children,” when they opened a school in Havana, Cuba whose primary mission was the civilization of Indigenous children (Utter, 1993, p. 195).

It is important to remember that, although European-colonial imperatives were decidedly dominant, an exchange of cultural educational ideas has occurred throughout the history of Indian/White relations. During colonial times in America, American Indian education was “continuously immersed in the constant flux that characterized the exchange between cultures” (Szasz, 1988, p. 3). To the extent that cultural exchange did occur, however, it was nearly always weighted towards European-American cultural dominance, as can be seen in the heavy reliance on formal schooling as the dominant method of cultural exchange in an educational setting.

Although the tendency toward European educational settings is recognized, it is important to point out that Indigenous education systems were co-evolving alongside colonial European systems. Both systems were adapting to new pressures and ideas that were being exchanged between the different cultural groups. Examples include the inclusion of Native words in American English vocabularies for plants, animals, and other objects that were strange to the colonists (Weatherford, 1988). On the Indigenous side, the educational process was most obviously impacted by the introduction of written languages and new technologies like the gun. In many respects, it was a time of renaissance, albeit more at the expense of the Indigenous cultures. The heavy toll exacted on the Indigenous cultural groups of this hemisphere during that time was enormous in terms of loss of human lives and disruption of subsistence patterns.

Early colonial Indian education practices included taking American Indian children out of their family/community environment and supplanting them in the homes of European colonists in an effort to bring them to civility. The first British Indian school established for such purposes was developed in 1619 by the Virginia Company (Utter, 1993). More advanced schools were later developed for higher education purposes including the British missionary school, Harvard, founded in 1636 (chartered in 1650), and the College of William and Mary, chartered in 1693 (Lambert, 1997; Utter, 1993). Both were established as institutions that were to provide for, at least in part, the education of American Indian students (Lambert, 1997; Utter, 1993).

The evolution of the general trust relationship between the United States and American Indian tribes directly can be traced back to the early *Plan of Union*, in which a grand council and a president general were to share responsibility for Indian affairs and supervision of relationships (including educational responsibilities inherited from earlier colonizing sovereigns) with Indians

(Deloria & Wilkins, 1999). The decision to maintain federal control over Indian affairs after the American Revolution was likely made to avoid conflicts between the states and tribes (Canby, 1988).

Although rooted in British common law, U.S. American Indian education policy officially began in 1776, when the Continental Congress made the first federal U.S. appropriation for American Indian education. The first official treaty entered into between the U.S. government and an American Indian tribe occurred in 1778 with the Delaware (Cohen, 1982; Kappler, 1972). This treaty stipulated that a state would be developed for American Indians with representation in Congress. Of course, a representative state was never actually developed for American Indian people in the United States. The closest the U.S. ever came to fulfilling this promise was the development of the reservation system, the Bureau of Indian Affairs, and the Indian Territory which was admitted into the Union along with the Oklahoma Territory as one state under the *Hamilton Bill* (Maloney, 1998). Needless to say, there is a significant power differential between tribes and states today, due to the way the federal government has treated the tribes.

According to the Blue Dog and Kittson (1979) and the U.S. Department of Education (1991), the United States first included educational provisions in a treaty in 1794 in the Treaty with the Oneida, Tuscarora, and Stockbridge Indians. This treaty stipulates that:

The United States will provide, during three years after the mills shall be completed, for the expense of employing one or two suitable persons to manage the mills, to keep them in repair, to *instruct* some young men of the three nations in the arts of the miller and sawyer, and to provide teams and utensils for carrying on the work of the mills (emphasis added, Kappler, 1972).

While treaties are legal contracts entered into between nations, there were times during the U.S. American Indian treaty making period that a direct relationship was developed between the U.S. and American Indian tribal citizens due to the wording of certain treaty stipulations. For example, several treaties included U.S. citizenship options, whereby individuals had the choice whether to remain a citizen of their tribe or to become a citizen of the United States (Utter, 1993).

Multiple studies have suggested that over 116 of 371 American Indian treaties entered into by the U.S. contained educational provisions (Kappler, 1972; Oshie-Dorr, 1997; Reinhardt, 1998; United States, American Indian Policy Review Commission, 1976). These treaty provisions included school houses, books written in Native languages, teachers, domestic and agricultural training, farm equipment, black smithing, and major funding for education in general (Kappler, 1972; Reinhardt, 1998). Additionally, by entering into formal treaty agreements with the Indigenous peoples of this continent, the United States “committed itself to the permanent provision of a range of services to Indian populations (i.e., the citizens of the Indian nations with which the treaty agreements were reached)” (Jaimes, 1992, p. 778).

It was during the treaty making period that the U.S. “became increasingly concerned with the education of the Indian tribes in contact with white settlements and encouraged the activities of benevolent societies in providing schools for the Indians. Congress in 1819 authorized an annual ‘civilization fund’ to stimulate and promote this work” (Prucha, 1990, p. 33).

The treaty making period between the U.S. government and American Indian tribes was officially brought to a close with the passage of the Indian Appropriations Act of 1871 (25 U.S.C.A. § 71). This Act contained a rider which provided that the U.S. would no longer acknowledge or recognize any American Indian nation as a treaty making entity (Canby, 1988).

In 1789, the Constitution of the United States of America officially established that it would be the federal government's responsibility to control U.S. relationships with American Indian tribes, which included the treaty making process (Canby, 1988). Although the US Constitution contains no wording as to the exact relationship between the US and American Indian tribes, it does provide the federal government with the authority to deal with the tribes, and as such has been held to imply a trust relationship (Deloria & Wilkins, 1999). The Indian Commerce Clause, Art. I § 8, cl. 3, and the treaty making powers of the president, Art. II, § 2, cl. 2, are the most crucial to this interpretation. The Supremacy Clause, Art. VI, cl. 2, also has implications as to the status of treaties in respect to other forms of law in the US, as it elevates Federal law above all else. The above Clauses "support the federal-tribal relationship but leave unclear the status of that unique relationship to the federal-state relationship otherwise set forth in the Constitution" (McCoy, 2004).

The beginnings of the US Supreme Court's perspective on the trust doctrine are found in Chief Justice Marshall's decision in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). In this case, he characterized American Indian tribes as *domestic dependent nations*. He stated that the relationship between the federal government and the tribes "resembles that of a ward to his guardian" 30 U.S. (5 Pet.) at 17.

According to Canby (1988) the US Supreme Court first recognized the treaty basis of the general trust relationship in *United States v. Kagama*, 118 U.S. 375, 384-85 (1886). In this case, it was decided that: "From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power" (§13).

It was in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) that the Supreme Court espoused a view of the plenary authority of the US Congress as it derives from the trust relationship. In this case, the Court found that a treaty provision could not limit the ability of Congress to act “in respect to the care and protection of the Indians”. Thus the reference to “the power” in the *Kagama* case was now taken to include plenary authority. It is important to note that historically there would be no plenary authority if not for the acknowledgement of a trust relationship.

The earliest Supreme Court decision regarding a fiduciary educational relationship between the US and an American Indian tribe is the 1908 decision in *Quick Bear v. Leupp* (210 U.S. 50). In this case, Quick Bear of the Sicangu Lakota challenged the practice of the BIA using federal Indian funds that derived from treaties to support a Catholic school on the Rosebud Reservation. In this case, it was found permissible to utilize federal Indian funds for this purpose as it did not violate the Act of 1897, which prohibited the use of general federal funding for sectarian education in contract schools (30 Stat. 62, 79). Thus, a clear distinction was made between general federal funds and federal Indian funds. The BIA, as a representative agency of the US Federal Government, was found to be acting in a fiduciary trustee capacity.

More recently, the cases *United States v. Mitchell*, 445 U.S. 535 (1980), *United States v. Mitchell*, 463 U.S. 206 (1983), *United States v Navajo Nation*, 537 U.S. 488 (2003), and *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003) have further defined the view of the US Supreme Court in addressing the trust responsibility. In the *Mitchell* cases, the US Supreme Court addressed the multiple doctrines concerning the trust obligations between the US and American Indian tribes. Especially important in these cases was the distinction between what is known as a *general trust* responsibility (that the US is obligated to act in the best interest of

American Indian tribes—does not indicate a fiduciary duty), a *limited trust* (as in the case of the General Allotment Act, 25 U.S.C. § 348, where the federal government is required to act only in a specific sense short of fiduciary responsibilities), and an *express trust* (as found in the case of the Indian Long-Term Leasing Act, 25 U.S.C. § 396, where the federal government has specific responsibilities including fiduciary duties). A fiduciary obligation may be found in both an express trust situation, and in what may be called an *implicit trust* situation where the US clearly has control or supervision over American Indian resources. In the last instance, such control would need to exceed the level considered to be limited as in the first *Mitchell* case.

In the later two cases, the Supreme Court makes a distinction between an enforceable duty, and a non-enforceable duty as it relates to the trust doctrine. In *Navajo Nation*, the Supreme Court found that although the Indian Mineral Leasing Act requires the Secretary of the Interior's approval of any mineral leases negotiated by a tribe, it does not imply an enforceable duty to protect the best interest of tribes in the process. In *White Mountain Apache Tribe*, the Supreme Court found that the United States was responsible for maintaining Fort Apache which is held in trust for the Tribe as expressed in Public Law 86-392, 74 Stat. 8. (United States, 1960). The statute expressly states that the Secretary has the right to use the Fort, which it currently occupies and supervises. According to Canby (2004), these cases are examples of express (*Navajo Nation*) and implicit (*White Mountain Apache Tribe*) trust relationships.

On July 13, 1787, the U.S. Congress passed the Northwest Ordinance which covered governance of all U.S. territories North of the Ohio River. Article 3 of the ordinance reads as follows:

Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, *schools and the means of education* shall forever be

encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them (emphasis added, “The Northwest Ordinance,” 1998).

This article illustrates the importance of education and schools in diplomacy between the U.S. and the American Indian tribes of the Northwest (which includes the area now called Michigan).

The first Congressional act to acknowledge the federal responsibility for Indian education was the Act of March 30, 1802, which appropriated \$15,000 to “promote civilization among the friendly Indian tribes” (2 Stat. 139). The second Congressional act to address Indian education provided a basis for the subsequent development of further Indian education programs under the auspices of a federal agency. The Act of March 3, 1819, empowered the President of the United States to “employ capable persons of good moral character to instruct [the Indians] in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic” (25 U.S.C. § 271). This act had an annual appropriation of \$10,000 (*the civilization fund*) that was repealed by the Act of February 14, 1873 when the federal government began to appropriate funding for tribal specific programs (17 Stat. 437, 440, 461).

In 1832, the Office of the Commissioner of Indian Affairs was created by an act of Congress (4 Stat. 564). Under the supervision of the Secretary of the Interior, the Commissioner’s duties included Indian Federal education. According to Blue Dog and Kittson (1979), “by 1838 the Federal Government was operating 16 manual schools with eight hundred

students (800) and eighty-seven (87) boarding schools with approximately 2,900 students” (p. 7).

From the beginning of the U.S. American Indian treaty making period until its completion, it was generally through appropriations to missionary societies that the federal government sought to deal with educational provisions contained within treaties (Prucha, 1990; Utter, 1993), although in 1860 the BIA did open the first government run school for American Indian people on the Yakima Reservation in the State of Washington (Utter, 1993). It was in the late 1870s, however, that the federal government began to assert its dominion over the operation of schools for American Indian students.

While certainly not the first American Indian education initiative by the federal government, the off-reservation boarding school program was, undeniably, the most disruptive to the healthy socialization processes of American Indian cultures. In 1879, the first government run, off-reservation boarding school was opened at Carlisle, Pennsylvania, under the direction of Henry Pratt whose motto was “kill the Indian and save the man” (Utter, 1993, p. 196). “Regimentation, reading, writing, arithmetic, the manual trades, and home economics were drilled into the students until the school closed in 1918” (Utter, 1993, p. 196).

The predominant view of politicians and Indian Affairs "experts" during the late 1880s was that Indians should be "civilized" and assimilated into the Euro-American way of life as rapidly as possible, taking on the customs and economic activities of the settlers. The off-reservation boarding schools were a key component of this scheme: by separating children from their families and communities, their way of life could be changed more rapidly and thoroughly (Littlefield, 1989, p. 431).

Lomawaima (1994) suggests that the federal residential Indian boarding school initiative was "an educational crusade - vast in scope, military in organization, fervent in zeal, and violent in method - to transform young Indian people" (p. xi).

The federal Indian boarding school was not the only model of Indian education put forth during this time period. In 1889, "Commissioner Thomas J. Morgan presented at the Lake Mohonk Conference a detailed plan for a national system of Indian schools, modeled on the public school system of the states" (Prucha, 1990, p. 178). In this plan, he included "provisions for high schools, grammar schools, and day schools" (Prucha, 1990, p. 178).

The importance of education in the relationships between the U.S. government, American Indian tribes, and American Indian tribal citizens is also obvious in an act of 1893 (27 Stat. 614) which authorized the Secretary of the Interior to assign Indian school superintendents as Indian Agents. This presents a major shift in the practice of selecting Indian agents. Whereas in years prior, agents were politically appointed, educational administrators could now be promoted from superintendent to agent (Prucha, 1990).

By 1900, the federal government had established "147 reservation day schools, 81 reservation boarding schools, and 25 off-reservation boarding schools" (Utter, 1993, p. 196). In 1907, the Commissioner on Indian Affairs, Francis E. Leupp, submitted an annual report which encouraged the expansion of the on-reservation Indian day school system as opposed to the off-reservation boarding school system that was receiving much support (Prucha, 1990). In his report, he stated that the issue "pivots on the question of whether we are to bring civilization to the Indian or carry the Indian to civilization" (Prucha, 1990, p. 210). Leupp favored the former plan as he rationalized that "to plant out schools among the Indians means to bring the older members of the race within the sphere of influence of which every school is a center. This

certainly must be the basis of any practical effort to uplift a whole people” (Prucha, 1990, pp. 210-211).

Although government run Indian schools were opened as early as the 1860s, it wasn't until 1921 that federal legislators formalized the commitment of the U.S. in providing for Indian education. The Department of Education stated:

The practice of providing for technical or vocational education and of providing financial support for reservation schools, boarding schools, and other educational programs was formalized in 1921 by the Snyder Act. This legislation gave broad authority to the Bureau of Indian Affairs to spend federal money to educate and generally support the acculturation of Indians (U.S. Department of Education, 1991, p. xi).

In 1924 the U.S. passed the Indian Citizenship Act which declared that all American Indian people currently living within the U.S. were henceforth citizens of the United States (43 Stat. 253). Subsequent amendments to this act extended the declaration to the descendants of those people as well (Utter, 1993). Thus, in accordance with the Fourteenth Amendment to the Constitution of the U.S., American Indian tribal citizens not only became citizens of the U.S., but also became citizens of the states in which they resided (LaMorte, 1996).

In the years prior to the passing of the Indian Citizenship Act, it was customary that the federal government would pay tuition for American Indian students attending public schools within the states in which they resided (43 Stat. 536-537). Interestingly enough, although American Indian people were declared U.S., and subsequently state citizens in 1924, the federal government continued to provide tuition payments to states for the attendance of American Indian children at public schools as explained in the 1931 Appropriations Act for the Department

of the Interior. What is even more troubling, is that this funding came from accounts set up for American Indian tribes based on treaty obligations. Thus, tribes were actually paying for their own education, although they had little input into the kind of education they were receiving.

In 1928 Lewis Meriam published a report titled *The Problem of Indian Administration*. This report called for a new approach in federal government interactions with American Indian people in the area of education. The report stated:

The fundamental requirement is that the task of the Indian Service be recognized as primarily educational, in the broadest sense of that word, and that it be made an efficient educational agency, devoting its main energies to the social and economic advancement of the Indians, so that they may be absorbed into the prevailing civilization or be fitted to live in the presence of that civilization at least in accordance with a minimum standard of health and decency (Meriam, 1928, p. 21).

This report goes on to suggest that relationships with American Indian people would be better served through an educational leadership approach rather than more dictatorial approaches then common to the service (Meriam, 1928).

The report stated that “the first and foremost need in Indian education is a change in point of view” (Meriam, 1928, p. 32). It is alleged that the predominant view up to that point was that American Indian students needed to be far removed from their home environments in order to accomplish educational tasks (Meriam, 1928). What Meriam suggested is that routinization in American Indian education had to be eliminated. He argued that the structure of the federal boarding school system worked in opposition to the goals of developing initiative and independence within American Indian communities. He went on to recommend that the

curriculum used in American Indian schools should be developed based on the reality of the students attending the schools, in contrast to the uniform/standardized curriculum that was in use at the time.

Another important point that was made in the Meriam Report was about the inadequate funding that was put toward American Indian education at that time (Meriam, 1928). Meriam asserted that scanty funding in education inevitably leads to other serious problems down the road (Meriam, 1928). Tippeconnic (1999) suggested that lack of adequate funding was one of the most serious issues facing American Indian education today.

In 1929, the U.S. passed an act which authorized “agents and employees of any state to enter upon Indian tribal lands, reservations, or allotments therein ...to enforce compulsory school attendance of Indian pupils, as provided by the law of the State, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe” (25 U.S.C. § 231). This act was later amended to require that a tribal government adopt a resolution of consent prior to any state official being able to enter tribal lands to enforce state compulsory attendance laws. For at least eighteen years prior, states were able to enforce compulsory attendance laws on American Indian tribal citizens even while they were living within tribal lands, without the consent of tribal governments.

Although the Indian Citizenship Act of 1924 (43 Stat. 253) established that all American Indian people were to be considered residents of the states in which they resided, in 1934, the U.S. passed the Johnson-O’Malley Act “authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes” (48 Stat. 596). Initially this Act did not include Alaska and Oklahoma, but it was amended in 1936 to include both (49 Stat. 1458). Thus, this act was an

indication that the federal government recognized that even if American Indian people had access to state educational programs, the federal government still had certain responsibilities for Indian education regardless.

In 1934, the U.S. also passed the Indian Reorganization Act, (48 Stat. 984). This Act authorized an appropriation of \$250,000 annually “for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: Provided, that not more than \$50,000 of such sum shall be available for loans to Indian students in high schools and colleges” (48 Stat. 984). It is interesting that the method of providing educational programming to American Indian students was through the use of *loans* for tuition and not free or based on treaty obligations, recalling that American Indian students were now considered U.S. and state citizens as well as tribal citizens. This Act also provided that the term *Indian* as used in the act included all persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term “tribe” wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words “adult Indians” wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years. (48 Stat. 984)

What the definition does not include is how Indian blood was to be determined and who would be responsible for determining it. This definition may not hold-up in court today if it were

argued that it discriminated against American Indian people who did not fit the half-blood quantum requirement. Note that the definition of *tribe* includes the *Indians residing on one reservation*. This distinction is made here because several historic tribal entities were relocated to reservations where other tribes had already been living or relocated.

In 1953, Congress passed House Resolution 1242 (67 Stat. 41), which authorized the Secretary of the Interior “to convey to State or local governmental agencies or to local school authorities all the right, title, and interest of the United States in any land and improvements thereon and personal property used in connection therewith heretofore or hereafter used for Federal Indian school purposes and no longer needed for such purposes”. The law did require consent of the owner of the property, but it is unclear if ownership meant the tribe the school lands were being held in trust for, or non-Indian entities like churches. The same year, the U.S. adopted House Concurrent Resolution 108, in which Congress “declared it to be the policy of the United States to abolish federal supervision over tribes as soon as possible and to subject the Indians to the same laws, privileges, and responsibilities as other citizens of the United States” (Prucha, 1990, p. 233). Following the passage of this resolution, a number of tribes were terminated through Acts of Congress.

This era also saw the enactment of Public Law 83-280 (1953) (commonly referred to as PL280) “which extended state jurisdiction over offenses committed by or against Indians in the Indian country” (Prucha, 1990, p. 233). This Act was amended in 1968 to require tribal consent prior to any state assuming jurisdiction (State of Michigan, Dept. of Social Services, 1986).

Indian relocation programs, pursuant to the 1940s and 1950s, also had an impact on the growth of urban Indian populations, and subsequently American Indian public school students.

It is estimated that over 100,000 American Indian people participated in these programs between 1952 and 1972 (Nagel, 1996).

[The relocation] program involved an active attempt by the federal government to move Indian people from the reservations into the cities. Although such programs were in place as early as the 1930's they accelerated rapidly in the 1940's and 1950's, as a means of dealing with inadequate land resources on many reservations. Indian veterans returning from World War II were especially encouraged to remain in cities rather than return to their reservations. Other Indians were moved from the reservations to the cities with promises of employment and economic opportunity. These promises frequently failed to materialize, and it is estimated that as many as 60-90 percent of these people managed to find their own way back to the reservation. Many of those who chose to remain, or who were simply without the economic resources to finance a return to their homes, remained in the cities, often in dire poverty (State of Michigan, Department of Social Services, 1986, p. 30).

As a consequence of this program, urban Indian populations increased significantly, rising from approximately 13 percent of the total Indian population in the U.S. in 1950 to about 44.5 percent in 1970 (Nagel, 1996).

In 1966 the Rough Rock Demonstration School, the first American Indian controlled school, was established on the Navajo Reservation with funding from the BIA and the Office of Economic Opportunity (Tippeconnic, 1999). This school had an all Navajo elected school board, and integrated Navajo language and culture into the curriculum (Tippeconnic, 1999).

In 1968, Congress passed the Indian Civil Rights Act, which extended many of the provisions of the Bill of Rights to American Indian tribal citizens living within the jurisdiction of tribal governments (Prucha, 1990). This act in some ways legitimated the institution of tribal government, as it required the consent of tribes prior to the state assumption of jurisdiction. In other ways it further diminished the sovereign status of tribes within a U.S. legal/political framework, as it intervened into the relationships between American Indian tribes and the citizens of those tribes. This same year, the Navajo Community College (now Dine' College) was established as the first tribally operated community college, and like the Rough Rock Demonstration School, had a governing board comprised of all Navajo people and emphasized Navajo language and culture (Prucha, 1990; Tippeconnic, 1999).

According to Danziger (1991), by 1969 U.S. Indian education policy had “reaped a bitter harvest throughout America” (p. 134). “Whether examining national data, an individual BIA school, or native performance in public institutions, the outcome was ‘a dismal record of absenteeism, dropouts, negative self-image, low achievement, and ultimately, academic failure for many Indian children’ ” (Danziger, 1991, p. 134). Nearly 75% of Indian heads of households had not graduated from high school, let alone attended college (Danziger, 1991, p.134). That same year, in a Special U.S. Senate Subcommittee on Indian Education report titled *Indian Education: A National Tragedy—A National Challenge*, the U.S. Senate emphasized the need for cultural relevance in American Indian education, and that American Indians must be given greater control over their children’s education (Utter, 1993).

In 1970, U.S. President Richard Nixon delivered a Special Message on Indian Affairs to Congress in which he attacked tribal termination policies and set forth a new direction in U.S. American Indian policy—Indian self-determination (Prucha, 1990).

The first and most basic question that must be answered with respect to Indian policy concerns the historic and legal relationship between the Federal government and Indian communities. In the past, this relationship has oscillated between two equally harsh and unacceptable extremes (Prucha, 1990, p. 256).

The extremes he referred to were termination of American Indian tribes, and excessive dependence of tribes on the federal government (Prucha, 1990). Thus he declared, “it is time for a new era in which the Indian future is determined by Indian acts and Indian decisions” (Prucha, 1990, p. 256).

In January of 1971, the NAACP Legal Defense Fund and the Harvard Center for Law and Education announced that they had discovered that “state and local school officials [had] misused millions of federal dollars earmarked for the education of impoverished Indian children” (Legal Groups, 1971). The BIA had “encouraged such practices ... by looking the other way when districts misused funds, and then granting them extra Indian student money to replace what they’d misused” (Legal Groups, 1971). The study also pointed out that “by every standard, Indians [received] the worst education of any children in the country They [attended] shabby, overcrowded public schools which [lacked] even basic resources ... with many teachers openly disrespectful of Indian heritage and culture” (Legal Groups, 1971).

In 1972, Congress passed the Indian Education Act. This act authorized funding for the improvement of educational opportunities for American Indian children, improvement of educational opportunities for American Indian adults, the establishment of an Office of Indian Education in the U.S. Department of Education, and the creation of a National Advisory Council on Indian Education (Prucha, 1990). One of the most important features of this act, however,

was that it required American Indian participation in planning the relevant educational programs at the local level (Prucha, 1990).

According to Olson (1997), the passage of the Indian Self-Determination and Education Assistance Act (P.L. 93-638 of 1975) had the effect of leading many Indian people to believe “they had succeeded, at least temporarily, in reversing the direction of government policy toward Indians” (p. 39). The abstract for this act reads as follows:

An Act to provide maximum Indian participation in the Government and education of Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes. (United States, 1975)

Given the language of this abstract, it is clear why people may have thought the trend in U.S. American Indian policy had been reversed. In relevance to relationships between the U.S., tribes, and individuals, it should be noted that while including tribes as recipients of federal programs and services, this act supports the idea of individual American Indian citizen’s control of educational activities.

In 1976, the American Indian Policy Review Commission published a final summary of reports of its separate task forces. In this final report, the Commission put forth two “fundamental concepts which must guide future policy determination” (Prucha, 1990, p. 282). These concepts are as follows:

1. That Indian tribes are sovereign political bodies, having power to determine their own membership and power to enact laws and enforce them within the boundaries of their reservations, and
2. That the relationship which exists between the tribes and the United States is premised on a special trust that must govern the conduct of the stronger toward the weaker (Prucha, 1990, p. 282).

While the Commission attempted to define the relationship between American Indian tribes and the U.S. as one of sovereignty and trust, the Vice Chairman of the Commission had a dissenting view. In his estimation,

War, conquest, treaties, statutes, cases, and history have extinguished the tribe as a general governmental entity. All that remains is a policy. And, that policy is that American Indian tribes may govern their own internal relations by the grace of Congress. General governmental powers exist in this country only in the United States and the States (Prucha, 1990, p. 283).

Representative Lloyd Meeds did not share a perspective which supported the U.S. treatment of American Indian tribes as sovereign governments. Further on in his dissent, he questioned “What does it mean to be a citizen of a State and yet be immune to its laws? What is the basis for asserting that reservation Indians shall have representation in State government, but without taxation?” (Prucha, 1990, p. 283).

In 1978 Congress passed the Tribally Controlled Community College Assistance Act. This act provided “grants for the operation and improvement of tribally controlled community colleges to insure continued and expanded educational opportunities for Indian students” (Prucha, 1990, p. 290). During the same year the Education Amendments Act was passed. In

Title XI, Indian Education, it provided: standards for the basic education of American Indian children in BIA schools; national criteria for dormitory situations; facilities construction; BIA education functions; allotment formula; policy for American Indian control of American Indian education; education personnel; recruitment of American Indian educators; and rights of American Indian students (Prucha, 1990, pp. 292-293).

The Indian Child Welfare Act of 1978 spoke of the importance of recognizing tribal sovereignty as it pertained to tribal children. Gross (1989) asserted that “of all the legislation enacted by Congress during the 1970s, the Indian Child Welfare Act (ICWA) of 1978 provided perhaps the purest and most comprehensive example of self-determination ideology at work” (p.38). She explained that while the Senate hearings provided evidence that discrimination and prejudice had significantly impacted placement and adoption practices, they also acknowledged that American Indian children are the most important “tribal resource—its primary means of insuring continued survival and cultural integrity” (Gross, 1989, p. 39).

In his 1983 statement on Indian policy, President Ronald Reagan stated that since 1975, with the passage of the Indian Self-Determination and Education Assistance Act, little more than rhetoric had been accomplished in the area of promoting tribal self-government (Prucha, 1990). He pointed out that major functions of tribal governments, including education of tribal children, were still being carried out by federal employees. In his estimation, this only served to undermine the concept of self-government (Prucha, 1990). His plan to promote less dependency on the federal government focused on tribal economic development. This was to be accomplished through federally deregulating reservations; building partnerships between the tribes, the federal government and industry; and by subsequently encouraging tribes to provide “a greater percentage of the cost of their self-government” (Prucha, 1990, p. 302).

In 1988 a report on BIA education was released. This report explained that since the 1960s, the federal government had adopted American Indian self-determination as its official policy perspective (Prucha, 1990). “The cornerstone of this framework has been the promotion of the assumption by tribes and other Indian groups of direct responsibility for the education of Indian children. Following this objective, Indian groups have contracted for the operation of many elementary and secondary schools formerly operated by the BIA” (Prucha, 1990, p. 309). This report also made a distinction between tribally-operated schools (contract schools), BIA-operated schools (schools administered by the BIA), and cooperative schools (BIA-operated schools that established cooperative agreements with local public schools). Together these schools comprise the BIA funded school system (Prucha, 1990). The report also explained that BIA education goes beyond elementary and secondary education, in that it provided “support for higher education, adult education, assistance to Indian students in public schools, and other program elements” (Prucha, 1990, p. 311).

Later in 1988 Congress passed the Tribally Controlled Schools Act which recognized that BIA control over the contracting process outlined in the Indian Self-Determination and Education Assistance Act of 1975 had not provided an opportunity for Indian people to effectively voice their perspectives in planning and implementing components of the programs that had been developed for their benefit (Prucha, 1990). The act authorized a tribally controlled schools grant program which affirmed “the reality of the special and unique educational needs of Indian peoples, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities” (Prucha, 1990, p. 315). While this act also authorized the BIA to fund tribal departments of education, this has yet to occur (Tippeconnic, 1999).

According to Tippeconnic (1999), the 1990s have seen significant increases in tribal and American Indian control of education within U.S. federal American Indian education policy. “During the 1994-95 school year, for the first time in history, there were more tribally controlled schools (93) than BIA operated schools (92) at the elementary and secondary levels. Today there are over 114 tribally controlled schools educating over 50,000 students” and 31 tribal colleges educating over 25,000 students (Tippeconnic, 1999, p. 38).

In 1997 the National Indian Education Association published a Comprehensive Federal Indian Education Policy Statement that was endorsed by a number of American Indian tribes and organizations. This statement was intended “to set national guidelines in Indian education for federal agencies, including the Departments of Education, Interior, Health and Human Services, Agriculture, Commerce, and Labor” (National Indian Education Association, 1997, p. i). The statement “recognizes and supports tribal sovereignty, treaty rights, the government-to-government relationship between the United States and Indian nations, the trust relationship of the federal government with Indian people, and Indian self-determination” (National Indian Education Association, 1997, p. ii). This statement also “promotes tribal languages and cultures, tribal control of education, Indian education standards, quality Indian education and educational research, tribal consultation, and accountability as the basis for student academic success” (National Indian Education Association, 1997, p. ii).

While it is encouraging that the current trend in U.S. federal American Indian education policy supports tribal control of systems located within tribal jurisdiction, most American Indian students attend public state operated schools (U.S. Department of Education, 1996). The Comprehensive Statement on Indian Education addressed this issue stating that:

Federal agencies shall carry out statutory obligations to provide education to Indian students residing outside of Indian country by:

- 1). implementing the decisions of Indian parent committees and Indian boards regarding education programs and funding; and,
- 2). recognizing and supporting decisions of tribes regarding their members who are students residing outside of Indian country (National Indian Education Association, 1997, p. 5).

It is asserted in this study that tribal governments retain sovereignty over the educational interests of their citizens unless that right has been clearly surrendered through treaty negotiation with the United States (Lomawaima, 1998). In this study, it is advanced that American Indian tribes retain certain legal/political jurisdictional interests in the education of their citizens even while they are in attendance at a public state institution. This position is rather serious, given that there is an estimated 91-92% of all 491,936 American Indian school-age students attending public state schools who are often assumed to be beyond tribal government jurisdiction (National Center for Educational Statistics, 1997; Wells, 1991).

Tippeconnic (1999) asserted, “a movement toward self-determination is taking place among American Indians and Alaska Natives. This movement toward Indian control of Indian education actually started in the 1960s, secured legislation in the 1970s, survived the 1980s, picked up momentum in the 1990s, and promises to gain even greater significance beyond 2000” (p.33). This developing system “includes *every level of education*—from early childhood to graduate school” (emphasis mine, Tippeconnic, 1999, p. 33).

The principles of federal Indian law “derive from the *sui generis* (unique) political status of tribes under federal law and the *sui generis* federal-tribal relationship recognized in federal

law” (McCoy, 2004). The general trust relationship between the US and American Indian tribes is not necessarily defined in any particular piece of legislation, treaty, or court case, although it is often referred to in principle for the same. This kind of trust is like that referred to in Executive Order 13175 signed by President Clinton in the year 2000, which stated:

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes (Executive Order 13175).

An example of an implicit trust situation is found in the recent case *Cobell v. Norton* (United States, 2002), where the Department of Interior has argued that common law fiduciary duties do not apply to the Indian trust fund. United States District Judge Lamberth suggested otherwise in stating that the range of duties for the Department and the nature of such duties “are coextensive with the duties imposed upon trustees at common law” (United States, 2002).

President George W. Bush referenced Executive Order 13175 in his own Executive Order on American Indian and Alaska Native Education (2004), where it states: “...to recognize the unique educational and culturally related academic needs of American Indian and Alaska Native students consistent with the unique political and legal relationship of the Federal Government with tribal governments...”. While importantly including the above wording, and thereby reinforcing earlier self-determination era policies, the President also included some nuances in the recent executive order. He makes a point of including the No Child Left Behind Act of 2001

by stating “It is the purpose of this order to assist American Indian and Alaska Native students in meeting the challenging student academic standards of the No Child Left Behind Act of 2001 (Public Law 107-110) in a manner that is consistent with tribal traditions, languages, and cultures” (Executive Order 13175).

A working group on American Indian and Alaska Native Education is also created by this executive order which will be co-chaired by the Secretaries of the Interior and Education. The working group is to consult with representatives of American Indian and Alaska Native tribes and organizations, and with the National Advisory Council on Indian Education. The working group is to complete a study and report that focus on American Indian and Alaska Native student achievement under the No Child Left Behind Act. The study will include the following items:

- i. the compilation of comprehensive data on the academic achievement and progress of American Indian and Alaska Native students toward meeting the challenging student academic standards of the No Child Left Behind Act of 2001;
- ii. Identification and dissemination of research-based practices and proven methods in raising academic achievement and, in particular, reading achievement, of American Indian and Alaska Native students;
- iii. Assessment of the impact and role of native language and culture on the development of educational strategies to improve academic achievement;
- iv. Development of methods to strengthen early childhood education so that American Indian and Alaska Native students enter school ready to learn; and
- v. development of methods to increase the high school graduation rate and develop pathways to college and the workplace for American Indian and Alaska Native students.

It is interesting to note that the last provision of the executive order makes the point of stating that the order “is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person”. Perhaps this is a sign of the times, when the trust relationship between the United States and American Indian tribes is potentially costing the federal government billions of dollars.

According to a recent article that appeared on Indianz.com (Bush Budget, 2004), trust reform efforts under the Bureau of Indian Affairs will receive a great budget increase this year, but Indian education is going to be cut by nearly \$79 million. The greatest cuts will come in the areas of construction and renovation for tribal schools which is being cut by nearly \$65 million. The article suggests that many tribal leaders believe that historical accounting of Indian trust accounts is being paid for by cutting Indian education.

In summary, the educational trust relationship between the U.S., American Indian tribes, and American Indian tribal citizens has impacted and been impacted by a number of policies throughout the history of federal American Indian education. This dialectic relationship originates from early interactions between colonial governments and the Indigenous peoples of this continent. These interactions have influenced treaty negotiations, Congressional acts, and court decisions. Within the current framework of American Indian self-determination, the U.S. has developed policy that is supportive of both tribal control of education within Indian country, as well as American Indian participation in planning and implementing programs that impact American Indian people within public state educational systems.

American Indian Education in Michigan

While there are many parallels between American Indian education on national and state levels, this section of the study is focused on the unique history of American Indian education within the state of Michigan. This section provides Michigan specific examples from eras included in the previous section.

Rosson (1979) presents five major policy considerations which have impacted American Indian education in Michigan. These considerations include: (a) early European involvement in the Education of Michigan tribes, (b) the use of education as a tool by the U.S. to implement its Indian civilization policy, (c) the use of educational/economic goods and services as counter incentives to British influence, (d) U.S. economic gains which included the exchange of Indigenous lands for educational goods and services, and lastly, (e) policies of allotment which “forced Indians into a state of deprivation and poverty” (Rosson, 1979, p. 18).

Michigan tribes were in a position, prior to American expansion into the Great Lakes Region, to provide for their own culturally relevant educational goods and services (Cleland, 1992; Rosson, 1979). It wasn't until 1634 that early European religious sects began infiltrating the Great Lakes Region for the dual purposes of conversion and instruction of the Indigenous peoples of this region (Rosson, 1979). The French were the first group of European colonists to physically occupy the Great Lakes Region and to establish subsequent outposts in the mid-1600s. These establishments were primarily focused on fur-trading and conversion of the Indigenous peoples into Christianity (Cleland, 1992; Tanner, 1987). The first recorded European contact with the Indigenous peoples of the area now known as Michigan was in 1615, when French explorer Samuel de Champlain met up with the Ottawa on the shore of the Georgian Bay (Cleland, 1992). In 1720, France officially claimed rule over an area of land which included the

Great Lakes Region without the consent of the Indigenous peoples living within the same area (Tanner, 1987).

It is estimated that the Anishinaabek³ were participants in over half of the 371 treaties formally ratified between the United States and the Indigenous peoples of this continent (Eckert, 1997), the earliest of which was a treaty of peace occurring in 1785 (Kappler, 1972). This treaty is also the first to stipulate for U.S. “ownership” of property, Detroit and Michillimachenac, within the current State of Michigan (Kappler, 1972).

The Anishinaabek had been interacting with the French and British colonial governments for over one hundred years (Tanner, 1987) before they began making treaties with the U.S. government. Although there were considerable differences in the way the French and British interacted with the Anishinaabek, it is proposed here that the Anishinaabek were much more accustomed to dealing with these governments than they were at dealing with the relatively new United States government.

According to Tanner (1987), the territory of Michigan was established in 1805 with a white population of approximately 4,800. This was a small percentage of the total white population of the entire Great Lakes Region at that time, which totaled approximately 345,000. The largest percentage of white population in the Great Lakes Region was concentrated in the State of Ohio, which had received statehood in 1803, and had approximately 230,000 white residents by 1810. According to Van Alstine (1998), the Michigan Territory was originally only the Lower Peninsula and the eastern most portion of the Upper Peninsula. In 1818, the U.S. extended the Territory’s boundaries to include lands that fall within the present states of Wisconsin and Minnesota.

Rosson's (1979) study shows how conflicting value systems between the Indigenous peoples of the Great Lakes Region and the Americans affected federal Indian education policy development. The first appropriation from the federal government for the purpose of educating American Indians within the Michigan Territory was approved in 1808 by then President Jefferson, who afforded \$200 per year for the support of a private Indian school located in what is now Detroit. This school was intended to provide Indian students with agricultural training as well as "rudimentary normal education" (Rosson, 1979, p. 5). Interestingly enough, Father Gabriele Richard, the Catholic Priest who was in charge of the Indian school, pronounced that it was the "duty" of the citizens of the United States to provide for the education of the Indigenous peoples of this society (Rosson, 1979, p. 9). Public messages from former President of the United States, Monroe, also evidenced conflicting cultural values, as he made it clear that it was the aim of the U.S. to civilize the Indian for his own good and the good of the nation (Rosson, 1979, p. 6-7). This difference in values eventually led to the Anishinaabek fighting against the United States in the War of 1812.

The imbalance of power in treaty making processes between the Anishinaabek and the United States is even more obvious when considering that most of the treaties entered into between the two nations followed the War of 1812, when the Anishinaabek openly fought against the U.S., along with the British and other intertribal forces (Tanner, 1987). It is also important to note that "Indian treaties were written in English, and their terms were often explained inexactly to the Indian signatories" (Canby, 1988, p. 85).

One important concern is that although at a serious disadvantage in the treaty negotiation process because of language differences and military conquest, the Anishinaabek were not necessarily unaware of the implications of these legal/political agreements. The mere fact that

treaties were pursued by the U.S. government with the Anishinaabek suggests that the Anishinaabek were still seen as a sovereign power, even after the War of 1812. What is questionable is the intent of both the Anishinaabek and the U.S. government in formalizing certain agreements on education between these sovereigns by treaty making. While it is conceded in this study that some of those who represented the Anishinaabek in the treaty making process may not, in fact, have been selected by the Anishinaabek to speak on their behalf, it is still a fact that they did. According to Canby (1988), “The federal government frequently negotiated with individuals whom *it* had selected and who were *not* the traditional leaders of the concerned tribes” (emphasis added, p. 85). Although these agents may have been more able to communicate in English, they may not have had the best interests of the Anishinaabek at heart. While it may be impossible to prove conspiracy on the part of the U.S. in pursuing treaties with unofficial representatives of the Anishinaabek, it is apparent that the U.S. had good motive for doing so. What are left to deal with today are the outcomes of these treaties.

While subsequent chapters of this study will deal directly with the educational content of treaties between the U.S. and the Anishinaabek, it is important to point out a few treaty provisions that reflect the early history of U.S. American Indian education policy in the territory or State of Michigan. The first treaty between the Anishinaabek and the U.S. government to contain educational provisions was the Treaty with the Wyandot, Etc.(A.K.A. The Treaty of Fort Mięgs), 1817. While the Treaty of Fort Mięgs was the first to include educational provisions, it was the Treaty with the Ottawa, Etc., 1821, that Tanner (1974) suggests was the first treaty that helped Indian education in Michigan “become a reality” (p. 16).

The Territory of Michigan was accepted as a state in the Republic in 1837 after the Treaty of 1836 was successfully negotiated, which ceded the largest portion of land over to the

U.S. from the Anishinaabek. In all, seven major land cessions of Michigan occurred between the years 1807 and 1842. According to United States Department of Commerce Bureau of the Census (1970), prior to the Treaty of 1836, Michigan was considered a territory consisting of 186,052 square miles of land and included what is now known as Wisconsin. After the treaty, Michigan became a state consisting of 57,480 square miles of land. The impact of this major land acquisition is most obvious in the rise of the estimated white population in Michigan between 1830 and 1840. The white population rose from 32,000 to 212,000 in just 10 years (United States, 1970).

Following Michigan statehood, there was an evident change in treaty relations. The balance of power became increasingly unbalanced, as the U.S. no longer entered into any treaties with The Three Fires Confederacy, only with individual tribes and tribal communities. This may have been because the Three Fires Confederacy no longer had a contiguous land base, and was, therefore, no longer seen as a sovereign entity in and of itself. This is the point at which the Anishinaabek became politically isolated on reservations surrounded by state borders.

An example of the outcome of the political isolation can be seen in the treaties between the Chippewa and the U.S. of 1837 (Kappler, 1972). In these treaties, the Chippewa of Detroit and the Chippewa of St. Peters are treated as separate nations capable of entering into treaty with the U.S. government. An equivalent of this practice would be for the Anishinaabek to enter into a treaty with the U.S. government, then the State of Michigan, and finally the City of Detroit. This trend in treaty relations between the Anishinaabek and the U.S. continued throughout the remainder of the treaty making period and helped to determine current relations between the several federally recognized Anishinaabe tribes and the U.S. today. Although the U.S. began making treaties with sub-groups of the Anishinaabek, it is clear in the Treaty with the

Potawatomi Nation, 1846, that even these sub-groups were seen as sovereign nations which maintained national borders.

In the Treaty with the Chippewa of the Mississippi and Lake Superior, 1847 (Kappler, 1972), the beginnings of federal Indian identification policy can be seen. In Article 3 of the treaty it stipulates that:

...The United States further agree to pay to the Mississippi Indians the sum of one thousand dollars annually for forty-six years; but it is agreed that whenever the Chippewas of the Mississippi shall agree as to the schools to be established, and the places at which they shall be located, the number of blacksmiths and laborers to be employed for them, and shall request the United States to expend, from year to year, the annual payments remaining unpaid, in support of schools, blacksmiths, and laborers, the same shall be expended by the United States for such purposes; and that Chippewas of full or mixed blood shall be employed as teachers, blacksmiths, and laborers, when such persons can be employed who are competent to perform the duties required of them under this and all former treaties. (Kappler, 1972, p. 567)

Here we see early examples of American Indian blood quantum identity, and tribal specific American Indian job preference. What is unclear is whether it was the U.S. government or the Anishinaabek that were to determine full or mixed blood identity and competency.

In many treaties between the Anishinaabek and the United States, educational provisions often include some consideration for the development of missions or church related activities. This is inordinately conspicuous in the Treaty with the Ottawa and Chippewa, 1855, as is further discussed in Chapter 4. According to Littlefield (1989), the federal government relied almost wholly on church organizations to provide the educational programming guaranteed by treaties.

Recall this practice as early as 1817 in the Treaty of Fort Miegs (Kappler, 1972). It wasn't until the late 1880s that the federal government began developing their own schools. In fact, many of the federal schools were merely church run schools that had been taken over by the federal government.

The transition between church run Indian mission schools and federal Indian schools is well illustrated by the transition between the Bradley Mission School and the Mt. Pleasant Indian Boarding School. The Bradley Mission had been developed by the Methodist Episcopal Indian Church in the 1850s on reservation land that was later designated by the Treaty with the Chippewa of Saginaw, Etc., 1855, to be used as a mission (Kappler, 1972, p. 733). The Treaty of 1864 redefined previous treaty boundaries, subdivided the reservation into allotted sections, and re-designated a portion of land to be used as a mission (Kappler, 1972, p. 868). The educational provisions included in the Treaty of 1864 were the legal basis for the establishment of the federally run Mt. Pleasant Indian Boarding School.

The federally operated Mt. Pleasant Indian Boarding School was opened in 1891, on the same properties that had been reserved as a mission site by the Treaties of 1855 and 1864. This school remained in operation until the early 1930s (Littlefield, 1989). In 1934, the State of Michigan entered into an agreement with the federal government, that in exchange for title to the properties of the Mt. Pleasant Indian Boarding School, the State would take over responsibility for providing a wide range of federal services, including educational services, to American Indian people resident within the State. Thus, the history of the mission properties reflects the transition of Indian education from tribal, to church, to federal, and finally, to state (Reinhardt, 1998).

According to Littlefield (1989), the Mt. Pleasant Industrial School served approximately 350-375 students from 1920 to the spring of 1933. She suggested, at that point, most students were sent home. Only about 60 orphans remained in residence and began attending Mt. Pleasant public schools while foster care placements were being arranged for them—primarily in European-American homes. A historical sketch, developed by Mt. Pleasant Regional Center staff (State of Michigan, 1985), stated that at the close of the school there was a population of 45 students still in attendance.

According to Van Alstine (1998), the U.S. Secretary of War established the Michigan Superintendency in 1805 after Michigan became an official territory of the United States. From 1805 to 1815, the Michigan Superintendent had complete charge of U.S. Indian affairs in Michigan Territory. From 1815 to 1852, several agencies and sub-agencies were established and assigned to the Michigan Superintendency. The Bureau of Indian Affairs was established in 1824, and was informally administered under the direction of the Secretary of War until 1832, when Congress authorized the appointment of a Commissioner on Indian Affairs. The Bureau was subsequently moved from the War Department to the Department of the Interior in 1849. From 1852 to 1889, the Mackinac Agency became known as the Michigan Agency, as it was the only remaining agency in Michigan. Another office was later opened in Mackinac and became known as the BIA Mackinac Agency, but was never recorded in the National Archives for unknown reasons. This later agency was closed in 1919, due to cutbacks in federal spending (State of Michigan, Department of Social Services, 1986), but also due to the fact that the government considered all Indians east of the Mississippi to be fully assimilated into U.S. society (Van Alstine, 1998).

There were nine Indian day schools under the supervision of the Mackinac agency in the late 1800s in Michigan. These included the Garden Island Day School, the Nawbetung Day School, the Longwood Day School, the Chippewa Day School, the Neppessing Day School, the Hannahville Indian Mission Day School, the L'Anse Indian Day School, and the Sugar Island Indian Day School (Lee, 1881; United States Department of the Interior, 1882).

According to Morris (1994), by 1913, "Indian students were attending a wide range of schools. In addition to 69 Indian mission boarding schools enrolling 4,804 students, there were 328 government schools (217 day schools, 76 reservation boarding schools, and 35 off-reservation boarding schools) and 45 public schools serving Indian students" (p. 114). In Michigan in 1913, there was at least one Indian mission boarding school in operation, that being the Holy Childhood boarding school; one off reservation boarding school, the Mt. Pleasant Industrial School; and nine Indian day schools as noted above. The extent of Indian student enrollment in the Michigan public school system during that time period has not been adequately researched for inclusion in this study, but apparently there was some participation in public schools, as it was reported to the Bureau of Indian Affairs Mackinac Agency that problems existed because the Indian students were attending such schools (Lee, 1881).

Following the passage of the Indian Reorganization Act of 1934, several Indigenous groups began to organize towards the process of federal recognition. In Michigan, the earliest Indigenous groups to apply for recognition included the Bay Mills Indian Community, the Keeweenaw Bay Indian Community, the Hannahville Indian Community, and the Saginaw Chippewa Indian Tribe (Van Alstine, 1998). There are now 12 federally recognized tribes within the State of Michigan borders (see Appendix A and B).

Although passed in 1934 as part of the Indian New Deal legislation, Johnson O'Malley (JOM) Act funds failed to reach Michigan tribes until 1972. This was due to the Comstock agreement (see Appendix C) which stipulated that the State of Michigan would "receive and care for in State institutions Indians resident within the state on entire equality with persons of other races and without cost to the Federal government" (Comstock, 1934). The only source of contemporaneous construction of the intent of this agreement from the time it was written comes from Acting Commissioner of Indian Affairs William Zimmerman who interpreted it "to mean that public schools in Michigan shall not charge tuition for Indian pupils" (Zimmerman, 1934). In 1935, he again addressed the meaning of the Agreement in a letter to former Congressman Albert Engel by stating:

We are not overlooking the educational needs of Michigan Indian children although we think it is in their best interest to attend public schools, high schools, colleges and trade schools with members of other races than to establish separate schools for the Indians. Of course, under existing law providing for their education by the state, such separate schools would be impracticable (Zimmerman, 1935).

These interpretations of the Comstock Agreement are not only the sole source of contemporaneous construction of the Agreement, but are also undisputed by any other opinion from that time period (Inter-Tribal Council of Michigan, 1995).

Although none of the reservation areas in Michigan were directly impacted by tribal termination policies, termination was considered by both the federal government and tribal leadership at one point. In fact, by June of 1957, rough draft legislation had already been created which would have lifted all restrictions on lands that were held in trust by the Federal Government for American Indian tribes within the State of Michigan (Proposal to End, 1957).

This proposed legislation was presented to tribal leadership by then Superintendent of the Great Lakes Indian Agency, Emmett J. Riley, who was stationed in Ashland, Wisconsin, and Fred Hatch of Sault Ste. Marie, a member of the newly established Indian Commission in the Governor's office. It was explained by the Superintendent that termination agreements had taken effect in other states that year including Wisconsin, Oklahoma, and Oregon. He further explained that a termination agreement would not affect Indian people in Michigan like it affected Indians in other states. In other states, Indian people received federal benefits based on their Indian status, whereas "there [had] been no federal services rendered to Indians in Michigan since 1932, except to keep their lands in restricted status" (Proposal to End, 1957).

Although none of the citizens of Michigan tribes were directly affected by termination policies, they were affected by government-sponsored Indian relocation programs of that same time period. The Detroit Indian Center is considered the oldest and one of the largest urban Indian Centers in the U.S., primarily due to the automobile industry and the relocation program (State of Michigan, Department of Social Services, 1986).

According to Danziger (1991), by 1970 Detroit's Indian population was estimated at 5,207. This number is 2,293 less than reported by the U.S. Bureau of the Census. He explains, "In that year the census documented that native socioeconomic levels were shockingly low and generally typical of conditions found among other Indians in such cities as Chicago, Denver, and Albuquerque" (p. 12). He further explains that

Indian migration to Detroit from rural reservations in Michigan and elsewhere began about the turn of the century and greatly increased during the fifties and sixties, thanks to an aggressive federal relocation program and the lack of job opportunities on the reservations. The Chippewa, Cherokee, Iroquois, and Sioux

nations contributed the largest number to Detroit's burgeoning native community. (p. 13)

Although many of the Indigenous peoples who made their way to Detroit during this time period may have been previously living in rural or reservation areas, in the case of the Chippewa or Anishinaabe Ojibway it is important to remember that the area of Detroit has always been a significant cultural area. In the case of the Ojibway, the migration may be more properly viewed as a return to a traditional cultural area.

In Michigan, there had been a virtual lack of governmental services specific to American Indian people from the 1930s to the 1960s. During a conference at Northern Michigan University in 1965, attended by tribal chiefs, U.S., state and county representatives, and BIA officials, then superintendent of the BIA Great Lakes Indian Agency, Emmet J. Riley, explained that the BIA was "often asked in Michigan, 'What are you doing for the Indians?' But we would like to ask what are you doing here in this state for them?" (Claims State, 1965). He further explained that

Since about 1932, we have been phasing out our activities in the state, because at that time Gov. William A. Comstock indicated the state would shoulder a larger share of caring for its Indians.... Our job in this state for the past several decades had been little more than custodian of lands making up the four reservations in the state. (Claims State, 1965)

Just a decade prior, the same superintendent was working with the Michigan Commission on Indian Affairs (MCIA) to terminate the trust status of American Indian tribal lands in Michigan. According to Riley, "the state [had] been doing so little, the Bureau has had to get back into action in Michigan to fill the void" (Claims State, 1965).

By 1968, college education for American Indian students in the State of Michigan began to appear as a tribal leadership issue in the media (State Indian, 1968). In August of 1968, at a Michigan Commission on Indian Affairs meeting at Lake Superior State University, Emmett J. Riley made suggestions for the “support and organization in college education” (Film Highlights, 1968) for Michigan Indian students. He compared Michigan, with only twenty-three Indian college students, to the other states located in the Great Lakes area, and suggested “that it was the only state that doesn’t come in on education” (Film Highlights, 1968). Wisconsin had sixty-six Indian students enrolled in college the same year, all with scholarships. At the same meeting, the MCIA suggested that it expected “to continue working in the area of education” (Film Highlights, 1968).

Beginning in January of 1970, the Governors’ Interstate Council on Indian Affairs announced that they were planning on holding a national convention on Indian issues in Sault Ste. Marie, Michigan (National Indian, 1970). Then director of the Michigan Commission on Indian Affairs, Herman Cameron, suggested that this convention was to serve as a preliminary planning session for a White House Conference on Indian issues that would focus on economic and educational issues in particular (National Indian, 1970; Indian Convention, 1970). During this same month, Representative James Bradley of Detroit announced that he had proposed a bill that would set aside “as much as \$50,000 a year in state funds ... to pay tuition costs for Indians” (Bill Would, 1970). This funding “would be provided for either vocational education or schooling beyond high school” (Bill Would, 1970). The program was to have been housed under the State Department of Labor.

In mid-October of 1970 the BIA advised Congressman Phillip Ruppe's office that the resident Indian Agent for Michigan, Billy Bolin, would be moved from Gladstone to Sault Ste. Marie because of "an emphasis change which [was] expected to be helpful to a larger number of Michigan's Indians" (Indian Agent, 1970). "Until Bolin was assigned to Gladstone in 1965, Michigan had not had a resident Indian agent since 1935" (Indian Agent, 1970).

In early August of 1971, State Representative Michael Dively submitted suggestions to the Michigan Commission on Indian Affairs in an effort to "strengthen the Indian Affairs Commission; guarantee Indian control and broad Indian representation on the commission; and launch an intensive program of quality education for our Indian citizens" (Dively Outlines, 1971). He explained that in his opinion "Indian influence and Indian education—have been woefully neglected and must be given urgent attention" (Dively Outlines, 1971). He further suggested that the State of Michigan had reached an historic crossroads in this State's relationship with its Indian citizens We have ignored and avoided our responsibilities and obligations for decades. At this point in time I foresee a chance to make really meaningful advances, to give Indians the opportunity to achieve the place in society they deserve and have for so long been denied The key to realizing this goal is a strong and persistent voice for Michigan's Indians; a voice which truly represents the Indian people and has the authority to do effective work for them. I believe the Michigan Commission on Indian Affairs can and should be that voice. (Dively Outlines, 1971)

By February of 1972, Michigan schools had at long last started receiving funds from the 1934 Johnson O'Malley Act (Funds for Area, 1972). Senator Robert Griffin spearheaded an effort to have the Interior Department order a policy change set forth in 1934, making the funds available for the first time to Michigan schools (Funds for Area, 1972). The funds were to be initially used to set up "special tutoring programs, teacher aides, and liaison between the Indian community and the schools" (Funds for Area, 1972).

In April of 1973 the Michigan State Board of Education created an eleven member Indian Education Advisory Council to advise the State on how it could "improve public school education for an estimated 10,000 Indian youths" (Bay Mills Man, 1973). The all Indian council was to work with the recently appointed Indian Education Coordinator, Lester Gemmill who reported directly to then State Superintendent of Public Instruction, Dr. John Porter (Bay Mills Man, 1973).

In February of 1974 Lester Gemmill announced that only 19 out of 132 eligible school districts in Michigan had applied for federal Indian education funds the previous year (Sault District, 1974). He suggested that apathy among school boards could result in Indian students being "deprived of extra aid for arts, language, vocational training, physical education and cultural enrichment" (Sault District, 1974).

Although this study is focused on the relationship between treaties made between the Anishinaabek and the U.S. government, and federal K-12 American Indian education legislation, it is important to point out that the body of law surrounding American Indian higher education in Michigan draws on much of the same historical legal documents as does K-12 Indian education in Michigan, especially when dealing with treaty provisions

and the Comstock Agreement. Thus, references to major events regarding the advent of the Michigan Indian Tuition Waiver and other Indian higher education initiatives are included in this brief overview of Michigan Indian education.

In the late 1970s, the Washtenaw County Circuit Court found that a trust relationship had not been established between the Anishinaabek and the U.S. government in the treaty of Fort Miags, 1817. Instead, it was suggested, the land had been given as a gift to Father Richard as a representative of the Catholic church (*Children of the Chippewa, Etc. v Regents of the University of Michigan*, 1979). It was argued, although unsuccessfully, by the plaintiffs that Father Richard not only served as the rector of the local Catholic church, but also served on the Board of Trustees for the entity that would later become the University of Michigan, and also served in an official capacity in the territorial government of Michigan (*Children of the Chippewa, Etc. v Regents of the University of Michigan*, 1979). Father Richard, it was argued, had established friendly relationships between the church and the Anishinaabek, due to the church's willingness to educate Anishinaabe children (*Children of the Chippewa, Etc. v Regents of the University of Michigan*, 1979). Thus the plaintiffs argued that Father Richard, in effect, wore three official hats and was acting in an official capacity on behalf of all three at the time of this treaty (Reinhardt, 1998).

At around the same time that the University of Michigan was defending itself in court, the Governor of Michigan stated his position on the state of American Indian issues in Michigan. Then Governor William Milliken stated in January of 1979 that he would "call for a state policy to improve the quality of life for the American Indian population of Michigan, foster Indian self-determination, and encourage

intergovernmental cooperation between tribal, state, and local governments” (Rosson, 1979, p. 56).

In 1981 the U.S. Department of Education provided funding for the Bay Mills Indian Community to begin a vocational education program (United States, Department of the Interior, 1994). What grew out of this program was the Bay Mills Community College, which received its tribal charter in 1984. The college was designed to be a student centered institution “that promotes the preservation of the customs and beliefs of Native Americans” (United States, Department of the Interior, 1994, p. 57).

The same year that Bay Mills Community College received its charter, the State of Michigan’s Board of Education (1987) requested that then Superintendent Dr. Phillip Runkle

...appoint a special committee (State Superintendent’s Special Advisory Committee), working in concert with the Michigan American Indian Community, to study the educational condition of American Indians.

Further, the Committee was requested to report to the Board, through the Superintendent, the findings and recommendations for ameliorating such inequalities as may exist in the education of American Indians in

Michigan. (p. ii)

The charges given to the members of the Committee included the following: (a) Review the delivery of educational services to American Indians in Michigan’s K-12 programs, intermediate school districts, and the Michigan Department of Education; (b) Make specific recommendations for reducing the dropout rate of American Indian youth; (c) Acquire information from selected school districts on the status of American Indian

students; (d) Review current and pending federal educational programs/legislation affecting American Indians in Michigan; and (e) Review the status of American Indians in Michigan's institutions of higher learning focusing particularly on recruitment and retention (Michigan State Board of Education, 1987).

At the time the above mentioned report was compiled, there were several important issues brought out through public meetings with American Indian parents, teachers, administrators, and others. These included the following:

- * In school districts where the relationship between the Superintendent and the American Indian community is positive, American Indian students fare much better.

- * Dropout rates were also lower in these districts which had a good working relationship between Indian community leaders and school officials.

- * Suspension rates were lower in schools with a good working relationship with the Indian community.

- * Young American Indian students (age 13-15) are being "assigned at home" and not allowed to complete grade level course work. No educational services are provided and this long-term home detention of students for disciplinary and absentee reasons is inconsistent with school districts receiving state aid for these pupils.

- * In areas where there were noticeable problems between school officials and the Indian community, there was a higher incidence of student failure. In certain cases, reasonable transportation requests have been denied by school officials, thus resulting in the death of children.

- * Alternative schools have been and will continue to be important educational options for American Indian communities.

- * Young Indian children who have been tested as developmentally ready for kindergarten by Head Start or other preschool programs are being unfairly tracked into "early five" programs possibly due to inappropriate testing practices, but resulting in an additional year of schooling for the child and additional federal funding for the local school district. (Michigan State Board of Education, 1987)

The Committee also reported that “of the 13,825 Indian students in school, the vast majority [were] enrolled in the public schools” (Michigan State Board of Education, 1987, p. 3).

On May 12, 1994, Senator Jackie Vaughn introduced Senate Bill No. 1149, which was to amend the School Code of 1976. This bill required that a school district board of directors “ensure that instruction in the history, culture, and tribal sovereignty of the federally recognized Native American tribes and bands located in this state is included as part of the social studies curriculum at least twice in the elementary grades and at least once in the high school grades.” The bill also included language that required an applicant for a teaching certificate to have “received instruction in the study of minority group relations, including, but not limited to, instruction in the history, culture, and tribal sovereignty of the federally recognized Native American tribes and bands located in this state.” The bill was ultimately defeated.

American Indian tribes of Michigan have grown considerably in the last two decades. According to Van Alstine, since the 1970s, the number of federally recognized tribes in Michigan has grown from four to twelve (personal communication, May, 1999). Van Alstine also explained that there are three tribes that are currently state recognized, but are awaiting federal recognition (personal communication, May, 1999). With the influx of federal funding for Indian education programs in the early 1970s, and the advent of tribal gaming in the 1980s, Michigan American Indian tribes have been able to develop their own education programs, including schools and colleges (Michigan Department of Social Services, 1990).

In September of 1994 the Sault Ste. Marie Tribe of Chippewa Indians opened the Bahweting Sault Ojibway Elementary School with an enrollment of 140 students in Kindergarten through 6th grade. The first principal of this tribally controlled school was Tom Topash, a former Pokagon Potawatomi principal from Berrien Springs, Michigan, who was the Chairperson of the Michigan Commission on Indian Affairs at that time. The school's core curriculum is similar to that of the Nah Tah Wahsh school, but unlike Nah Tah Wahsh, which focuses on Potawatomi language and culture, Baweting focuses on Ojibway language and culture. This was the first time that the education of tribal children was controlled by tribal government in 166 years in the Sault Ste. Marie area (Van Alstine, 1998).

In 1995 Governor John Engler announced that he would not support the continuation of the Michigan Indian Tuition Waiver for American Indian college students ("State Universities," 1995, p. 1). This action caused American Indian college students to reconsider how they were going to afford college tuition costs, and sadly for many it caused a change of heart entirely due to the uncertainty of funding availability (Reinhardt, 1998). According to the Governor's attorney Christopher Murray (1996), the Governor's decision to cut the program's funding was based on the social and economic changes that have taken place for American Indian tribes in Michigan (p.4). He also contested the idea that the tuition waiver program was based on legal obligations. Instead, he argued that what the State of Michigan agreed to in the 1934 Comstock Agreement was that they would "provide resident Indians with equal access to its public schools, and at no cost to the federal government" (Murray, 1996, p. 4).

While the governor has clearly come out against the continuation of this program, the University Presidents Association has continued to abide by the law, and several bipartisan State Representatives have devised a method to keep funds for the program flowing to colleges and universities by burying it in the general funding bill, which would require the Governor to veto the entire bill if he wanted to cut the funding off--an action which he has failed to take up to this point (Reinhardt, 1998).

Although American Indian higher education programming in Michigan has come under fire recently, K-12 education programs have fared much better. In fact, the former Bahweting Sault Ojibway Elementary School, now the Bahweting Anishnabe Elementary School, has recently been granted a charter from the State of Michigan, thereby increasing its resource base (Van Alstine, personal communication, May, 1999). Interestingly enough, the charter affords the school more funding, but also creates a dual identity for the school. It must now accept non-tribal students into its programs, and must report to both the BIA and the State Department of Education (Van Alstine, personal communication, May, 1999).

American Indian tribes in Michigan have recently opened other schools and colleges including the Saginaw Chippewa Tribal College, the Bay Mills Ojibway School, and the Grand Traverse Band of Chippewa and Ottawa Tribal School. The Saginaw Chippewa Tribal College has recently submitted an application for a BIA charter (Van Alstine, personal communication, May, 1999).

In addition to recent tribal education initiatives, there has appeared on the scene a non-tribally controlled state charter school that focuses on American Indian cultural themes in the curriculum. This school is called the Medicine Bear American Indian

Academy and is located in the Detroit Public School District. Detroit has the largest population of American Indian residents in the state (Michigan Department of Treasury, 1997).

Statistical Profile of American Indian Students

While recognizing the fact that very little is known about the contemporary educational experiences of American Indians as compared with other groups of American students (O'Brien, 1992), it is important to develop a frame of reference for the discussion about these experiences, as they are impacted by American Indian education legislation. A statistical profile of American Indian education helps to place into perspective the urgency in addressing these issues.

National Statistics

According to the 2000 U.S. Census (United States Department of Commerce, 2000), the total American Indian/Alaska Native population in the U.S. was 2,475,956 or 4,119,301 when combined with individuals who reported that they were American Indian and some other race. Of those individuals who reported that they are American Indian, 1,963,996 (or 3,062,844 when combined with individuals who reported that they are American Indian and some other race) also specified that they are a member of an American Indian tribe.

According to the 2000 U.S. Census (United States Department of Commerce, 2000), the total combined population of Anishinaabe tribes of Chippewa, Ottawa, and Potawatomy in the U.S. was 128,156, (or 185,941 when combined with individuals who reported that they are American Indian and some other race). Of the individuals who reported to be Chippewa, Ottawa, or Potawatomy, 3,945 (or 7,368 when combined with

individuals who reported that they are American Indian and some other race) reported that they were also descendant from a tribe other than the one they reported. The combined number of Chippewa, Ottawa, and Potawatomy individuals between the ages of 0-19 was 47,042 (or 70,942 when combined with individuals who reported that they are American Indian and some other race). Seventeen percent of those individuals who were reported as being Chippewa were single females with dependent children, the figure for both Ottawa and Potawatomy was 11%. For individuals who reported that they are American Indian and some other race, the figure was 16% for Chippewa, 11% for Ottawa, and 10% for Potawatomy.

The 2000 Census (United States Department of Commerce, 2000) indicated that about 1.1% of all students at all educational levels in the US reported that they were American Indian or Alaska Native alone. The 2000 Census reported that 28,771 or 16.1% of the total American Indian and Alaska Native population between the ages of 16 and 19 were not enrolled in school and were not high school graduates (high school dropouts). American Indian and Alaska Native alone students attending private K-12 schools in 2000 was 5.5% of the total American Indian and Alaska Native alone population in that age range. American Indian and Alaska Native alone students attending college in 2000 comprised 137,854 students or 26.5% of the American Indian and Alaska Native alone population 18 and older. Of the total 1,350,998 American Indian and Alaska Native alone population 25 and older, 70.9% had graduated from high school, 41.7% had gone to college, 11.5% had attained their bachelor's degree, and 3.9% had attained an advanced degree.

According to the National Center for Education Statistics (NCES) (1997), in 1993-94, “among the 80,893 public schools in the United States, 1,244 had an American Indian/Alaska Native student enrollment of at least 25 percent” (p. iii). Of the total American Indian/Alaska Native student population that same year, “9 percent attended BIA/tribal schools and 38 percent attended public schools with high Indian enrollment. Fifty-three percent of the Indian student population attended public schools with relatively few Indian students” (NCES, 1997. p. iv).

According to the Bureau of Indian Affairs Office of Indian Education Programs (United States, Department of the Interior, 2003), the current number of BIA funded elementary and secondary schools in the U.S is 185, with 66 of those being BIA operated, and 119 being operated by tribes or local school boards through grants or contracts. Twelve of these schools are dormitory programs only, while the others are actual academic programs. These schools served 48,693 students from 238 different tribes on 63 reservations in 23 different states during the 2000-2001 school year. Most of these schools are small rural schools having an enrollment of fewer than 250 students on average. About 75% of these schools are elementary schools only, and about 34% are either K-only or K-6 schools.

The NCES (1997) points out that BIA or tribal schools are more likely to offer “compensatory programs such as Chapter 1, remedial mathematics, and bilingual education” (p. iii). BIA or tribal schools are more likely than public schools “to offer gifted and talented programs for their students” (NCES, 1997, p. iii). They are more likely “to require coursework in computer science and foreign language” (NCES, 1997, p. iv). The student-teacher ratio is generally lower in BIA or tribal schools than in many

public schools, and the student to non-instructional staff ratio is considerably lower than in public schools (NCES, 1997, p. iv).

Based on the above, BIA/tribal schools seem to be more well equipped to offer students a better educational experience, yet the graduation rates do not reflect a higher rate of academic success. American Indian/Alaska Native student graduation rates were 91% in public schools vs. 86% in BIA/tribal schools (NCES, 1997, p. iv). Public schools with low Indian enrollment also had larger percentages of students applying to college (58 percent vs. 47 percent for BIA/tribal schools) (NCES, 1997, p. iv). It is important to note that although the BIA/tribal school rates are lower in these areas, graduation rate decreased only slightly, and college applications actually increased as compared to years prior to this study.

While graduation rates and college application are only two indicators of academic success, it is important to understand why there is such a discrepancy between public and BIA/tribal schools in these regards. It is plausible that BIA/tribal schools are succeeding in other areas that are unique to these schools (i.e., acquisition of Native languages and cultural traditions) and will eventually rise to a level of success that incorporates a unique cultural orientation with a strong academic success rate. It is also possible that as tribally controlled schools develop stronger links with public and/or BIA schools, student academic success rates will also increase.

Native American role models in the schools are also an important consideration of improving the academic experience for Native American youth. Unfortunately, out of the 2,564,000 teachers employed in both BIA/tribal and public schools in 1993-94, less than 1% were American Indian/Alaska Native (NCES, 1997, p. v). While 47% of the

principals and 385 of the teachers in BIA/tribal schools were American Indian/Alaska Native, less than 155 of the principals and 17% of the teachers were American Indian/Alaska Native in public schools (NCES, 1997, p. v). Perhaps current initiatives under way through the Bureau of Indian Affairs and the U.S. Department of Education will produce more Native American educators in the near future.

Michigan Statistics

According to the 2000 U.S. Census (United States Department of Commerce, 2000), Michigan's American Indian population was 58,479 or 124,412 when combined with individuals who reported that they were American Indian and some other race. In 2002, the Population Estimates Branch of the US Census Bureau estimated the total population to be 60,105 alone not combined with other races (State of Michigan, 2002).

According to McGowan (2002), the 2000 US Census "represents a serious undercount of Indians" (p.1) in Michigan. She points out that the census does not report on state recognized tribes, or tribes like the Mackinac Band or Wyandot that are seeking state or federal recognition (p.1). She also suggests that there are many Canadian Indians who pass freely between Canada and the US under the provisions of the Jay Treaty that are not counted because they are considered Canadian citizens (pp. 2-3).

According to the National Center for Education Statistics (2002), about 1% of those students enrolled in elementary or secondary public schools in Michigan in the fall of 2000 were American Indian or Alaska Native. NCES reported that 841 or 0.93% of the total population that graduated from high school in Michigan during the 1999-2000 school year were American Indian or Alaska Native. The Center also reported that 4,361

or 0.77% of the total population that was enrolled in postsecondary institutions in Michigan in 2000 were American Indian or Alaska Native.

There are currently two BIA funded schools in Michigan, the Hannahville Indian School, and the Joseph K. Lumsden Bahweting School. Both of these schools are also Michigan charter schools under the auspices of Northern Michigan University. In 2003, Hannahville had an enrollment of 160 students, of which 132 or 83% were American Indian (Northern Michigan University, 2003). In 2004, Bahweting had an enrollment of 270 students, of which 175 or 65% were American Indian (Northern Michigan University, 2004).

The Bay Mills Indian Community also has a Michigan charter school called the Bay Mills Ojibwe Charter School operated under charter from their own Bay Mills Community College. Native American students comprised 90% of the school's enrollment in 2004 (NCSC News, 2004). More specific information about Michigan Indian tribes, Indian students, and Indian education funding is provided in Chapter 4.

Chapter Summary

While this chapter has only briefly covered the history of American Indian education on both the national and state level, it is important that anyone approaching the study of Indian education at least be familiar with the major turning points in history as they have impacted American Indian tribes and individuals. While subsequent chapters provide a more in-depth look at the relationship between treaties and federal Indian education legislation, this chapter has provided a backdrop for understanding how the eras of Michigan Indian education are related to both national and state events regarding

Indian education during the eras of focus, as well as how those eras are related to other historical eras.

CHAPTER 3

Methodology

This study of Indian education law can best be described as interpretive, in that a socio-historical content analysis method was utilized in an effort to derive meaning from treaty terminology and archival records, and subsequently these findings were compared with certain pieces of current federal Indian education legislation. What makes it a social study is that it focused on the relationship between two social groups--Indigenous and non-Indigenous, or more specifically, the Anishinaabek and the United States government. What makes it a historical study, is that it focused on data derived from two different eras of Indian education in Michigan--the Early US era (the era treaties were made between the Anishinaabek and the US), and the revitalization era (the current era). What makes it a comparative content analysis is that it compares data contained within treaties to current federal Indian education legislation.

It would be a leap to suggest that triangulation of data is achieved using this methodology, but it is safe to say that the methods used provide data that is both quantitative and qualitative in nature. What the study lacks in breadth (triangulation), it makes up for in depth. While there is great potential for the use of data produced in this study, there is also great potential for bias in the findings. This chapter provides a description of the methods used as well as an explanation of how potential for bias was recognized and controlled for when possible.

Research Questions, Procedures, and Criteria

As indicated in Chapter 1, this study was intended to provide data that would answer the following research questions:

1. What is the extent of educational obligations set forth by treaty for American Indian tribes located within Michigan?
2. Are current federal K-12 American Indian education laws intended to satisfy any portion of these treaty obligations?
3. If so, how do they satisfy these obligations?
4. Are there any portions of treaty educational obligations that have not been met, or are not addressed by current federal K-12 American Indian education legislation?
5. What is the responsibility of federal, state, and tribal governments in providing for the K-12 educational interests of American Indian tribal citizens within the State of Michigan?

In order to answer the first four of the above questions, the following procedures were utilized:

1. Determined the education specific content of each of twenty-six treaties signed between the Anishinaabe Three Fires Confederacy—Chippewa, Ottawa, and Potawatomi--and the United States of America.
2. Determined which of the twenty-six treaties were relevant to tribes currently located within the State of Michigan, and which treaties actually included an educational benefit for those tribes.
3. Conducted a socio-historical content analysis of each of the education provisions of the sixteen remaining treaties utilizing the U.S. Supreme Court's Canons of Treaty Construction which are:
 - a. Ambiguities in treaties must be resolved in favor of the Indians.
 - b. Indian treaties must be interpreted as the Indians would have understood them.
 - c. Indian treaties must be construed liberally in favor of the Indians. (Pevar, 1992).
4. Applied the trust criteria to each provision individually.
5. Compared the findings for each education provision analysis with the content of each of the three pieces of federal Indian education legislation utilizing specific terms, similar terms, and conceptual cluster searches.
6. Applied the trust criteria to each piece of current legislation individually.

7. Determined how the current Indian education legislation addresses the federal relationship with American Indian tribes, and how they address the relationship with treaties.
8. Applied the trust criteria to the collective body of treaty educational provisions and three pieces of current legislation.

The definition/criteria utilized in this study to determine ambiguity in treaty educational terms or phrases is borrowed from Webster's Dictionary (1983): "Ambiguous: doubtful or uncertain... inexplicable... capable of being understood in two or more possible senses or ways" (p. 77). It was also necessary to conduct a search of historical references to Indian perspectives (Anishinaabe in particular) on education during the time period that the treaties were written. Thus, after making a determination of which treaty terms were ambiguous and which were not, the author illustrated how Indian meaning was derived from historical references (when possible) for such ambiguous terms. Finally, in resolving the most liberal construction of the treaty educational provisions, the researcher provided what could be considered alternative interpretations of the treaty provisions (albeit still in line with the other two canons), and subsequently selected which of the interpretations would be seen as the most liberal. A definition of liberal is also borrowed from Webster's Dictionary (1983): "Liberal: Generous, openhanded...given or provided in a generous and openhanded way...suggests openhandedness in the giver and largeness in the thing or amount given" (p. 688).

The following trust criteria originate from the American Indian trust doctrine, and are in line with current discussions of the status of American Indian trust relationships with the United States.

general trust –obligates the Federal Government to act in the best interest of American Indian tribes for some purpose in a vague and ambiguous

sense. Does not indicate a fiduciary duty, as in the case of Executive Order 13175 signed by President Clinton in the year 2000.

limited trust –obligates the Federal Government to act in the best interest of American Indian tribes in a specific sense short of fiduciary responsibilities, as in the case of the General Allotment Act, 25 U.S.C. § 348.

express fiduciary trust –obligates the Federal Government to act in the best interest of American Indian tribes with specific responsibilities including fiduciary duties, as in the case of the Indian Long-Term Leasing Act, 25 U.S.C. § 396.

implicit fiduciary trust –obligates the Federal Government to act in the best interest of American Indian tribes based on the fact that the Federal Government clearly maintains, or has maintained, control or supervision over American Indian tribal resources. In such an instance, the level of control should exceed the level considered limited as in the first *Mitchell* case. An example of an implicit trust situation is found in the recent case *Cobell v. Norton* (No. 96-1285), where the Department of Interior has argued that common law fiduciary duties do not apply to the Indian trust fund. US District Judge Lamberth suggests otherwise in stating that the range of duties for the Department and the nature of such duties “are coextensive with the duties imposed upon trustees at common law.”

As suggested above, these criteria are used in this study to categorize each of the educational provisions found within the 16 treaties that are relevant to tribes that

currently exist within the State of Michigan, and subsequently applied to the collective body of educational provisions. The criteria are further utilized in the comparison of the three pieces of American Indian education legislation with the treaty educational provisions.

The criteria utilized in determining the relationship with tribes score are as follows:

0= Law does not require specific interaction with American Indian tribes or tribal citizens

1= Law requires specific interaction with American Indian tribal citizens in general, but does not require specific interaction with American Indian tribes

2= Law requires specific interaction with an American Indian tribe or tribes in general

3= Law requires tribal consultation prior to implementation

4= Law empowers tribes with decision making authority and resources necessary to implement the act

These are categorical definitions developed by the author. They are intended to differentiate between the different types of relationships that exist in law as they potentially impact how a law impacts tribal control, which in turn potentially impacts trust and treaty relationships.

Regarding the score of zero, if a law inadvertently impacts the education of US children citizens in general, which would include tribal citizens, but it does not require any type of interaction between the United States and American Indian tribes, it

effectively ignores the special trust relationship between the Federal Government and the tribes-even in the face of other laws that may allow such law to include those tribal children who fall under tribal legal and political jurisdiction (as in the case of the Individuals with Disabilities Education Act of 2000 and the States Authorized to Enforce Laws in Indian Country Act of 1929). On the other end of the spectrum, if a law empowers a tribe, or recognizes and supports a tribe's authority, to actually make decisions regarding the education of its citizens, then the law is in line with the special trust relationship (as in the case of the Indian Self-Determination & Education Assistance Act of 1975). The scores or area that lay between the two extremes of this continuum shows the middle-ground scenarios that may arise in other examples of legislation.

The criteria utilized in determining the relationship with treaties score are as follows:

0= Legislative history of law is not clearly linked to treaty obligations

1= Legislative history of law is clearly linked to treaty obligations

2= Law includes wording about its treaty basis

3= Law includes wording about its intent to satisfy treaty obligations in general

4= Law includes wording about its intent to satisfy specific treaty obligations

Like the relationship with tribes criteria, these are categorical definitions developed by the author. They are intended to differentiate between the different types of relationships that exist in law as they potentially impact how the intent of a law is interpreted, which in turn impacts trust and treaty relationships.

Regarding the score of zero under this criteria, a law that provides federal education benefits to all children in the US (including American Indian tribal citizens) but does not have a legislative history that includes a relationship with treaties, like the Elementary and Secondary Education Assistance Act of 1968, would fit this category. Such a law would probably not be seen as establishing any type of treaty based trust relationship with American Indian tribes. At the other end of the spectrum, would be laws that specifically state that they are intended to satisfy specific treaty obligations (a non-education example would be the Michigan Indian Land Claims Settlement Act of 1997 where it pinpoints the fiduciary obligation set forth by land cessions in the Treaty of 1836). There is absolutely no denying that such a law is intended to satisfy certain treaty based obligations that created an express fiduciary trust relationship between the Federal Government and an American Indian tribe or tribes. Again, the scores or area that lay between the two extremes of this continuum shows the middle-ground scenarios that may arise in other examples of legislation.

Following the analysis of terms for each treaty, is a further analysis of how these terms may or may not be met within the contexts of the three current pieces of federal Indian education legislation included in this study--the Indian Education Act, the Indian Self-Determination and Education Assistance Act, and the Individuals with Disabilities Education Act. Three approaches were followed in this component of the study: a specific terms approach, whereby exact terms in treaties were searched for within the three laws; a similar terms approach, whereby similar terms were searched for; and a conceptual approach, whereby it was determined by the researcher if the acts contained conceptual clusters or ideas that address the same educational interests as those included

in the treaties.

In the specific terms approach, computer software was utilized that identified where the exact treaty terms were located within the body of the act. After the results of the initial key word searches were recorded, the researcher then utilized the same software to search the acts for other terms that may have similar meaning. Finally, in the concepts approach, the researcher read through each act to determine if there were conceptual clusters or ideas that may constitute equivalents of the ideas contained within the treaty provisions. These conceptual clusters were then recorded in the search hit tables.

Limitations

While this study includes a brief history of Indian education from pre-colonial times to the present, the primary focus is the relationship between two era of Indian education as it has impacted tribes within Michigan. While this study is limited to a comparison of policies from only two era, it should be noted that policies and other considerations from the excluded era have also had significant, long lasting impacts on the current status of Michigan Indian education. For example, appropriations acts that were not included in this study may have provided funding for treaty obligations and even language about the legislative intent that could have addressed treaty monetary provisions. Another example is the federal boarding school initiative. This was probably the most disruptive policy as far as its impact on the discontinuity of traditional Indigenous educational practices in Michigan, as well as in other locations across the U.S. and Canada. When considered with the outcomes of this study, certain aspects from the excluded eras may alter the direction of further study in this area. The time line

below shows the eras of focus in this study (Early U.S. and Revitalization) in relationship to other era.

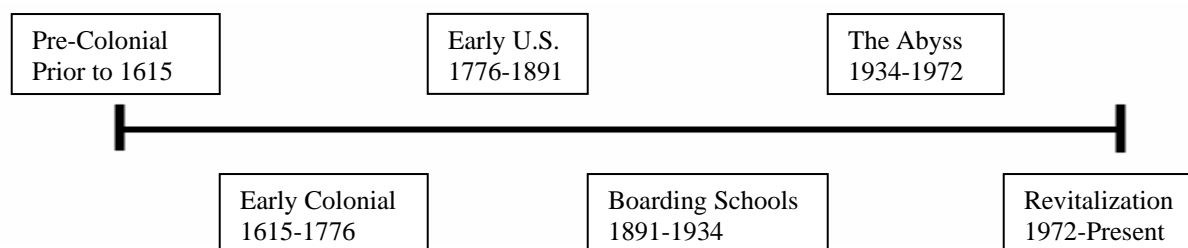


Figure 1-1. Michigan Indian Education Policy Era Timeline

There are some obvious difficulties in conducting a study such as this. First, it requires the researcher to draw arbitrary lines around those areas of law known as treaties relevant to Michigan Indian education and the most significant federal K-12 American Indian education legislation. While these arbitrary lines were necessary for the completion of this study, they could have biased the results one way or the other. For instance, some would argue that only those treaties that occurred within the current geographical boundaries of Michigan should have been included, or that the study is incomplete without looking at the provisions of the Native American Languages Act and other acts. While these arguments have merit, it is suggested here that all of the treaties signed between the Anishinaabe Three Fires Confederacy and the United States government have potential bearing on the federal obligation to Anishinaabe citizens, and that, while the language of the Native American Languages Act, and others, may be relevant to the current level of federal, and subsequently state, obligation, it was decided by the researcher that the three acts included have the greatest impact on Indian education in the United States today.

The three acts taken together could be said to have the greatest potential impact on Indian education today. The acts apply to both tribal schools and non-tribal schools,

and thus have the greatest potential of all contemporary Indian education acts to impact the education of Anishinaabe youth. While not discounting the importance of other Indian education laws, it was decided by the researcher to focus on these laws for this study, and to create a model that could be applied to other laws subsequent to this study.

While at first glance the Individuals with Disabilities Education Act (1997) may not seem as though it is a truly “Indian” education act, it was included due to its content regarding both tribes and Indian individuals. Like the other two laws included, IDEA spans the expanse between tribal and non-tribal schools, and has an entire section that deals with the complexities of interacting with tribal schools.

The outcomes of this study may seem conclusive or inconclusive in some respects, depending on the focus. It may seem inconclusive in respect to all treaties and all Indian education laws, but certain conclusions can be drawn about the body of treaty provisions and the three laws studied in the analysis. In any case, this study should be compared with other studies that have already been or will be conducted on the same subject matter. For instance, this study should be compared with Helen Hornbeck Tanner’s (1974) *Educational Provisions of Michigan Indian Treaties*.

The author also had to consider the overlapping nature of legal/political borders, and subsequent legal jurisdictions of the three forms of government included in this study. See the conceptual model at the end of this chapter for examples. The gray area that exists in this overlap may, as of yet, be unclear and uninformed by the literature.

For the purpose of this study, all treaties entered into between the Chippewa, Ottawa, Potawatomi (collectively referred to as the Anishinaabe Three Fires Confederacy) and the United States government were considered potentially relevant

treaties. The definition of federal and state American Indian education legislation was confined to three federal laws specific to American Indian education, in whole or in part, including: the Indian Education Act of 1972, as amended; the Indian Self-Determination & Education Assistance Act of 1975, as amended; and the Individuals with Disabilities Education Act of 1997.

Treaties and Laws Selected

Anishinaabe tribes including the Chippewa, Ottawa, and Potwatomi, are the only American Indian cultural groups that govern over federally recognized American Indian reservations within the State of Michigan and/or comprise State of Michigan recognized tribes. As such, each of 42 treaties signed between the Anishinaabek and the United States government were reviewed for educational content. It was determined by the researcher that 26 of these treaties actually contained provisions for education in some fashion. This finding is similar to the findings of the American Indian Policy Review Commission in the Report on Indian Education (United States, 1976) with a few exceptions: (a) The Treaty with the Potawatomi, 1832 which was included in the report was not found to have any educational provisions; and, (b) Five treaties including the Treaty with the Wyandot, Etc., 1817, Treaty with the Chippewa, Etc., 1833, Treaty with the Chippewa (Detroit), 1837, Treaty with the Chippewa (St. Peters), 1837, and the Treaty with the Potawatomi, 1867 were found to have educational provisions and were not included in the Report.

Further review of the treaties indicated that only 17 of the 26 could be argued to pertain to tribes currently located within the State of Michigan. In the end, only 16 were actually selected for a comparative legislative analysis, as it was determined that in the

Treaty with the Potawatomy, 1867, there was no real benefit to the tribes included in the treaty, rather the benefit was to individuals who were to receive fee simple title to lands previously held in trust for educational purposes.

A chart that details the twenty-six treaties, the educational provisions of each, and how they apply or do not apply to tribes currently located in the State of Michigan is included as Appendix F. This chart is also accessible electronically by opening the Microsoft Excel file *treaty_provisions_table.xls* on the compact disk accompanying this study. The full text of each of the sixteen treaties included in this study is available for review electronically by clicking on the bold sub-section heading for each treaty, or by visiting the following website at Oklahoma State University:

<http://digital.library.okstate.edu/kappler/>

The 26 treaties signed between the Anishinaabe Three Fires Confederacy tribes and the United States of America that contain educational provisions are as follows:

1. Treaty with the Wyandot, Etc., 1817.
2. Treaty with the Ottawa, Etc., 1821.
3. Treaty with the Chippewa, 1826.
4. Treaty with the Potawatomi, 1826.
5. Treaty with the Chippewa, Etc., 1827.
6. Treaty with the Potawatomi, 1828.
7. Treaty with the Chippewa, Etc., 1833.
8. Treaty with the Ottawa, Etc., 1836.
9. Treaty with the Chippewa (Detroit), 1837.
10. Treaty with the Chippewa (St. Peters), 1837.
11. Treaty with the Chippewa, 1842.
12. Treaty with the Potawatomi Nation, 1846.
13. Treaty with the Chippewa of the Mississippi and Lake Superior, 1847.
14. Treaty with the Chippewa, 1854.
15. Treaty with the Chippewa, 1855.
16. Treaty with the Ottawa and Chippewa, 1855.
17. Treaty with the Chippewa of Saginaw, Etc., 1855.
18. Treaty with the Chippewa, Etc., 1859.
19. Treaty with the Ottawa of Blanchard's Fork and Roche De Boeuf, 1862.

20. Treaty with the Chippewa of the Mississippi and the Pillager and Lake Winnibigoshish Bands, 1863.
21. Treaty with the Chippewa–Red Lake and Pembina Bands, 1863.
22. Treaty with the Chippewa, Mississippi, and Pillager and Lake Winnibigoshish Bands, 1864.
23. Treaty with the Chippewa of Saginaw, Swan Creek, and Black River, 1864.
24. Treaty with the Chippewa–Bois Fort Band, 1866.
25. Treaty with the Potawatomi, 1867.
26. Treaty with the Chippewa of the Mississippi, 1867.

The 17 treaties that were determined to be relevant to the Anishinaabe tribes that are currently located within the State of Michigan, include: Treaties 1-12, 14, 16, 17, 23, and 25. Again, the 16 treaties included in the actual comparative content analysis did not include Treaty 25.

Federal American Indian education laws that were included in this content analysis were as follows:

1. The Indian Education Act (IEA) of 1972, as amended;
2. The Indian Self-Determination and Education Assistance Act (ISDEA) of 1975, as amended;
3. The Individuals with Disabilities Educational Assistance Act (IDEA) of 1997.

The first two acts were included in the Native American Rights Fund paper on federal American Indian education policy (McCoy, 1997), and are specific to American Indian education. These acts both provide opportunity for direct interaction between the U.S. and American Indian tribes located within the State of Michigan. IDEA '97 is included because the law provides for American Indian education within both public and BIA/tribally controlled schools, and because it also provides an opportunity for direct interaction between the United States and American Indian tribes located within the State of Michigan.

The full-text of each law is available by opening the following files on the

compact disk accompanying this study: for the Indian Education Act *iea.doc*; for the Indian Self-Determination and Education Assistance Act *isdea.doc*; and for the Individuals with Disabilities Education Act *idea.doc*. The funding under each act for Anishinaabe tribal schools or tribes is in a chart that is included as Appendix G, or by opening the file *tribal_schools.xls* on the compact disk accompanying this study. Also included are law summary charts (please see Appendix H), that provide an overview of the primary purpose of each law, the main components, eligibility requirements, authorized funding, current appropriations, and how the law addresses the relationship with tribes or Indian people. These summary tables are also accessible by opening the file *law_summary_charts.doc* on the compact disc accompanying this study.

Socio-Historical Content Analysis

According to Berg (1995), all unobtrusive strategies in social research, including historiography and content analysis, are an examination of the traces that humans leave behind. In this study, a content analysis of educational provisions contained within 16 treaties signed between the Anishinaabek and the United States government was conducted. Insight into the Indian meaning of ambiguous terms included in the treaty provisions are provided by drawing on primary and secondary sources of historical data. This study concludes with an illustration of how the development of specific educational provisions in the treaty-making process may have been impacted by the larger social dynamics that existed in the relationship between Indigenous and colonial cultures during that time period.

Berg (1995) suggested that content analysis is an examination of "artifacts of social communication" (p. 174). These artifacts typically include "written documents or

transcriptions of recorded verbal communications" (p. 174). Treaties are written documents and many contain transcriptions of verbal communications.

Berg (1995) asserted that the selection criteria utilized in a content analysis must be "sufficiently exhaustive to account for each variation of message content and must be rigidly and consistently applied so that other researchers or readers, looking at the same messages, would obtain the same or comparable results" (p. 175). The criteria utilized in this study are based on two different approaches to content analysis--a specific terms approach and a concepts approach.

Smith (1975) recommended that both qualitative and quantitative forms of content analysis be utilized in research when possible, "because qualitative analysis deals with forms and antecedent-consequent patterns of form, while quantitative analysis deals with duration and frequency of form" (p. 218). In this study, words or terms (a combination of words) and concepts are counted.

According to Berg (1995), "the word is the smallest element or unit used in content analysis. Its use generally results in a frequency distribution of specified words or terms" (p. 181). Words or terms are considered manifest content (quantitative), and are based on the surface structure of the document (Berg, 1995). "Concepts involve words grouped together into conceptual clusters (ideas) that constitute, in some instances, variables in a typical research hypothesis" (p. 182). For example, the terms *school*, *teaching facility*, and *place of learning* may all cluster around the concept or idea of *an establishment for the education of tribal youth*. Concepts are considered latent content (qualitative), and are concentrated on the symbolism underlying the surface content (or manifest content) of documents (Berg, 1995). Berg (1995) also suggested that when a

latent content analysis is performed, detailed excerpts from the documents are included in the explanation of the results. This gives the reader an opportunity to agree or disagree with the researchers interpretation of the data.

Denzin (1989) explains that prior to employing any research method to measure a concept, the meaning of the concept must first be established. In this study, the Canons of Treaty Construction were applied to each of the educational treaty provisions. After a determination was made about ambiguity in words or terms, a historiography of the terms was conducted to derive meaning for the subsequent search for conceptual clusters throughout the relevant treaties and within the three pieces of federal Indian education legislation. According to Berg (1995), the general rule of thumb is to provide at least three examples for each interpretation. This rule of thumb was adhered to when possible in developing the historiography of Indian meanings for the words or terms.

Advantages of Socio-Historical Content Analysis

According to Bailey (1994), there are some significant advantages of document study. He suggested that one of the greatest advantages is that it allows access to data that cannot be gleaned from living human subjects. Equally advantageous in this study, is that this method allows the researcher to examine data that covers a long time period (1817-1864). While it is impossible to access the parties involved in the creation of treaties between the Anishinaabek and the United States of America, and even to most of the parties involved in the creation of the federal American Indian education laws, it is not impossible to study these documents and their interrelationship.

Another strength of this method, is that there is no reactivity on the part of those who produced the documents in the first place. As Bailey (1994) explained, “ the data

collection method itself generally does not change the data being collected” (p. 295).

While there is certainly potential for bias in the interpretation of educational provisions and key wording in this study, the authors of such documents were not prone to modify the document because of the researcher’s preferences.

Finally, this method offered the researcher high quality data on the subject matter. The treaties and laws of this study were available from government sources that are accessible in various ways (i.e., electronic information, reports, laws and regulations, etc.).

Disadvantages of Socio-Historical Content Analysis

While there are certainly advantages to this type of study, there are also disadvantages. For instance, as Bailey explained “the various goals and purposes for which documents are written can bias them in various ways” (p. 296). Certainly, treaties and federal K-12 American Indian education laws are biased towards U.S. American Indian policy imperatives of their times. Nonetheless, it is these documents that provided the clearest picture of the subject matter in this study.

Another consideration is that related documents surrounding these treaties and laws may be incomplete at best, especially as the documents get older. As such, much of the relevant information may be unavailable.

Perhaps the greatest weakness of this particular study was the reliance on the researcher to derive meaning for the wording of the treaties and laws as they relate to education. The lack of a standard format in the documents, and in coding procedures and definitions of terms for this type of analysis, required the development of a model based on findings from the content of the treaties and laws themselves. Thus, this procedure

could bias the results toward the researchers interpretation of educational provisions and key wording. Hopefully, other studies will be done like this in the future to increase the potential for comparability of findings.

Finally, Bailey (1994) suggests that one of the strengths of this method may also be a weakness.

Although one of the advantages of document study is that comparisons may be made over a long period of time, often external events cause changes so drastic that even if a common unit of analysis is used for the entire time period, the value of this unit may have changed so much over time that comparisons are misleading unless corrections are made. (p. 298)

Certainly, this is a major consideration for this study. The value of education in general in our society has changed drastically since the early 1800s. The co-evolution of Indian education, including that which is based on treaty educational provisions, has also changed drastically since that time period.

Research Bias

Due to the latent nature of the concept portion of the content analysis, and the researcher directed selection of primary and secondary sources for the historiography of Indian meanings for ambiguous treaty terms, there existed potential bias to enter into the research process. The researcher also recognized that his own cultural bias (the researcher is Anishinaabe Ojibway) could have influenced the outcomes of the content analysis, as he is self-admittedly slanted toward a favorable outcome of this study for the Anishinaabek. To control for potential bias: the entire body of treaties and laws are included in the appendix and on the CD accompanying this document; key words, terms

and conceptual clusters are clearly identified within the appropriate sections; and when possible examples of historical references are provided for determinations of Indian meaning. These controls will allow other researchers and/or readers to examine the findings and draw their own conclusions.

Whereas researcher bias is often considered a weakness in a study, it is asserted here that an emic, or insiders perspective, could alternatively be considered a strength given the overarching theoretical perspective. In this instance, the researcher is Anishinaabe Ojibway and thus provides insight into how to find Indian meaning of treaty terms and perhaps a greater sense of contemporary leadership perspectives on Indian education and the law.

Chapter Summary

A comparative socio-historical content analysis methodology was utilized to produce data that provided answers to the research questions proposed in this study. This methodology combines an analysis of key terms, similar terms, and conceptual clusters in treaty provisions and federal Indian education legislation along with a search for historical references to Indian meaning of treaty terms. The criteria utilized in this analysis originated from the American Indian trust doctrine, United States Supreme Court canons of treaty construction, or were developed by the author based on a review of the literature. All is set against a backdrop of social considerations relative to the time frames in which the documents were written. This chapter laid out specific procedures for the application of this methodology, and provided some insight into the strengths and areas of concern when utilizing such methods.

CHAPTER 4

Content Analysis

This chapter presents the analysis and results of a comparative socio-historical content analysis that was conducted on treaty educational provisions between the United States of America and the Anishinaabe–Three Fires Confederacy (Chippewa, Ottawa, and Potawatomi), and three pieces of federal Indian education legislation (Indian Education Act, Indian Self-Determination & Education Assistance Act, and Individuals with Disabilities Education Act). This analysis provides a glimpse of the larger treaty based Indian education picture from the perspective of one Native American cultural group, and also provides an important model for further investigation of treaty based educational rights and subsequent federal Indian education legislation for all Native American cultural groups and their respective relationships with the states.

Concerning the Relationships with Tribes and Treaties

Each of the laws included in this study treat the relationship between the federal government and Indian tribes differently. This difference in treatment results in a more or less direct relationship between the tribes and the federal government. Another important consideration is how direct the relationship is between the laws and the treaty educational provisions.

If there is a modern act that represents the continuous federal responsibility for Indian education more than any other, it is the ISDEA based on its articulated linkages with previous federal Indian education laws. For example, under Section 450f, Self-determination contracts, the Secretary of the Interior is authorized to enter into self-determination contracts with tribal organizations to plan, conduct, and administer

programs (or portions of programs):

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended

(25 U.S.C. 452 et seq.);

(B) which the Secretary is authorized to administer for the benefit of

Indians under the Act of November 2, 1921 (42 Stat. 208) (25 U.S.C. 13),

and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under the

Act of August 5, 1954 (68 Stat. 674), as amended (42 U.S.C. 2001 et

seq.);

Thus, the legislative links contained within this act extend back to the Snyder Act of 1921 (42 Stat. 208), in which it was established that the Bureau of Indian Affairs would direct, supervise, and expend the funds made available by Congress for Indian education and other concerns. The Snyder Act in turn extends back to the federal responsibility for educational provisions contained within the collective body of treaties with American Indian tribes. According to Goldberg and Champagne (1996),

Before Congress enacted the Snyder Act of 1921, the federal government appropriated funds to Bureau of Indian Affairs agency superintendents on an ad hoc basis to supply basic needs of Indians under their purview.

Sometimes these payments for food, clothing, and supplies fulfilled treaty obligations; sometimes they simply addressed pressing human needs. (p.

40)

While the ISDEA certainly provides for direct relationships between the federal government and Indian tribes in regard to education, it also provides a mechanism for

Indian input into school districts that fall outside of tribal jurisdiction. Although the ISDEA provides for such programming, it also requires that when a local school board is not composed of a majority of Indians, that "the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number" (ISDEA, p.54). This committee is then empowered to "participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts" (ISDEA, p. 54).

While the Indian Education Act certainly recognizes the "federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children" (IEA, p.1), it is primarily concerned with how Indian children are being educated versus who is actually in control of that educational process. Like the ISDEA, the provisions of the IEA extend Indian control of Indian education out into public schools that are beyond the jurisdiction of tribal governments, by providing a mechanism whereby parents of Indian children will have a voice in how their children are being educated. The IEA also provides an opportunity for tribal governments to apply for program funding for tribal schools, or to serve Indian students at a public school:

If a local educational agency that is otherwise eligible for a grant under this subpart does not establish a committee under section 7114(c)(4) for such grant, an Indian tribe that represents not less than 1/2 of the eligible Indian children who are served by such local educational agency may apply for such grant (p.2).

The IDEA also contains provisions that address the relationship with tribes, albeit only as it pertains to the education of tribal children with disabilities. For example, it states in the

IDEA that the

Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. (p. 23)

Thus, the measure of directness of the three laws in meeting the educational provisions in the treaties will be affected by how each of the laws treats the relationship with Indian tribes. One could ascertain then, that the ISDEA is more direct than either the IEA or the IDEA.

The articulated interrelationship between the acts is also important to consider. For instance the ISDEA states that “The assistance provided in this subchapter for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801 et seq.)” (p. 59). In other words, the ISDEA funding is not to be used for programming that could be funded under the IEA. No where in the IDEA does it contain such a statement pertaining to either of the other acts included in this study, although it does contain a statement about the IDEA being a payee of last resort for special education programming that is not funded under other programs.

Relationship	Scores for Laws		
	IEA	ISDEA	IDEA
Relationship with Tribes	1	2	1
Relationship with Treaties	0	1	0

Figure 4-1 Type of Relationship between Acts, Tribes, and Treaties

Concerning Trust Levels and the Acts

Given the generality of the acts included in this study to all American Indian tribes or individuals, it is difficult to prove in and of themselves that any one of these acts are rooted in specific trust relationships that were forged by educational provisions contained within the body of treaties analyzed herein. As suggested above, however, the legislative histories of the acts give a sense of the type of relationships that exists between the collective body of treaty education provisions and the acts. Also suggested above, the relationships established between the tribes and the Federal Government is largely based on treaties. As such, the relationships established between the acts and tribes could also be argued to be treaty based—at least to some degree. The analysis will offer a bit more clarity to this point, as it seems easier to understand going forward in time rather than going back in time. Taken together, the treaty education provisions and the acts could be interpreted as establishing some type of collective treaty trust corpus depending on the language of the provisions as compared to that of the acts. Hence, the need for such a comparative analysis.

Concerning the Sections of the Analysis

Each section of this chapter deals with one of 16 treaties that contain educational provisions, and that are applicable to Michigan tribes. Each section includes: the article (s) (or portions of articles) of the treaty that contain the educational provision (s),

identification of key terms, an analysis of key terms using the U.S. Supreme Court's Canons of Treaty Construction, an interpretive trust level statement, and a comparative legislative analysis.

Some of the educational provisions are very general, while others are very specific. The analyses for the first of the treaties are subsequently referenced throughout the rest of the chapter in the analyses for the remaining treaties. The summary table on the following page shows the outcomes of the analysis referencing each section.

Treaty 1: Treaty with the Wyandot, Etc., 1817

Article(s) Containing Educational Provision(s):

Article 16:

Some of the Ottawa, Chippewa, and Potawatomy tribes, being attached to the Catholic religion, and believing they may wish some of their children hereafter educated, do grant to the rector of the Catholic church of St. Anne of Detroit, for the use of said church, and to the corporation of the college at Detroit, for the use of the said college, to be retained or sold, as the said rector and corporation may judge expedient, each, one half of three sections of land, to contain six hundred and forty acres, on the river Raisin, at a place called Macon; and three sections of land not yet located, which tracts were reserved, for the use of the said Indians, by the treaty of Detroit, in one thousand eight hundred and seven; and the superintendent of Indian affairs, in the territory of Michigan, is authorized, on the part of the said Indians, to select the said tracts of land. (Kappler, 1972, p. 150)

Treaty	Type of Trust Established				Search Hits								
					Specific Terms			Similar Terms			Conceptual Clusters		
	General	Limited	Express	Implicit	IEA	ISDEA	IDEA	IEA	ISDEA	IDEA	IEA	ISDEA	IDEA
1	x				0	0	3	103	50	839	4	11	48
2		x	x*		4	0	44	0	11	6	8	14	26
3		x	x*	x	29	51	70	0	40	22	3	8	21
4			x*	x	33	38	365	71	12	516	4	11	48
5			x*	x	33	38	365	71	12	516	4	11	48
6			x*	x	33	38	365	71	12	516	4	11	48
7			x		33	38	365	71	12	516	4	11	51
8			x*	x	66	78	479	71	16	542	13	17	86
9			x		33	38	365	71	12	516	4	11	48
10			x*		29	40	70	0	4	20	3	4	21
11			x*		29	40	70	0	4	20	3	4	21
12			x		0	0	0	1	1	0	5	5	9
14			x*		62	78	435	71	16	536	7	15	69
16		x	x*		62	78	435	72	17	536	12	20	78
17		x	x*		33	49	365	71	48	518	4	15	48
23		x	x		29	40	70	1	5	20	8	9	30

** Indicates a specific time limitation*

Figure 4-2 Treaty Trust/Search Summary Table

Identification of Key Terms:

Some of the Ottawa, Chippewa, and Potawatomy tribes...some of their children hereafter educated.

Analysis of Key Terms:

The reference to the three tribes “Ottawa, Chippewa, and Potawatomy” in the above excerpt, indicates that they are being treated as a collective bargaining unit--a sovereign nation. In fact, within the treaty itself, it identifies these groups as "the tribes or nations of Indians within the boundaries of the State of Ohio" (Kappler, 1972, p. 145). Although it specifically references tribes of Ohio, it does not suggest that the tribes are confined to Ohio. It is important to remember that treaties are signed between the governments of sovereign nations. Historically, this nation of Chippewa, Ottawa, and Potawatomi tribal groups has been referred to as the Anishinaabe–Three Fires Confederacy (Benton-Banai, 1988).

In the phrase, “some of their children hereafter educated” (see above excerpt), the meaning of the terms *their children* is somewhat ambiguous. It may mean children in the sense of youth, although, it is proposed here that the more likely meaning of the terms may be closer to the idea of wards, or citizens, of the collectivity, Ottawa, Chippewa, and Potawatomi. If the later were the case, age would not be considered the primary factor, rather it would be a matter of legal and political identification. It is also helpful to consider the fact that references to the *Great White Father in Washington* were also terms commonly used in treaty negotiations, and certainly did not pertain to family relations, but rather a political relationship between the United States government and American Indian tribes.

It is also unclear what is implied by the term *some* in this treaty educational provision. In keeping with the likely definition of terms *their children*, and applying the most liberal definition for this term, it could be argued that some, as it applies to the tribal groups, may include only those tribal groups that wished their citizens to be educated

with the support of the relationships forged, and resources made available, via this treaty. Thus potentially, some could mean all, if all wished for such educational support under this agreement. On an individual level, some could mean all but one of the citizens of the Anishinaabe--Three Fires Confederacy. It is also important to note that the term *hereafter* is not an ambiguous term, but is very precise. There should be no doubt that hereafter means hereafter.

While the above analysis has shed some light on who the beneficiaries of the provisions are likely to be and how long the provision was to be in effect, it is the general term *educated* that provides the answer to what the benefit actually is. In trying to determine meaning for such an ambiguous term, it is important to look to historical references and other sources of information that provide insight into the Indian (Anishinaabe in particular) meaning of educated at that time.

The educational interests of the Indigenous peoples of the Great Lakes Region evolved over the course of thousands of years to shape the traditional educational systems that were still in place when European-Americans began colonizing this region in the early 1600s. Oral historical accounts of Anishinaabe practices were the most common sources of information regarding these systems until the 1930s when anthropologists began documenting the lifeways of certain Anishinaabe communities throughout the United States and Canada (Hallowell 1992; Hilger 1992).

Contemporary Anishinaabe authors like Benton-Banai (1988), Broker (1983), Johnston (1976) and Wub-e-ke-niew (1995) and living traditional culture projects like Waswagoning (2001) provide us with a contemporary glimpse/interpretation of Anishinaabe oral traditional knowledge, and can be drawn on to inform a standpoint on

what type of educational system was in place during pre-colonial times according to oral tradition. Such references, when used in conjunction with live interviews, may provide good cross checks of data relative to a comparison of Native and non-Native views on what was considered good education from then and now.

Miller (1996) compares the traditional Indigenous educational systems of North America with European systems of pre-colonial and early colonial eras. He explains that groups like the Anishinaabek did not incorporate schooling as a means of imparting education to younger generations in pre-colonial times. Educational practices were philosophically and spiritually oriented and “emphasized an approach to instruction that relied on looking, listening, and learning—the three Ls” (Miller, 1996, p. 16).

Indigenous educational systems also differed from European systems in that they insisted on individual autonomy. Miller (1996) supports this argument:

...among North American Indigenous societies in general there was a powerful imperative to avoid imposing one’s will on another individual in any but the most extreme situations. This respect for autonomy was extended to young children, permitting them great scope for self-expression and preventing the use of direct, coercive techniques of behaviors modification. Hence, the family’s and community’s efforts to educate the young as to acceptable conduct had to be carried out by the use of sanctions such as embarrassment and ridicule, and more positive force of story and example. (p. 19)

The social and economic success of an adult depended to a large extent on the training they received as children through play and recreation activities. “Games and amusement

were, in fact, techniques for vocational training in Aboriginal society” (Miller, 1996, p. 20). Intervention by adults into the play of the children “was systematic and deliberate, if often unobtrusive and unnoticed” (Miller, 1996, p. 20).

McCoy (1997) explains that "it was generally through family, clan, and community systems that tribal children were given daily and continuing instructions in survival, social and spiritual skills, relations, and values" (p. 18). She goes on to suggest that these educational practices were effective within a cultural context as evidenced by the successful ecologies/economies of these cultures.

Cleland (1992) suggests that role-modeling through family mentoring type relationships was common to the traditional Anishinaabek educational system. He also points out that this system required constant, close interaction within the family group. Because of this, he states

Humor, and in particular sarcastic humor, were devices that helped maintain social norms. When a person hoarded food or shirked obligations to relatives, family and friends responded with sharp ridicule, biting words, and songs that were difficult to withstand. In a way, the community acted as a grand jury, always in session and always ready to prod the lazy, stingy, and boastful back into more acceptable behavior.

(Cleland, 1992, p. 62)

Unlike European-American schools, where students have generally been organized, instructed, and disciplined by individuals other than family members and close friends, this learning environment offered near total family involvement in all stages and components of early education.

Drawing from an Anishinaabemowin (Native language) perspective, an interpretation of the English term "educated" can be found in Nichols and Nyholm (1995) where it includes the animate intransitive verb: "be educated *gikendaaso*" (p. 173). Another interpretation comes from Eklund (1991), where it includes a third person neuter verb form: "*kikino.ama.goosi*" (p. 170) meaning he/she is educated. Lastly, from Rhodes (1993) is a similar term for educated. Under the translation for "be learned," is the animate intransitive verb: "*nbwaakaad*" (Rhodes, 1993, p. 509). According to Rhodes (1993) this use of the term comes from an Ottawa dialect found on Manitoulin and Walpole Islands.

According to Anishinaabemowin teacher, Helen Roy, the Anishinaabe term "*kinomaage*" is generally used to mean "teach or educate," but it is more appropriately interpreted as "the Earth it shows." The root word "*aki-*" is a reference to the Earth. This makes a lot of sense given oral traditional teachings about Mother Earth being our greatest teacher. She explains that the "*-nomaage*" component of the above term is best interpreted to mean "it shows or provides the example" (personal communication, February, 2003).

More examples can be found by studying how Anishinaabe leadership was approaching the idea of education at or near the time that this treaty was written. One of the most common references to Anishinaabe leadership perspectives on education from that era comes from Shingwauk⁴, or the Pine, an Ojibway Chief from Kitigaanziibing (Garden River First Nation of Ojibway). According to Chute (1998), Shingwauk was party to several treaty negotiations between the Anishinaabek and both the United States and the British, and his signature can be found within treaties on both sides of the border

between the United States and Canada.

According to the Shingwauk Project (2002), Shingwauk "envisaged schools as part of a self-determination strategy for the Anishnabek People" (§ 5). His commitment to "cultural synthesis and modern community development" (§ 5) through education is evidenced by his lead role in an 1832 delegation from Bawating (Sault Ste. Marie) to York (Toronto), where he and others petitioned Governor Colbourne for teachers.

According to Chute (1998), Shingwauk "defined three major goals for Ojibwa people: first, to establish linkages with the government agencies that were just beginning to exercise jurisdiction in the Upper Great Lakes region; second, to preserve an environment in which Native cultural values and organizational structures could survive; and finally, to devise new strategies that would promote the formation of band governments capable of assuming a degree of proprietorship over resources on First Nations lands" (p. 3). Shingwauk's vision for education was in line with these major goals and called for some type of blending of educational systems to meet the educational needs of Anishinaabe communities at that time. It did not subordinate one system to the other, nor did it imply that the Anishinaabek were somehow turning over control of the education of Anishinaabe people to colonial governments. In fact, it could be seen as an early tribally controlled school movement for the Anishinaabek. It also speaks to the fact that although the idea of a school was something new to the Anishinaabek at that time, it was being conceptualized by Anishinaabe leadership as something that could be inclusive of both Anishinaabe and colonial knowledge and ways of teaching and learning.

Shingwauk's vision for the education of Anishinaabe people is also evidenced by his son Ogista's perspective after his father had passed on. Ogista, like his father,

"focused on bringing Western education within the reach of the Ojibwa people, in order to strengthen and enhance Native culture rather than to supercede Native values" (Chute, 1998, p. 160). Thus, we see continuity between generations of leadership on the idea of education for Anishinaabe people.

When considering what *educated* meant to the Anishinaabek at the time this treaty was written, it is important to draw on a number of sources including those referenced above. What is clear is that the Anishinaabe understanding of such a term was most likely derived from a blend of traditional educational practices and new cross-cultural ideas about language, leadership, schools, technologies, spirituality, and other considerations.

Trust Level

Given the ambiguity surrounding this educational provision, it is likely that this would fall into the general trust category. While it could certainly be argued that a comprehensive education system would include some type of fiduciary relationship, it remains that the provision lacks any reference to such a relationship. Thus, it would fall on the Indian side of the house to prove that the Indian understanding of this provision included an expectation that the Federal Government would act as a fiduciary regarding the education of Anishinaabe people. Alternately, it may be argued that it should befall the Federal Government to disprove the above. Whatever the case may be, based simply on the wording of this educational provision, the level of trust would probably be interpreted to be general until proven otherwise.

Comparative Legislative Analysis:

The specific terms search for this treaty included the term *educated*. Related

terms included: *cultured, knowledgeable, well-informed, well-read, sophisticated, skilled, learned, erudite, scholarly, educate, education* and *educational*. All three of the acts included in this study can certainly be said to provide some type of educational benefit for Anishinaabe citizens. While a specific terms search of the three laws for the term "educated" produced only three hits under IDEA and no hits under the other two acts, a similar terms search produced many more hits under all three laws (103 under IEA, 50 under ISDEA, and 846 under IDEA). The researcher identified similar terms "education" and "educational" produced the greatest amount of hits (991 total). The conceptual cluster search, however, provided the most evidence for how each of the laws provide for this particular treaty's educational provision. Given the very general nature of the provision, the search for conceptual clusters that provided some type of education, or educational benefit, for Anishinaabe citizens was tremendous, albeit only one of the conceptual clusters under the IDEA contained the specific term *educated*.

Indian Education Act

The IEA provides funding for educational programming that addresses the unique educational and culturally related academic needs of Native American students. The act authorizes programs of direct assistance for meeting those needs; education of Indian children and adults; training of Indian people as educators, counselors and other professionals that serve Indian people; and research, evaluation, data collection, and technical assistance. The act in and of itself does not provide a comprehensive educational program for Anishinaabe citizens, but it does supplement the educational programs provided by different constituencies for all citizens by providing an opportunity for Indian people in general to be involved in the delivery and improvement of

educational programming for Indian children and adults which includes Anishinaabe citizens.

In the Indian Education Act, Congress recognizes that the federal government has a “special responsibility” (p. 1) regarding the education of all American Indian and Alaska Native children and adults. What the act does not do is clarify exactly why the federal government has this special responsibility. The act does point out, however, that the federal government is responsible for ensuring that Indian education programs are based on high-quality, internationally competitive content standards and student performance standards; that they build on Indian culture and the Indian community; assist local educational agencies, Indian tribes, and other entities and individuals in providing Indian students the opportunity to achieve such standards; and that they meet the special educational and culturally related academic needs of American Indian and Alaska Native students.

In regard to content and performance standards, the act specifies that the programs should be “based on challenging State content standards and State student performance standards” (p. 1). No where does the act mention anything about tribal content or performance standards, although it does call for programs that build on Indian culture and the Indian community. While not discounting the utility of State standards, it is nonetheless important to consider what may be missing from a state program. State standards in Michigan do not include any specific reference to the language and culture of the Anishinaabe, although it is certainly possible for teachers to instill Anishinaabe language and cultural concepts into all parts of the curriculum.

The act also provides for: training of Indian persons as educators and counselors;

research; evaluation; data collection; and technical assistance. While the act authorizes program funding for these areas of Indian education, recent appropriations have not provided the level of financial support necessary to realize the goals of the act in this respect. Many of these areas have been underfunded or unfunded since the law was enacted. One area that has never been funded provides grants to tribes for education administrative planning and development.

Local educational agencies (LEA) are eligible to apply for program funding if they have 10 or more Indian students enrolled in the school district, and the Indian student population is not less than 25% of the total student population. These requirements do not apply in certain states and for schools that are located on or near a reservation. An Indian tribe may also apply for a grant if an eligible LEA has decided not to apply. In this case, the tribe would be treated as an LEA by the Secretary of Education. Interestingly, tribes are seen as eligible applicants under the act, but are not included in the identification of Indian students, consultation or development process, review of applications, implementation, or evaluation of the programs, unless the school happens to be a tribal school or under the circumstances mentioned above.

The act authorizes the creation of committees that are composed of 50% or more parents of American Indian students, and requires consultation with the same in the development of the program application. Important to note is that the law does not require the parents to be Indian, only that they be the parents of Indian children. While the assumption would be that most parents of Indian children would themselves be Indian, this is not always the case. It is very possible to have a non-Indian parent raising an Indian child. It is equally important to realize that many Indian and non-Indian

parents of Indian children may not be culturally competent or well equipped to offer advice on the development of programs that are supposed to be designed to meet the special educational and culturally related academic needs of their children. While this can be addressed to some degree by hiring a program staff member who is well equipped in these areas, it does not provide for good oversight or internal evaluation of the program if all or most of the expertise is flowing from one individual.

Lastly, on student eligibility, students do not have to be members/citizens of Indian tribes in order to be considered eligible for program benefits. In fact, even if a child falsely claims to be a member of a tribe, or claims to be a descendant of a tribal member, there is nothing built into the act that requires a verification process that would prove a claim one way or the other.

Indian Self-Determination and Education Assistance Act

In this act, “Congress recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational...services to Indian communities so as to render such services more responsive to the needs and desires of those communities” (p. 2). This recognition is important in addressing the question of what educated means to the Anishinaabek in regards to the language used in Treaty 1. In a way, this is a legislative reaffirmation of what is alluded to in the Supreme Court’s Canons of Treaty Construction concerning the interpretation of ambiguous language.

While Congress recognizes the importance of having Indian people determine the course of their own educational future in this act, it does so with a “commitment to the maintenance of the Federal Government's unique and continuing relationship with, and

responsibility to, individual Indian tribes and to the Indian people as a whole” (ISDEA, p. 2). Unlike termination era legislation, this piece of self-determination legislation is not an attempt to shirk responsibilities, only to uphold the rights of Indian tribes and individuals and to protect their interests in their educational future at every level. From the establishment of advisory committees on the implementation of the act composed of members of Indian tribes and representatives of the federal government, to the local school committees composed of parents of Indian students, Indian people have the opportunity to influence, to at least some degree, the direction of their own educational programs.

The act states that it is the goal of the United States “to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being” (ISDEA, p. 2). This is a far cry from assimilation era legislation that was focused on killing the Indian and saving the man. It would be difficult to imagine that any tribe would argue that this vision of education would not be good for the citizens of any tribe.

Sections 452-455 of the ISDEA are collectively known as the Johnson O’Malley Act of 1934 as amended. Until 1958, this “program was a basic Federal Aid program specifically designed to assist public school districts to educate Indian children from reservations and Indian-owned, tax-exempt land areas” (Van Alstine, 1998). Since that time, we have seen the program evolve into a “supplementary aid program geared to offset the financial deficit of unmet extraordinary and exceptional cases of need” (Van Alstine, 1998) for Indian students.

In 1996, the Johnson O'Malley program was placed under Tribal Priority Allocation or TPA. In some sense, this may have afforded the program a certain measure of stability, given the attempts to zero-fund the program in prior years (Cheek, 1999). In 2001, the BIA "requested \$17,035,000 for JOM, a \$352,000 decrease from Fiscal Year (FY) 2000 appropriations at 17,387,000. For FY 2001, the BIA request serves 272,000 students in 33 states...averages of \$62.62 per student for FY 2001" (Arkeketa, 2002, ¶ 3, 7). Also in 2001, the National Johnson O'Malley Association passed resolutions to request the reinstatement of an "annual student count with a funding base of \$400 per capita with a 6% minimum annual increase and to take JOM out of tribal priority allocation; and to approve forward funding of JOM funds to be in Fiscal Year 2002" (Arkeketa, 2002, ¶ 12). The rationale behind the forward funding resolution is to get the JOM funding process in line with the fiscal year (July 1-June 30) of the school districts, whereas at present it runs on the federal fiscal year (October 1-September 30).

Where the original language for this act included only states and territories as eligible recipients, the law was later amended in 1936 to allow the Secretary of the Interior to contract with state universities, colleges, schools, a state or private corporation, agency, or institution, in addition to states and territories. According to former BIA Education Program Administrator, Betty Walker, "prior to 1970, nearly all JOM contracts were with State Departments of Education. Since 1975, most have been with tribal governments" (Walker, 1994, p.1). The shift that occurred in 1975 has been attributed to the inclusion of JOM in the Indian Self-Determination & Education Assistance Act.

Given the fact that most JOM contracts are now held by tribes, it is likely that Anishinaabe students who receive benefit from JOM programs are getting supplementary

education directly from their respective tribe and not from schools. Exactly how many Anishinaabe students are actually receiving benefit from JOM programs has yet to be determined.

Whether the JOM program is administered by a school or a tribe, there is an expectation within the act that a minimum standard will be included as to how the program is administered. It remains questionable the impact this act is having on standards based reform efforts, including the use of state standardized tests.

Under this act, the Secretary of the Interior is authorized to “make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of...this title into effect: Provided, that such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts, as herein provided, are to be effective” (ISDEA, 2000, p. 53). Additionally, the act requires that the Secretary of the Interior “not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students” (ISDEA, 2000, p. 53). The intersection of standards and educational needs of Indian students is of primary interest in considering how Anishinaabe students should be educated. Do state standards provide adequate guidelines for the delivery of an educational program that meets the educational needs of Indian students? If not, how will supplementary programs like the ones included under this act and the Indian Education Act help to meet those needs? Is there need for change at a deeper level?

These questions will be addressed further in the next chapter.

The act authorizes appropriations of “such sums as may be necessary” (ISDEA, 2000, p. 57), and provides that “all of such sums [are] to remain available until expended” (ISDEA, 2000, p. 57). It is important to note that there is no cutoff date for this act. In fact, it stipulates that the appropriations authorization is for *thereafter*. The act contains a provision for schools that educate Indian students who are members of federally recognized tribes the full cost of their education, when the student is an out of state resident currently residing in a federal boarding school facility. The act also authorizes the Secretary of the Interior to contract with a state education agency or school district to assist in the “acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to, or in close proximity to, any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands” (ISDEA, 2000, p. 55).

One important consideration included in the act, is that the assistance provided by this act is to be seen as “in addition and supplemental to assistance provided under title IX of the Elementary and Secondary Education Act of 1965” (ISDEA, 2000, p. 59). This is the act that would later contain the Indian Education Act.

Finally, the act stipulates that the “money expended under such contract shall be prorated to cover the participation of only the Indian students.” The definition of an Indian student under this act is somewhat different from the Indian Education Act as well, in that Indian is defined as “a person who is a member of an Indian tribe” (ISDEA, 2000, p. 3). The act also stipulates that the tribe must be federally recognized. In this

respect, the act is specific to the rights of a tribe to determine its own membership or citizenship requirements.

Individuals with Disabilities Education Act

This act is certainly the most comprehensive of the three acts insofar as establishing parameters around what a system of education may include. Although the act is not specific to Indian people, it does impact Indian citizens in both a public school and tribal school context. Some sections apply to tribal schools specifically.

The act provides a working definition of a child with a disability. The definition is split up into age specific components which are located at two separate points within the act. They read as follows:

... 'child with a disability' means a child -- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services... The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child -- (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services.

It is unclear how many Anishinaabe children would actually fit this definition. Further research into this subject may reveal a clearer picture.

Although the act is not specific to American Indian children, except for the section that pertains to the relationship between the Secretary of Education and the Secretary of the Interior, it does provide a definition of "Indian" and "Indian tribe" under the act. It reads as follows:

The term 'Indian' means an individual who is a member of an Indian tribe... The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act)(IDEA, 1997, p. 7)

Considering that approximately 92% of American Indian students attend public state run schools, it is very likely that the majority of Anishinaabe children with disabilities receive benefit from this act not because they are Indian, but because they are students with disabilities attending a state run public school who are entitled to "equal protection of the law" as stated in the act.

In relationship to the treaty provision, it could be argued that some Anishinaabe children with disabilities are being educated at state run public schools due, at least in part, to this act. It is unclear, however, how many of the same students were or were not being educated to the same degree prior to this act, although it is likely that the level of service was not as great considering the general history of education for students with disabilities nation wide prior to the adoption of this act.

What is particularly interesting about this act is that it provides a greater level of definition of the term *educated*. In this act, it calls for *appropriate* education that "emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living" (IDEA, 1997, p. 4). Although the definition stems from a non-Anishinaabe perspective, it does provide a more complete picture of what educated means in a contemporary sense from a federal perspective. Thus, it provides an opportunity for comparison of what educated means in a contemporary sense from an Anishinaabe governmental perspective.

Also important is that the act calls for a very comprehensive approach to accomplishing the goals of the act. The act contains provisions for protecting the rights of children and parents, assistance for states, local, educational, and federal agencies to provide the types of services called for by the act, early intervention programs for infants and toddlers with disabilities and their families, support for systemic change initiatives, research, personnel preparation, technical assistance, dissemination, technology development, media services, and assessment. The inclusion of these provisions in the act in a sense expands the definition of educated even further by implying that if these provisions were not included, the goals of the act may not actually be realized.

Another interesting point of discussion regarding the wording of this act, is found in the following definition of free and appropriate public education:

The term 'free appropriate public education' means special education and related services that -- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or

secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 614(d) (IDEA, 1997, pp. 6-7).

It is important to point out that no where within the section of that act that refers specifically to the Secretary of the Interior's interaction with Indian tribes via the Bureau of Indian Affairs does it contain the terms *free* and *public* when addressing the type of special education and related services provided under this act. It does, however, maintain the term *appropriate*. Again, this comes back to the definition of *educated* and offers yet another consideration for how the term is being defined within the act, and how it may be defined by the Anishinaabek historically and in a contemporary sense.

Within the sections of the act that deal specifically with Indian tribes, the Secretary of Education is to "reserve 1.226 percent [of the total appropriation] to provide assistance to the Secretary of the Interior" (IDEA, 1997, p. 14). This amount is provided only if certain conditions are met by the Secretary of the Interior including:

a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;...an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures;...and an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services,

resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program). (IDEA, 1997, p. 22)

The act also stipulates that the Secretary of the Interior shall distribute certain payments to "tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior" (IDEA, 1997, p.23). It is also important to note that within the same section of the act, it states that tribes or tribal organizations are "encouraged to involve Indian parents in the development and implementation of these activities" (IDEA, 1997, p.23). Note that it does not require the tribes to perform any specific task, but only encourages this action.

The act also calls for an advisory board established by the Secretary of the Interior that includes "individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal

organizations, representatives from State Interagency Coordinating Councils...[and] other members representing the various divisions and entities of the BIA" (IDEA, 1997, p. 24). The advisory board is charged with the following responsibilities: assisting "in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities; ... [advising and assisting] the Secretary of the Interior in the performance of the Secretary's responsibilities [under the act];...[developing and recommending] policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;... [providing assistance and disseminating] information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities;...[and providing] assistance in the preparation of information" (IDEA, 1997, p. 24).

Finally, the act authorizes to be appropriated such sums as may be necessary. While this language is clearly ambiguous, it implies that the projected costs of such an education program are really uncertain. Thus, if looking at this from an Anishinaabe perspective on education, it would likely follow that such a perspective would also be uncertain in regards to approximated costs of such an educational program.

Treaty 2: Treaty with the Ottawa, Etc., 1821

Article(s) Containing Educational Provision(s):

Article 4:

In consideration of the cession aforesaid, the United States engage to pay to the

Ottawa nation, one thousand dollars in specie annually forever, and also to appropriate annually, for a term of ten years, the sum of fifteen hundred dollars, to be expended as the President may direct, in the support of a Blacksmith, of a Teacher, and of a person to instruct the Ottawas in agriculture and in the purchase of cattle and farming utensils. And the United States also engage to pay to the Potawatamie nation five thousand dollars in specie, annually, for the term of twenty years, and also to appropriate annually, for the term of fifteen years, the sum of one thousand dollars, to be expended as the President may direct, in the support of a Blacksmith and a Teacher. And one mile square shall be selected, under the direction of the President, on the north side of the Grand River, and one mile square on the south side of the St. Joseph, and within the Indian lands not ceded, upon which the blacksmiths and teachers employed for the said tribes, respectively, shall reside. (Kappler, 1972, p. 200)

Identification of Key Terms:

*annually, for a term of ten years, the sum of fifteen hundred dollars...in the support of a Blacksmith, of a Teacher, and of a person to instruct the Ottawas in agriculture.

*to pay to the Potawatamie nation... annually, for the term of fifteen years, the sum of one thousand dollars... in the support of a Blacksmith and a Teacher.

*And one mile square shall be selected...on the north side of the Grand River, and one mile square on the south side of the St. Joseph, and within the Indian lands...upon which the...teachers employed for the said tribes, respectively, shall reside.

Analysis of key terms:

Parties to this treaty included “the United States, and the Ottawa, Chippewa, and

Pottawatamie, Nations of Indians" (Kappler, 1972, p. 198). In this treaty article, it is clear that the United States is no longer dealing with the Anishinaabe Three Fires Confederacy as in Treaty 1, but is now dealing with the Ottawa and Potawatamie as separate *nations* in their own right.

The treaty includes multiple educational provisions, most of which had a time limitation attached. It is unclear if the annual appropriation of \$1500 for ten years in support of "a Blacksmith, of a Teacher, and of a person to instruct the Ottawas in agriculture and in the purchase of cattle and farming utensils" (see above excerpt) was actually appropriated or not. It is also unclear at this point how it was actually used if indeed it was appropriated. It is also unclear if the annual appropriation of \$1000 for 15 years in "support of a Blacksmith and a Teacher" (see above excerpt) for the Potawatamie was actually ever appropriated. Again, if it ever was appropriated, it is unclear how it was actually used. Further research into the appropriations and reports on Indian affairs from that era may reveal a clearer picture on these educational provisions, but was beyond the scope of this project.

While the utility of a blacksmith at the time this treaty was written was certainly high in importance, the utility of a blacksmith in today's world is practically non-existent. Applying a liberal perspective to the idea of what kind of service a blacksmith performed for a school, on the one hand, may leave the door open for modern day equivalents of a blacksmith. For instance, a blacksmith maintained metal objects that were needed for the proper functioning of school equipment. A modern day general maintenance person performs similar tasks.

An important component of this article is the designation of two square miles of

land, one square mile on the St. Joseph River, and one square mile on the Grand River for the residential needs of blacksmiths and teachers for these tribes. It is important to note that the article includes no time limitation on the designations of land for this purpose. While it is true that there is a clear limitation on the appropriation for support of these individuals under this treaty, it does not preclude teachers for these tribes from being supported by another mechanism. As such, it leaves the potential for teachers who are not supported by the appropriation set forth in this article to have a place of residency on the lands set aside for that purpose under this treaty.

It is important to note also, that the term *teacher* is an ambiguous term, in that it does not specify what type of teachers. Thus, it could be argued that a teacher of Anishinaabemowin would qualify for residency on this property, or even a teacher-in-training, as long as the teacher was designated as for the benefit of these tribes. It is unclear if this provision has been met by subsequent land provisions for Indian education in Michigan, or if this provision has been abrogated by later treaties or legislative action. Further research into specific abrogation of land provisions may reveal a clearer picture but was beyond the scope of this project.

From a cross-linguistic perspective, it is clear that there are references to the idea of “teacher” as a participant in the educational process. In Nichols & Nyholm (1995) we find: “teacher *gekino'amaaged* na-pt; male teacher *gikino'amaagewinini (wag)* na; female teacher *gikino'amaagewikwe (g)* na” (p. 265). In Eklund (1991), it includes: “teacher: *kinkino.ama.ged (jig)* noun” (p.251). Lastly, in Rhodes (1993) we see: “teacher: *eknoohmaagenh* na, M; *kinoomagewnini* ni, CI” (p. 595).

Helen Roy explains that the human to human educational process in Anishinaabe

terms includes first, “*ezhinomaage*” (he/she shows), second, “*gdadendam*” (you think), third, “*gdasostam*” (you understand), and fourth, “*gikendam*” (you know). Thus, the role of a teacher, in an Anishinaabe sense of the term, is essentially to provide an example that will encourage a learner to engage in the act of thinking. From previous knowledge, the learner will come to understand new concepts, and as such gain an ever increasing knowledge of the surrounding world, which come back to the idea of “*kinomaage*,” which can be interpreted as “the Earth it shows” (personal communication, February, 2003).

While the above image of a teacher may not have been the reflection of the average non-Indian teacher of the times, it certainly would have reflected the type of teacher that would have been most prized by the Anishinaabek then or now, as such a teacher would have been able to show Anishinaabe people pathways to new knowledge in a way that was in line with how the Anishinaabek were used to learning. Interestingly enough, this type of educational process is very similar to the type of teaching and learning that is often referenced in best practices in education for all teachers and learners today (Tharp, et. al., 2000).

If the educational annuities under this treaty have never actually been paid, there may be an outstanding debt owed to the Anishinaabek. At the face value of \$30,000 this could amount to \$364,864 when adjusted for inflation in support of teachers or for a person to instruct the Ottawa in agriculture. The teachers’ residence provision may also still be obligated.

Trust Level:

Although it is clear that a fiduciary relationship was forged by the two educational

provisions pertaining to annuities, it is also clear that the relationship was not intended to be continuous. Thus, in keeping with the criteria, this provision would fall into the express fiduciary category, with an understanding that it had a time limitation.

It could be argued, however, that the provision of land for teacher's residence does not indicate a number of years, and may have thus been thought to have continued beyond the years referred to under the annuities. Thus, it would require the Indian side of the house to prove that the Indian understanding was that the land would be held in trust for the purpose of providing a residence for teachers for the tribes, and that it was expected that such provision would continue beyond the date of the last annuity. Alternatively, it may be argued that the Federal Government side of the house should have to disprove that continuation of this provision was not in line with Indian understanding at that time. Regardless, the outcome of such a dispute, it remains that the level of trust obligation would likely be considered limited as this provision is much like that of the General Allotment Act, in that it does not indicate a fiduciary relationship even if it were found to be continuous.

Comparative Legislative Analysis:

As the case with the Treaty 1, all three of the acts included in this study could be said to provide some type of support for teachers of Anishinaabe citizens. The specific terms search under this treaty included the term *teacher*. Similar terms included: *educator, tutor, instructor, coach, trainer, lecturer, professor, governess, educationalist, schoolteacher, agricultural instruction, teacher training, and residential facility for teachers*. Only two of the acts, ISDEA and IDEA, however, potentially provide some type of residential component for teachers. A specific terms search of the three laws for

the term *teacher* produced only 4 hits under IDEA and no hits under ISDEA, and 44 hits under IDEA. A similar terms search produced only six additional hits under IDEA. Microsoft Word identified similar terms “educator” and “professor” produced three hits and one hit respectively, whereas the researcher identified similar term “teacher training” produced two hits. Again, it was the conceptual cluster search that provided the most evidence for how each of the laws provide for this particular treaty educational provision. Unlike Treaty 1, the provisions in this treaty were a bit more specific, and the conceptual cluster search was a bit more confined. Only three of the conceptual clusters contained the specific term *teacher*, one under IEA, and two under IDEA.

Indian Education Act:

While the Indian Education Act does not specifically address the residence of teachers for the tribes included in this treaty, it does address the training of Indian persons as teachers and counselors. Thus, the act potentially provides for the partial funding of teachers for the tribes included under this treaty. Because this treaty included only Ottawa and Potawatomy, and there are currently no Ottawa tribes that operate a tribal school, it was determined that under this act, the monetary equivalent could only be partial at best, as under the limitations set up for this study, only the funding received by Hannahville Indian School would be comparable. As such, during the most recent year that data was available, the Hannahville Indian School received \$38,340 (Department of Education, 2001) under this act. At this level of funding, it would take 10 years of continuous funding to equal an amount greater than the modern day equivalent of the treaty monetary provision.

If construed liberally, as called for under the Canons of Treaty Construction, the

residency of teachers on the lands provided for under this treaty could be for the purposes of training. Given the ambiguity of the term *teacher* in the article, it could also be argued from a liberal perspective, that the teacher training could include Native language instructors, educational administrators, educational counselors, teacher aides, social workers, parents as teachers, and ancillary educational personnel. This would depend on the meaning assigned to an Anishinaabe definition of "teacher" in the early 1800s.

Indian Self-Determination and Education Assistance Act:

This act is almost opposite as compared to the Indian Education Act insofar as it potentially addresses the land for teacher's residence component, but offers much less as far as provisions for support of teachers for Indian citizens. This act may provide funds for the construction or renovation of a residential facility for teachers of Anishinaabe students. The act only requires that such a site be located on or near a reservation, and be needed to meet the educational needs of Indian people living therein. The lands included in Treaty 2 were certainly intended for meeting the needs of the tribes included in the treaty, and as such, could be arguably considered to fall within the definition of on or near reservations especially if taken into trust by the federal government for the tribes. Given that the lands in question may not actually be currently designated as they were intended by this treaty, this act could afford an opportunity to acquire lands, facilities, and equipment for teachers of Anishinaabe citizens in accordance with the treaty provision.

Finally, the act authorizes certain federal agencies to allow tribes to utilize existing federal buildings for purposes of education, and can also authorize the donation of certain properties for the same. Federal agencies, like the Department of Education,

can also contract with tribal governments for the administration of programs upon the request of a tribe by tribal resolution. Thus, the Anishinaabe tribes included in this treaty could potentially enter into a self-determination contract with the relevant agencies to create and administer a residential teacher training program under their own purview.

Concerning the comparison of monetary provisions under this treaty with the funding provided to current tribes that could be argued to be the modern day beneficiaries of the provisions, there are only two tribes that would fall into this category based on the limitations of this study. According to Dr. Joe Herrin, a finance systems specialist for the Bureau of Indian Affairs, the Grand Traverse Band of Ottawa/Chippewa (although they do not operate a school that receives funding under any of these acts) received \$42,900 (personal communication, February, 2003) under this act during the most recent year that data was available. The Hannahville Indian Community received \$16,266 (Herrin, personal communication, February, 2003) under this act during the same year. When added together, beneficiary tribes of this treaty received \$59,166 under this act. At the current level of funding, it would take seven years of continuous funding to reach a level greater than the modern day equivalent of the treaty monetary provision.

Individuals with Disabilities Education Act:

Similar to the Indian Education Act, this act has certain provisions for the preparation of educational personnel. This act, however, focuses on special education and related services personnel for students with disabilities in general. In relationship to the educational provision included in Treaty 2, there are certain components of this act that could apply to such a residential training facility as proposed earlier as well.

The act does permit "program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities" (IDEA, 1997, p. 10) for personnel preparation purposes. Thus, it could potentially provide funding for the construction or alteration of a residential training facility for special education teachers for the tribes included under this treaty. Applying a liberal definition to the term *teacher* as included within the treaty, could certainly encompass a wide range of special education personnel.

The act also provides that the Secretary of Education may contract with Institutions of Higher Education (which includes tribal colleges) and with Indian tribes as proscribed under the Indian Self-Determination and Education Assistance Act. This would allow the tribes included in this treaty an opportunity to develop a residential training facility for special education personnel for their tribes, or in cooperation with a tribal college, and under the purview of the respective tribal governments. This is of course given that the lands in question would be considered within tribal jurisdiction. If the lands were considered to be not within tribal jurisdiction, this may usher in an entirely different set of rules and regulations. Regardless of the jurisdiction, it could be argued that the type of special education training provided to the personnel in training would be much closer to an Anishinaabe perspective on education than the type of training received at an institution that does not fall under the purview, at least to some degree, of Anishinaabe tribes.

Regarding the comparison of funding under this act with the contemporary equivalent of the treaty monetary provision, only the Hannahville Indian School would fall within the limitations of this study. The Hannahville Indian School received \$558,257 (Herrin, personal communication, February, 2002) under this act during the

most recent year that data was available. At the current level of funding, it would take only one year of funding to provide an amount greater than the modern day equivalent of the treaty monetary provision.

Treaty 3: Treaty with the Chippewa, 1826

Article(s) Containing Educational Provision(s):

Article 6:

With a view to the improvement of the Indian youths, it is also agreed, that an annual sum of one thousand dollars shall be appropriated to the support of an establishment for their education, to be located upon some part of the St. Mary's river, and the money to be expended under the direction of the President; and for the accommodation of such school, a section of land is hereby granted. But the payment of the one thousand dollars stipulated for this article, is subject to the same limitations described in the preceding article. (Kappler, 1972, p. 270)

Identification of Key Terms:

annual sum of one thousand dollars...to...support...an establishment for their education, to be located upon some part of the St. Mary's river...for the accommodation of such school, a section of land is hereby granted.

Analysis of Key Terms:

Parties to this treaty included "the United States, and the Chippewa Tribe of Indians" (Kappler, 1972, p. 268). Note that this treaty is seemingly pertinent to only one group of the Anishinaabe Three Fires Confederacy.

If considering the value of one thousand dollars at the time this treaty was written, as compared to the value of one thousand dollars today, it would be safe to assume that

the Anishinaabe signatories of this treaty would have been relying on the meaning of one thousand dollars at that time. If applying the Canons of Treaty Construction in this fashion, the meaning of one thousand dollars would not be taken literally, instead, a more liberal definition might be applied that would account for inflation and other facets of value (i.e., the cost of labor). Just considering inflation, a thousand dollars in 1826 would be worth \$17,857 by today's standards.

As far as the meaning of "support of an establishment for their education" (see above excerpt), it does not indicate that the support was intended only for acquisition, construction, or maintenance. Applying a liberal definition to the term support, could really mean all of the above plus support for curriculum and instruction, or a whole host of other considerations that in some way support the operation of a school.

While the terms *establishment* and *school* seem to be synonymous terms within the article, an Anishinaabe perspective on these terms may have been, and may still be, radically different than that of the United States. Similar to the Treaty of 1817, this treaty contains the term *education*. While this has been fleshed out fairly well in the previous analysis, it is still important to point out that this term is again ambiguous and how it is defined may be radically different between the Anishinaabek and the United States. Thus, it begs the question about what type of establishment or school would be conducive in delivering the type of education perceived of by the Anishinaabek in this instance.

Recalling from the section on Treaty 1, Helen Roy's explanation of the term *kinomaage*, there are at least a few terms that have evolved since early colonial times to mean school, or a place that is designated for the educational process to occur from a non-traditional Anishinaabe context. According to Helen, one term evolved from a

combination of the term “*kinomaage*,” and the term for place which is “*gamik*,” thus we now have “*kinomaagegamik*.” Another term results from what Helen refers to as Ojiglish (a combination of Ojibway and English terms). The term “*shkoonwidgamik*” results from combining the English term “school” with the Anishinaabe term for “place”. In Anishinaabemowin there are no “L’s”. Thus, the L is dropped from school and replaced with a the sound of “n”, or in some cases a nasalized sound represented by “nh” (personal communication, February, 2003).

It is important to see that even the linguistic history of the interpretation of school in Anishinaabemowin tells something about the way the Anishinaabe people understood school at that time. Following the evolution of the term, it is safe to say that the Anishinaabe saw schools as a blend of Anishinaabe and English language and culture customs and traditions. This blending of educational systems is also witnessed by Anishinaabe leadership perspectives like that of Shingwaukonce mentioned earlier under Treaty 1.

While it could be argued that the United States does support an educational establishment or school for the tribes party to this treaty in Sault Ste. Marie, Michigan, a town that is within a few miles of the St. Mary's River, there is something to be said about the value of property in relationship to location. There should be no misunderstanding that "to be located on some part of the St. Mary's River" means actually located on some part of the St. Mary's River, not three miles inland. The waterways of this area have always played a vital role in the education of Anishinaabe children.

Even if it can be shown that the annuities have been discontinued via the will of

Congress, the grant of land may still exist. The preceding article for this treaty states that "this annuity shall continue only during the pleasure of the Congress of the United States" (Kappler, 1972, p. 270). Further research into subsequent Congressional appropriations may reveal a clearer picture of the "pleasure" of Congress in this regard. Although it could be argued that the meaning assigned to the will of Congress should also come from an Indian understanding from the time the treaty was written.

Trust Level:

The provision for an educational annuity in this treaty clearly creates an express fiduciary trust relationship between the Tribe and the Federal Government. That such a relationship continues to present day is questionable, as the annuity was to continue at the pleasure of Congress. As suggested above, it may be that the Indian understanding of the pleasure of Congress remains intact until Congress specifically and officially suggests otherwise. Thus it befalls the Federal Government side of the house in this instance to prove that Congress has made it clear to the Indian side of the house that it is no longer the pleasure of Congress to maintain such an annuity and hence a fiduciary trust relationship. Short of proving this, it remains that an implicit trust relationship may have been established by the ambiguity in the wording. In other words, even if not tied directly to this treaty, if Congress appropriated any funding that supported an establishment for the education of citizens of this Tribe, it could be argued to have a treaty basis.

Regarding the provision of land for an establishment for the education of tribal youth, the trust status of the land would create a limited trust relationship between the Tribe and the Federal Government. In this instance, the Federal Government may be

responsible for maintaining the trust status of the land even beyond the duration of a fiduciary relationship created by the annuity.

Comparative Legislative Analysis:

The specific terms search for this treaty included the terms *school* and *land*. Similar terms for school included: *educational institution, educational establishment, educational facility, training facility, college, and university*. Similar terms for land included: *ground, earth, terra firma, soil, terrain, and property*.

While it was clearly established in the comparative legislative analyses for the Treaty of 1817 that much support for schools that serve Anishinaabe students in general exists within the three acts, it could be argued that unless such a school actually exists, none of the potential support actually matters. That being said, the argument could be made that the Baweting Anishinaabe PSA, or some other public school in the Sault Ste. Marie area, may be the equivalent of the school included under this treaty. If this were the case, then any type of support provided under these acts for such a school could be considered relevant to at least one component of this treaty. Only two of the acts, ISDEA and IDEA, potentially provide some type of school and/or land component.

As suggested earlier, a specific terms and similar terms search was not conducted for an annuity or general monetary support for the school component of this treaty provision, however, a conceptual clusters search was included, and results provided some of the same evidence as found under the conceptual cluster search for the Treaty of 1817. A specific terms search of the three laws for the term *school* produced 29 hits under IEA, but no hits were recorded under similar terms searches nor were there any conceptual clusters that addressed either the provision of a school or tract of land. There were a total

of 40 hits recorded under a specific terms search for school under ISDEA, and 70 hits under IDEA. A similar terms search produced an additional 51 hits under ISDEA, and an additional 22 hits under IDEA. The Microsoft Word thesaurus did not have any similar terms for school as a noun. The search for Microsoft Word identified similar terms for land, but did not produce any hits under any of the acts. The conceptual cluster search provided the same evidence as derived from the search for the teacher's residence component under the previous treaty. Only four of the conceptual clusters under ISDEA contained the specific term *school*, and the one conceptual cluster under IDEA did not contain the term at all. Only two of the conceptual clusters under ISDEA contained the specific term *land*, and the one under IDEA did not.

Indian Education Act:

As suggested above, if it were argued that an equivalent of the school included in this treaty provision already exists, then the general support for schools that are providing education to Anishinaabe citizens under this act could be considered as relevant to this treaty provision. If this were the case, many of the findings under the conceptual clusters search under the Treaty of 1817 would also apply here. For instance, if the Baweting Anishinaabe PSA, the Sault Area Public Schools, (the two LEAs that serve the majority of the students belonging to this band of Ojibway) or a combination of both were seen as the modern day equivalent of this establishment, it could be argued that the current allocations for these schools may actually meet the educational provision. The schools (LEAs) included received \$311,545 under this Act for the year 2001. It could be argued, however, that only the Baweting Anishinaabe PSA actually fits the definition of a school established for the education of Indian youth. If this were the case, the amount would be

considerably less, as the school received only \$39,680 under this act in the year 2001. This amount is more than the contemporary equivalent (\$17,857) of the \$1000 annuity included in the treaty, however. With the redefinition of Baweting Anishinaabe PSA as a state charter school (thus having open enrollment with no tribal preference), it could also be argued that the school no longer fits the treaty definition. If it were argued that some school in the Sault area fits the definition of the school included in this treaty, then, in regard to the support for the school component, this act could be said to meet the treaty provision in much the same way that it met the general education provision under the Treaty of 1817, albeit for this treaty, it would be more limited to the support of one school or a specific set of schools.

Indian Self-Determination and Education Assistance Act:

This act may provide funds for the acquisition of a tract of land on the St. Mary's River, the construction of a school on the land (or alternately, it could provide a federally owned building that already exists), and JOM funding for supplementary Indian education programming at the school. This act even provides a mechanism whereby the Bureau of Indian Affairs and the U.S. Department of Education could contract with the tribe or the tribal school to administer an educational program for the children of the tribes party to this treaty at the school. If the amount of the contract was equal to or greater than the \$17,857 approximate contemporary value of the annual support called for by this treaty, it could be argued that this act provides a mechanism to address the support component of this treaty.

In comparison to the IEA, this act addresses the annual support provision more directly, as it provides JOM funding for schools that serve the educational needs of

Anishinaabe citizens, and it requires that recipients be tribal members (thus requiring a direct relationship between the school and the tribe). In comparison to IDEA, it is also more direct in this regard. While IDEA provides direct support to schools that educate Anishinaabe students who have special education needs, it does not require that the recipients of such services be tribal citizens.

This act is also more direct than either IEA or IDEA in respect to the tract of land provision or in the potential to donate an existing school or building, or to fund the construction or renovation of a school. IDEA also provides for the donation, construction or renovation of a school or building, but only as it is needed for special education purposes.

Regarding the level of fulfillment for the annual support component, it is more difficult to ascertain a clear figure on the amount of support being provided to Baweting Anishinaabe PSA or Sault Area Public Schools under the JOM section of this act. That being said, it is possible to at least get a close approximation of the amount by looking at the portion of the budget, \$210,300 (Herrin, personal communication, February, 2003), for the Sault Ste. Marie Tribe of Chippewa Indians Youth Education and Activities program that comes from JOM funds. According to Allison Krebs (personal communication, December, 2002), this is about one-third of this program's total annual budget. The program provides services ranging from cultural presenters to tutors and coordinators depending on which of the 17 school districts within the Tribe's service area is being addressed. The program provides a full-time coordinator for the Sault Ste. Marie area, as well as a wide range of services. Because the data collection process for the program is not set up to gather specific data for each of the schools it services, it is

difficult to figure out how much of the \$200,000 is actually spent on Baweting or Sault schools. Using simple division, it could be asserted that the 17 school districts ultimately split the \$200,000 and would thus receive approximately \$11,765 in services, thus support, under this act from the Sault Ste. Marie Tribe of Chippewa Indians. Combining this with the salary and benefits of the full-time coordinator for the Sault Ste. Marie area, would certainly be expected to exceed the \$17,857 modern day equivalent of the \$1000 annuity included in this treaty. Further research should clarify the exact amounts alluded to above, but it will have to suffice for this instance to suggest that this act is likely to provide an amount that is above the modern day equivalent of the monetary provision of this treaty.

Individuals with Disabilities Education Act:

As suggested earlier, it could be argued that the Baweting Anishinaabe PSA is the equivalent of the school called for by this treaty. If this were the case, it may be argued that the funding received on an annual basis for special education and/or related services may be meeting the support for school component of the treaty. The amount received by Baweting Anishinaabe PSA for special education during the 2001-2002 school year was \$196,665 (Herrin, personal communication, December, 2002), certainly more than the contemporary equivalent amount (\$17,857) of the \$1000 annuity that was included for support in the treaty. Thus in terms of directness, the act provides direct support for what could be considered the equivalent of the school included in the treaty, but not because it is obligated by treaty or even to Indian tribes or individuals in general, but because it provides funding for special education for all schools regardless of their Indian enrollment. As suggested previously, this act is less direct than either IEA or ISDEA in

respect to this provision of the treaty, because it is not focused on Indian students specifically.

As shown earlier, this act does permit program funds to be used to: acquire appropriate equipment; to construct new facilities; or alter existing facilities for special education purposes. Thus, it could potentially provide funding for the construction or alteration of a school for the tribes party to this treaty to meet the special education needs of the students who would be attending such a school. While the act does not provide for the acquisition of a tract of land for the school, it does provide under certain circumstances for the construction of a school. Assuming that the argument of Baweting or a Sault Area public school is not the equivalent of the school addressed in this treaty, this act could provide for the construction of such a school. Thus, it is more direct than IEA for this provision, but less direct than ISDEA.

In terms of level of fulfillment for annual support for the school, the amount of funding is greater than that of IEA, and could thus be considered more full in some sense. It is argued here, however, that once a certain threshold is reached, the Acts can only be said to meet the provision fully, and any amount above the full mark is another form of comparison entirely. It is difficult to compare this act with ISDEA as far as a dollar for dollar amount. Until a more complex data gathering procedure is put in place for ISDEA reporting for the Sault Ste. Marie Tribe of Chippewa Indians relationship with the Sault schools or Baweting, it will suffice to say that both of these acts are likely to offer a level of fulfillment that is greater than the amount provided in the treaty annuity.

In terms of acquisition of a tract of land, this act does not provide for this component, and as such, is much like the IEA in comparison to the ISDEA which does

provide for such land acquisition. Unlike the IEA, this Act does provide for the construction or renovation of a school, but only for special education purposes. Thus, if it were not needed for special education purposes, it may not provide such a school at all.

Treaty 4: Treaty with the Potawatomi, 1826

Article(s) Containing Educational Provision(s):

Article 3:

In consideration of the cessions in the first article, the United States agree to pay to the Potawattamie tribe, an annuity of two thousand dollars in silver, for the term of twenty-two years, and also to provide and support a black-smith for them at some convenient point; to appropriate, for the purposes of education, the annual sum of two thousand dollars, as long as the Congress of the United States may think proper, to be expended as the President may direct; and also, to build for them a mill, sufficient to grind corn, on the Tippecanoe river, and to provide and support a miller; and pay them annually one hundred and sixty bushels of salt; all of which annuities, herein specified, shall be paid by the Indian Agent at Fort Wayne. (Kappler, 1972, p. 274)

Identification of Key Terms:

for the purposes of education, the annual sum of two thousand dollars

Analysis of Key Terms:

Parties to this treaty included "the United States, and... the Potawattamie Tribe of Indians" (Kappler, 1972, p. 273). Again, this treaty is pertinent to only one group of the Anishinaabe Three Fires Confederacy—the Potawattamie.

For this group of Anishinaabek, the U.S. government was to provide an "annual

sum of two thousand dollars" for the "purposes of education" (see above excerpt). As suggested in the analysis of the Treaty of 1817, education is an ambiguous term that can mean many things. The meaning should be derived from an Anishinaabe (Potawatomi in particular) understanding, and would likely not have changed much in the interim period between these two treaties.

As suggested in the analysis of key terms for the Treaty with the Chippewa of 1826, the meaning of two thousand dollars is somewhat ambiguous in terms of value. What it was worth in 1826 is no where near what it would be worth in today's world. Thus, the meaning should be viewed liberally to mean the value of two thousand dollars. In terms of inflation alone, two thousand dollars in 1826 would be worth approximately \$35,714 by today's standards.

In terms of the duration of the annuity, it was to continue "as long as the Congress of the United States may think proper" (see above excerpt). A closer review of subsequent treaties, appropriations, and legislation may reveal how long Congress thought it proper to continue an annuity for this treaty provision. It is unclear if simple negligence on the part of Congress to continue funding these annuities would be considered a satisfactory legal action to meet treaty terms. Given the Canons of Treaty Construction, however, it seems that even this ambiguity would have to be resolved in favor of Indian understanding. How were the Anishinaabek to understand that Congress no longer thought it was proper to continue such an annuity?

Trust Level:

Similar to Treaty 3, given the ambiguity of the duration of this educational annuity, this provision could be argued to be both an instance of express fiduciary trust,

and an instance of implicit fiduciary trust. It would befall the Federal Government to prove that it has clearly shown that Congress no longer thought it proper to provide such an annuity. Simple negligence to provide such an annuity, as suggested above, may not in and of itself show that Congress no longer thought it proper to do so, especially from the perspective of the Indian side of the house. Thus, if Congress ever appropriated funds that supported the education of Potawatomi citizens it could be seen as having a treaty basis under such provision.

Comparative Legislative Analysis:

Consistent with the previous treaties, a specific terms and related terms search was not conducted for the annuity component of this treaty provision. The specific terms search for this treaty included the term *education*. Similar terms for education included: *teaching, learning, schooling, tutoring, instruction, edification, culture, and educational*. The conceptual clusters found under the comparative legislative analysis for Treaty 1, or the Treaty with the Wyandot Etc. of 1817, were found to reflect the same relationship with the provision for education contained within this treaty. The only differences are that this treaty included a limit on how much money was actually allocated toward this provision, and that the specific terms were different (although the same root word). It should be noted that the similar terms search under the Treaty with the Wyandot Etc. of 1817 included the specific search term for this treaty.

Indian Education Act:

Similar to the Treaty with the Chippewa of 1826, the educational provision contained in this treaty, could be seen as being met by this act given the amount of funding provided to any school that services Potawattamie children, as long as the total

amount provided under this act was over \$35,714 when adjusted for inflation. In Michigan, for instance, the Nah Tah Wahsh PSA was established as a tribally controlled school in 1976 under the auspices of the Hannahville Potawatomy Indian Community. Just considering their allocation for 2001 (\$38,340), it is clear that the provisions of this treaty could be seen as being met.

Indian Self-Determination and Education Assistance Act:

Given the fact that the Nah Tah Wahsh PSA is the only Potawatomy tribally controlled school that receives funding from the federal government, and operating under the assumption that most of the students that attend the school are Potawatomy citizens, this act could be said to fall short of the \$35,714 modern day equivalent of the treaty monetary provision, as it provided only \$16,266 to the Hannahville Potawatomy Indian Community during the most recent fiscal year (Herrin, personal communication, February, 2003). Even then, it is difficult to determine what percentage of the \$16,266 was actually allocated toward support for this particular school, although it is very likely the greatest percentage.

Individuals with Disabilities Education Act:

The IDEA is designed to be comprehensive in nature and as such has elements of both the IEA and the ISDEA in relationship to students with disabilities. The educational provision contained in Treaty 4 is an annuity, and as such could be seen as being met by this act given the amount of funding provided to any school that services Potawattamie children. The equivalent amount by today's standard is \$35,714 when adjusted for inflation. In the most recent year that data was available for, the Nah Tah Wahsh PSA received \$558,257 (Herrin, personal communication, December, 2002) under this act, an

amount that is obviously greater than the modern day equivalent of the treaty monetary provision.

Treaty 5: Treaty with the Chippewa, Etc., 1827

Article(s) Containing Educational Provision(s):

Article 5:

The sum of one thousand dollars shall be annually appropriated for the term of three years; and the sum of fifteen hundred dollars shall be annually thereafter appropriated as long as Congress think proper, for the education of the children of the tribes, parties hereto, and of the New York Indians, to be expended under the direction of the President of the United States. (Kappler, 1972, p. 282)

Identification of Key Terms:

one thousand dollars...annually appropriated for...three years... fifteen hundred dollars...annually thereafter...for the education of the children of the tribes

Analysis of Key Terms:

Parties to this treaty included "the United States, and the Chippewa, Menominee, and Winebago tribes of Indians" (Kappler, 1972, p. 281). It is important to note that the treaty provides for certain groups of Indians from New York, but does not suggest that they are party to the treaty.

For the tribes party to this treaty, and certain groups of Indians from New York, the U.S. was to provide one thousand dollars annually for three years specifically, and "the sum of fifteen hundred dollars" (see above excerpt) thereafter as long as Congress thought proper. Again, this money was intended "for the education of the children of the tribes" (see above excerpt). As suggested in previous analyses of key terms, the meaning

of the annuities should be viewed liberally to mean the value of \$1,500. In terms of inflation, \$1,500 in 1827 would be worth approximately \$26,316 by today's standards. Of course the treaty language contained no direction as to how the annuity was to be shared between the groups of Indians mentioned.

The *as long as Congress think proper* clause is, again, a key consideration in the interpretation of this educational provision. As suggested earlier, closer review of subsequent treaties, appropriations, and legislation may reveal how long Congress thought it proper to continue an annuity for this treaty provision, or even if the three year annuity was actually implemented. How it was implemented may be found in documents that detail Executive spending given the language "expended under the direction of the President of the United States" (see above excerpt). Again, there is a question about how the Anishinaabek were to know that Congress no longer thought it was proper to continue the annuity.

Thus, there are three major differences between the educational provisions of this treaty and the previous: (a) the intended beneficiaries of the educational provisions; (b) the specific annuity for three years; and (c) the amount of the ambiguous annuity. What is no different is that the funding was intended for the education of the Indian parties, and that it was to be continued for a period of time that remained in question.

Trust Level:

Regarding the annuity that was to last three years, it would likely be seen as a express fiduciary trust relationship with a specific time limitation. Although limited to the three years indicated in the treaty, it does not absolve the Federal Government from accountability for the way it conducted itself during the three years.

Regarding the annuity that was to be provided annually thereafter as long as Congress thinks proper, again it could be argued that simple negligence to provide such an annuity may not rise to the level of a clear intent of Congress to show that it no longer thought it proper to do so. As such, this provision could be interpreted to establish both an express fiduciary trust relationship and an implicit fiduciary trust without a specific time limitation for the same reason suggested under previous treaties.

Comparative Legislative Analysis:

While the analysis of key terms has provided insight into the significant differences between this treaty and Treaty 4, there would be no significant difference in the comparative legislative analysis as far as specific terms, similar terms, and conceptual clusters searches. The specific term would be *education* under this treaty, and the rest would follow. Thus, the narrative under each act for this section will focus primarily on insight into the comparative amounts of funding. Refer to the search table for the Treaty 4, or the Treaty with the Potawatomi, 1826 for like results.

Indian Education Act:

Similar to Treaties 3 and 4, the educational provision contained in Treaty 5, being of a monetary nature, could be seen as being met by this act given the amount of funding provided to any school that services the children of the tribes included in this treaty, as long as the total amount provided under this act was over \$26,316 per year when adjusted for inflation. As shown previously, the allocation for the Baweting Anishinaabe PSA alone would be over that amount.

Indian Self-Determination and Education Assistance Act:

As shown under this act for Treaty 3, the amount of funding provided to schools

in the seven county service area of the Sault Ste. Marie Tribe of Chippewa Indians under this act could be construed as greater than the modern day equivalent of this treaty annuity. Additionally, any funding under this act that was used for construction, renovation, or maintenance of facilities that were being used to educate Chippewa children could be argued to meet the provision as well.

Individuals with Disabilities Education Act:

Again, considering the amount of funding provided to Bahweting Anishinaabe PSA under this act, it could be argued that this act provides for a modern day equivalent of the amount of the annuity included in this treaty. As with the ISDEA, any funding under this act that was utilized for construction, renovation, or maintenance of a building to benefit the education of Chippewa children with special education needs could also be argued to meet the provisions of this treaty obligation.

Treaty 6: Treaty with the Potawatomi, 1828

Article(s) Containing Educational Provision(s):

Article 2:

One thousand dollars per annum shall be applied for the purposes of education, as long as Congress may think the appropriation may be useful. (Kappler, 1972, p. 295)

Identification of Key Terms:

One thousand dollars per annum... for the purposes of education

Analysis of Key Terms:

Parties to this treaty included "the United States, and the Potawatami tribe of Indians" (Kappler, 1972, p. 294). This treaty is pertinent to only one group of the

Anishinaabe Three Fires Confederacy.

In this treaty, Congress was to appropriate a \$1,000 annuity for the purposes of education. As suggested earlier, *education* is an ambiguous term, and may be defined differently depending on cultural background, time and location. In inflationary terms, \$1,000 in 1828 would be worth approximately \$18,519 by today's standards, but what would the real educational value of that annuity be? It is interesting to note that the language has changed from *as long as Congress think proper* in the earlier treaties to "as long as Congress may think the appropriation may be useful" (see above excerpt). Is the term *useful* any less ambiguous than the term *proper*? Further investigation into subsequent appropriations may reveal a clearer picture of how Congress treated this educational provision.

Trust Level:

Although the language regarding this annuity changed from *proper* to *useful*, it did not necessarily change the need for the Federal Government to show that it would no longer provide such an annuity. Thus, it would befall the Federal Government to prove that it showed clearly to the Indian side of the house that Congress no longer thought it useful to appropriate for this educational annuity. This provision could be interpreted to establish an express fiduciary trust relationship regarding any appropriation directly tied to this treaty, and an implicit fiduciary trust relationship given the ambiguity inherent in the language. In other words, anytime thereafter that Congress appropriated any funding toward education that impacted this Tribe, could be argued to have a treaty basis.

Comparative Legislative Analysis:

As with Treaty 5, there would be no significant difference between this treaty and

the previous in the comparative legislative analysis as far as specific terms, similar terms, and conceptual clusters searches. The specific term would be *education* under this treaty, and the rest would follow. Thus, the narrative under each act for this section will focus primarily on insight into the comparative amounts of funding. Refer to the search table for the Treaty 4, or the Treaty with the Potawatomi, 1826 for like results.

Indian Education Act:

Similar to Treaty 4 the educational provision contained in Treaty 6, being of a monetary nature, could be seen as being met by this act given the amount of funding provided to any school that services Potawatomi children, as long as the total amount provided under this act was over \$18,519 per year when adjusted for inflation. As shown previously, the most recent data shows that the Nah Tah Wahsh PSA received \$38,340 under this act during the most recent fiscal year.

Indian Self-Determination and Education Assistance Act:

As in Treaty 4, the funding provided to the Hannahville Potawatomy Indian Community during the most recent fiscal year under this act, \$16,266 (Herrin, personal communication, February, 2003), is the only amount that is provided to a Potawatomy tribe that operates a tribally controlled school. This amount falls slightly short of the \$18,519 modern day equivalent of the treaty provision.

Individuals with Disabilities Education Act:

As in Treaty 4, the amount provided under this act for the Nah Tah Wash PSA would be seen as the only amount that is provided to a Potawatomy tribe that also operates a tribally controlled school. In the most recent year that data was available for, the Nah Tah Wash PSA received \$558,257 (Herrin, personal communication, December,

2002) under this act, an amount that is obviously greater than the modern day equivalent, \$18,519, of the treaty monetary provision.

Treaty 7: Treaty with the Chippewa, Etc., 1833

Article(s) Containing Educational Provision(s):

Article 3:

Seventy thousand dollars for purposes of education and the encouragement of the domestic arts, to be applied in such a manner, as the President of the United States may direct. –[The wish of the Indians being expressed to the Commissioners as follows: The united nation of Chippewa, Ottawa and Potawatamie Indians being desirous to create a perpetual fund for the purposes of education and the encouragement of the domestic arts, wish to invest the sum of seventy thousand dollars in some safe stock, the interest of which only is to be applied as may be necessary for the above purposes. They therefore request the President of the United States, to make such investment for the nation as he may think best. If however, at any time hereafter, the said nation shall have made such advancement in civilization and have become so enlightened as in the opinion of the President and Senate of the United States they shall be capable of managing so large a fund with safety they may withdraw the whole or any part of it.] (Kappler, 1972, p. 402-403)

Identification of Key Terms:

Seventy thousand dollars for purposes of education and the encouragement of the domestic arts

Analysis of Key Terms:

Parties to this treaty included "the United States...and the United Nation of Chippewa, Ottawa and Potawatamie Indians" (Kappler, 1972, p. 402). This treaty is once again pertinent to all of the groups that comprise the Anishinaabe Three Fires Confederacy.

In inflationary terms, \$70,000 in 1833 would be worth approximately \$1,458,333 by today's standards. One can only speculate if this amount had actually been invested in a "safe" stock as to what kind of interest it might have earned since 1833. It is not clear if the Anishinaabe Three Fires Confederacy ever withdrew the whole or part of the amount, or even if it was actually invested as was intended. There is a certain amount of ambiguity in who was to determine the use of these funds. On the one hand, it states that it is the President of the United States who is to direct how the funding is invested (not necessarily what kind of educational programming is to be provided). Conversely, it includes a statement about the wishes of the tribes and adds further that at some point in the future that the tribes would control the fund under certain conditions. Further research may reveal a clearer picture of what actually happened with this treaty provision.

Again, it could be argued that *education* is an ambiguous term, and as such the definition should have come from an Anishinaabe perspective. Given this ambiguity, it is possible that the Anishinaabe Three Fires Confederacy could argue that even if this amount was spent on educational programming for these tribes that it was not spent on education as they would have defined it. Thus, the amount would, in effect, still be obligated.

This is the first instance that *domestic arts* is included as an educational provision term. This term is equally ambiguous, in that it could mean very different things to

individuals coming from different cultural backgrounds and ways of living. Whereas in an Anishinaabe way of life, an individual skilled in the domestic arts may know how to smoke whitefish, someone coming from a European American background may not consider this skill important to domestic well-being. In the American sense of the term, it was also understood to imply *women's work*, as witnessed by the domestic arts training that female students received in missionary and later federal Indian boarding schools (Littlefield & Knack, 1996). This interpretation is contrary to the domestic roles of males and females in traditional Anishinaabe communities at that time.

Trust Level:

Although a one time cash provision for education, the funding was to have been invested in stock by the President of the United States, who was also to direct how such funding was utilized. Even if the funding no longer exists today, the Federal Government, and perhaps even the President's office would still be accountable for the way the funds were utilized. Thus, the type of trust relationship established at that time was an express fiduciary trust. If it were found that there remains some financial obligation based on how the funding was supervised by the President's office, it could be argued that an implicit fiduciary trust still exists. It would befall the Federal Government to prove that the funding was invested in a "safe" stock, and that all principal and interest had been used to support the educational interests of the Indian side of the house, or that at some point the Indian side of the house was seen capable of managing the remaining funds and that the control of such funds had been signed over to the same.

Comparative Legislative Analysis:

While there is no significant difference between this treaty and Treaty 4 in regard

to the term *education*, there is a need to search for *domestic arts*. Refer to the search table for the Treaty 4, or the Treaty with the Potawatomi, 1826 for like results for the term *education*, but refer to the analysis table for this treaty for results on the specific term search for *domestic arts*, and for the researcher identified similar terms *domesticity training*, *homemaker education*, and *home economics*. Note that there were no Microsoft Word identified similar terms.

There were no hits under the specific terms or similar terms searches for domestic arts, however, there were three hits under IDEA that did seemingly address the idea of domestic arts in some fashion. The following analyses reflect the combined searches for education and domestic arts. As in the previous sections, the narrative under each act for this section also includes a focus on comparative amounts of funding, as funding is not included in the searches.

Indian Education Act:

Although similar to Treaties 3, 4, 5 and 6, the educational provision contained in Treaty 7 is of much greater monetary value, and it is not an annuity. It is possible that the allocation from this act that indirectly services the students of the Confederacy could be over \$1,458,333 (the amount of the fund when adjusted for inflation not counting any interest that should have accrued). If this were true, then the provision could be seen as being met by this act. It is not clear if there is any mechanism in place to determine exactly how many children of these tribes actually receive benefit from this act.

Considering the sum of the amounts, \$825,442 (Department of Education, 2001), provided for Anishinaabe tribally controlled schools under this act during the most recent year that data was available for, would suggest that the amount falls short of the nearly

one and a half million dollars included in the treaty provision. By simply doubling the sum, however, it is obvious to see that within a two year frame, the act would have covered the amount with a surplus.

This act does not contain any provision for the establishment of an interest earning account that would support the education of Anishinaabe children, nor does it provide for any kind of training in domestic arts. It does provide funding for educational purposes that ultimately impacts Anishinaabe citizens, but the approach is altogether different.

Indian Self-Determination and Education Assistance Act:

Similar to the Indian Education Act under this treaty, there is no difference in the results of the searches under this act and the searches under Treaty 4. The primary difference is again that under this treaty the amount allocated toward education was to be placed into an interest earning account for the purposes of education and for the encouragement of the domestic arts. This act does not address either of those provisions, although it does provide funding for the education of Anishinaabe citizens. As with the Indian Education Act, the sum of the amounts, \$774,061 (Herrin, personal communication, February, 2003), provided to Anishinaabe tribes that also operate tribal schools during the most recent year that data was available for, when multiplied times two years, was greater than the amount included in the treaty monetary provision. Also like the IEA, this act does not provide for the establishment of an interest earning account that would support the education of Anishinaabe children, nor does it provide for any kind of training in domestic arts.

Individuals with Disabilities Education Act:

Like the other acts, this act provides more than the amount of the monetary provision of the treaty, albeit, this act provides a greater amount in sum, \$4,392,397 (Herrin, personal communication, December, 2002) on a one year basis. Unlike the other acts, this act may address the treaty provision for encouragement of the domestic arts. Three hits were recorded under the conceptual clusters search for this component. Regarding the other components, there was no difference between the searches under this treaty and the searches under Treaty 4. This act also does not address the establishment of an interest earning account provision. As with the other acts, it is not clear if there is any mechanism in place to determine exactly how many children with disabilities of these tribes actually receive benefit from this act. Further research may reveal a clearer picture in this regard.

Treaty 8: Treaty with the Ottawa, Etc., 1836

Article(s) Containing Educational Provision(s):

Article 4:

Five thousand dollars per annum, for the purpose of education, teachers, school-houses, and books in their own language, to be continued twenty years, and as long thereafter as Congress may appropriate for the object. (Kappler, 1972, p. 452)

Identification of Key Terms:

Five thousand dollars... for the purpose of education, teachers, school-houses, and books in their own language to be continued twenty years, and as long thereafter as Congress may appropriate

Analysis of Key Terms:

Parties to this treaty included "the United States, and the Ottawa and Chippewa nations of Indians" (Kappler, 1972, p. 450). In Treaty 7, the Anishinaabe Three Fires Confederacy is recognized as a single sovereign entity. In Treaty 8, however, the Chippewa and Ottawa are treated as separate nations, and the Potawatomy are excluded.

If the \$5,000 annuity included in Treaty 8 were still being appropriated today, it would be worth \$94,340 when adjusted for inflation. When multiplied by the twenty years it was to be appropriated at the very least, it would equal \$100,000 in 1836 dollars, and approximately \$1,648,717 by today's standard. Inflation does not necessarily account for the buying power, but it does give a better indication of the meaning of this provision by today's standards. Further research into the educational buying power of a dollar in the early to mid-1800's may reveal a clearer picture of how \$5,000 could support teachers' pay, the construction or maintenance of schools houses, and the acquisition of books that have been written or translated into Anishinaabemowin.

Further research into subsequent appropriations may reveal if Congress actually appropriated the annuity for twenty years as provided in the treaty. It may also reveal if Congress ever actually appropriated the same thereafter. It is interesting to note how the language has evolved from *as long as Congress may think proper* in earlier treaties, to "as long thereafter as Congress may appropriate" (see above excerpt). Perhaps the individuals who wrote the terms of the treaty were starting to see that previous treaty provisions were unclear and nonspecific.

While there is no significant difference between this article and the previous in regard to the terms *school-house*, *education*, and *teacher*, there is a term included here for the first time that is conspicuous to the entire body of educational provisions. The phrase

“books in their own language” (see above excerpt) appears here for the first time.

Imagine the most liberal definition applied here, and the wealth of curriculum materials that could have been, or could still be, developed based on this treaty’s educational provision. While the Anishinaabe language was never a written language during pre-colonial times, by this time in history it had been recorded by various individuals, and was even included in certain hymnals in churches that catered to Anishinaabe people. Given the current needs of many of the Anishinaabe communities in Michigan and beyond for language revitalization, such books would be very useful, especially if the books reflected concepts included in state standards and tested by state assessment programs.

Trust Level:

The annuity provided for in this treaty would likely be seen as establishing a express fiduciary trust relationship. At first glance, it seems to establish limits that would extend to the amount of the annuity and to the time Congress no longer appropriates for the annuity. It would be a simple exercise to determine the final appropriation for this annuity by reviewing the Indian appropriations acts following the year 1836. Upon further analysis, however, it could be argued that if the Federal Government ever appropriated for the purpose of education, teachers, school-houses, and books in their own language for the citizens of these tribes that it is linked to this treaty provision. Following such logic, it could also be argued that the ambiguity of such a provision creates an expectation that the Federal Government may in fact appropriate for this provision beyond the twenty year period, and as such could be interpreted to establish an implicit fiduciary trust relationship. In other words, it does not guarantee that Congress

will appropriate for the annuity, but it leaves it open that if Congress ever does (under whatever legal mechanism) it is provided a basis by this treaty provision, and therefore bound by the trust status of this treaty relationship.

Comparative Legislative Analysis:

There is no significant difference between this treaty and: Treaty 2 in regard to the term *teacher*; Treaty 3 in regard to the term *school-house*; and Treaty 4 in regard to the term *education*. As such, please refer to the appropriate search tables and analyses for those terms under the relevant treaties. Refer to the tables for Treaty 8 for results on the specific term search for *books in their own language*, and for the researcher identified similar term *Native language curriculum materials*. Note that there were no additional Microsoft Word identified similar terms for this treaty.

There were no hits under the specific terms or similar terms searches. There were two hits under the conceptual clusters search for IEA, one hit under ISDEA, and five hits under IDEA that did address the idea of *Native language curriculum materials* in some way. As in the previous sections, the narrative under each act for this section also includes a focus on comparative amounts of funding, as funding is not included in the searches.

Indian Education Act:

As with the previous 5 treaties, this treaty authorizes a certain amount of funding in support of education for the tribes party to this treaty. Because the treaty is generalized to the children of the Chippewa and Ottawa, it would have to be determined what amount of the appropriation for this act is actually allocated towards programs that serve the children of these tribes. As indicated earlier, the Sault Ste. Marie Area Public

Schools alone receive an amount greater than \$94,340 (Department of Education, 2001) per year as the annuity would equal when adjusted for inflation and serve children who would be considered modern day beneficiaries of these tribes. Considering the amount received by Baweting Anishinaabe PSA (which is the only Chippewa or Ottawa tribally controlled school that falls within the treaty area) on an annual basis, however, the \$39,680 falls short of the modern day equivalent of the treaty educational annuity.

Because the provision is general to Chippewa and Ottawa children, however, if applied to all Chippewa and Ottawa tribally controlled schools throughout the U.S., the amount of total combined funding for such schools would be \$787,102 (Department of Education, 2001). Obviously, this amount is much greater than the modern day equivalent of the treaty provision annuity. Finally, if looking at the 20 year provision, the annuity would have been \$100,000 in 1836 dollars. The modern day equivalent would be \$1,648,717. Considering the amount of funding for Baweting Anishinaabe PSA under this act, it would take 41 years of funding in modern terms to equal to an amount greater than the 20 year treaty provision. Alternatively, it would take three years of funding for all Anishinaabe Chippewa or Ottawa tribally controlled schools in modern terms to equal an amount greater than the 20 year provision.

The provision of books in their own language may be met by at least two like provisions in this act that provide for: “services and activities...that are designed with special regard for the language and cultural needs of the Indian students,” (IEA, 2001, p. 3) and “activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency” (IEA, 2001, p. 5).

Indian Self-Determination and Education Assistance Act:

This act provides for the acquisition, construction and maintenance of schools that serve the citizens of American Indian tribes. In this respect, it has the potential to meet the obligation of building school houses as called for by this treaty. The act also provides a mechanism whereby the tribes party to this treaty could contract with the federal government to administer a program of education at such schools for its children. Thus, it could be argued that the act also has the potential to meet the other educational obligations--education, teachers, and books in their own language--set forth in this treaty.

The Sault Ste. Marie Tribe of Chippewa Indians alone received \$210,300 under this act during the most recent year that data was available (Herrin, personal communication, February, 2003). While it is unclear how much of this fund was actually allocated toward activities that supported Baweting Anishinaabe PSA, it is expected that the Sault Tribe would favor their own school above schools that are beyond their jurisdiction. It would take at least eight years to provide an amount that is greater than the equivalent of the 20 year figure. Considering the generality of the wording to include Chippewa and Ottawa nations, the most liberal definition would include all Chippewa and Ottawa tribes. For the purposes of this study, the funding received under this act by all of the Chippewa and Ottawa tribes that operate tribal schools is considered pertinent. This amount, \$757,795, is considerably more than the modern day equivalent (\$94,340) of the treaty educational annuity. It would take three years of funding at current levels under this act to match the modern day equivalent of the educational annuity if multiplied out for the 20 years suggested in the treaty.

Individuals with Disabilities Education Act:

It is not clear if this act could provide books and materials written in Anishinaabemowin, although the argument could be made that if a student with a disability were denied the same educational benefit as any other student regarding use of these types of materials, then they would not be receiving an appropriate education, which the act does require.

The Baweting Anishinaabe PSA received \$198,665 under this act during the most recent year for which data was available (Herrin, personal communication, December, 2002). Clearly, this amount is above the modern day equivalent of the treaty annuity. It would take 9 years of funding at the present level to reach an amount that is greater than the modern day equivalent when multiplied out for 20 years. Again, given the generality of the provision to include Chippewa and Ottawa nations, a combined amount of funding under this act from all Chippewa and Ottawa schools in the U.S. would be \$3,834,140. An amount that far exceeds that required by the modern day equivalents of both the annuity and the modern day equivalent of the annuity multiplied out for 20 years.

Treaty 9: Treaty with the Chippewa (Detroit), 1837

Article(s) Containing Educational Provision(s):

Article 3:

The United States agree to pay to the said Indians, in consideration of the lands above ceded, the net proceeds of the sales thereof, after deducting the expense of survey and sale, together with the incidental expenses of this treaty. The lands shall be surveyed in the usual manner, and offered for sale, as other public lands, at the land offices of the proper districts, as soon as practicable after the ratification of this treaty. A special account of the sales shall be kept at the

Treasury, indicating the receipts from this source, and after deducting therefrom the sums hereinafter set apart, for specified objects, together with all other sums, justly chargeable to this fund, the balance shall be invested, under the direction of the President, in some public stock, and the interest thereof shall be annually paid to the said tribe, in the same manner, and with the same precautions, that annuities are paid. Provided, that, if the said Indians shall, at the expiration of twenty years, or at any time thereafter, require the said stock to be sold, and the proceeds thereof distributed among the whole tribe, or applied to the advancement of agriculture, education, or any other useful object, the same may be done, with the consent of the President and Senate. (Kappler, 1972, p. 483)

Identification of Key Terms:

stock to be sold, and the proceeds thereof... applied to the advancement of... education

Analysis of Key Terms:

Parties to this treaty included "the United States of America... and the Saginaw tribe of the Chippewa nation" (Kappler, 1972, p. 482). Thus, by the time this treaty was negotiated, the United States had begun to recognize individual bands of Chippewa as sovereign entities capable of negotiating a treaty.

Although this treaty is very similar to Treaty 1 with respect to the fact that there is no specific amount of money designated toward the provision of education, it is actually more similar to Treaty 4 because it is definitely tied to the availability of funding under certain conditions set forth by treaty.

While it is unclear how much money was actually generated from the land sales in respect to the ceded lands referred to in this treaty, and what the actual expenses were

related to the survey, sale, and incidental costs related to the treaty itself, further research may reveal a more definitive set of numbers. While it is certainly not uncommon for a real estate agency, in this case the federal government, to charge the type of expenses against the sale of properties, it is uncommon for a real estate agency to assume authority over the approval of sales on behalf of the seller. In this respect, it seems that the federal government appointed itself as a trustee over the ceded lands referred to in this treaty, on behalf of the tribes. What then becomes questionable is if the tribes actually understood that this was the intent of Congress, and if Congress acted in the best interest of the tribes in this regard.

It is also unclear how much, if any of the proceeds were actually invested into a stock account as called for in the treaty, and if any of the proceeds were ever withdrawn from the account and used for educational purposes. Further investigation into this matter may reveal a clearer picture of events. If it could be shown that the federal government has an outstanding debt in this regard, it would give credence to the claim that, at least in this context, Indian education is a trust responsibility.

Trust Level:

This provision is likely to be interpreted as establishing an express fiduciary trust relationship. It would befall the Federal Government to prove that it had expended all of the funding available from the sale of stock by either distributing it to tribal citizens on a per capita basis, or by applying it to the advancement of education for the same.

Comparative Legislative Analysis:

There is no significant difference between this treaty and previous treaties in regard to the term *education*. Refer to the search table for Treaty 4 and the accompanying

analysis for each act.

It is important to keep in mind that this treaty is relevant only to the Saginaw Chippewa Tribe, which does not currently operate a tribally controlled school that receives funding under any of the acts included in this study. While it is certainly plausible that the children of this Tribe could be receiving benefit from an education system that is supported in part by funding under these acts, it remains that this particular tribe does not operate a tribally controlled school that receives any funding under these acts. If the Saginaw Chippewa Indian Tribal school began receiving funding under these acts, then the relationship between the three acts and this treaty would need to be reevaluated.

Treaty 10: Treaty with the Chippewa (St. Peters), 1837

Article(s) Containing Educational Provision(s):

Article 2:

In consideration of the cession aforesaid, the United States agree to make to the Chippewa nation, annually, for the term of twenty years, from the date of the ratification of this treaty, the following payments... Nine thousand five hundred dollars, to be paid in money... If at the expiration of one or more years the Indians should prefer to receive goods, instead of the nine thousand dollars agreed to be paid to them in money, they shall be at liberty to do so. Or, should they conclude to appropriate a portion of that annuity to the establishment and support of a school or schools among them, this shall be granted them. (Kappler, 1972, p. 492)

Identification of Key Terms:

annually, for the term of twenty years... Nine thousand five hundred dollars... a portion of that annuity to the establishment and support of a school or schools among them

Analysis of Key Terms:

Parties to this treaty included "the United States of America...and the Chippewa nation of Indians" (Kappler, 1972, p. 491). It is important to note that this treaty was not specific to a single band of Chippewa as was Treaty 9.

Nine thousand five hundred dollars in 1837 when adjusted for inflation would be worth approximately \$172,727 by today's standards. Multiplied by 20 years as called for in the article, it equals \$190,000 (\$3,454,545 in 2001 dollars). Notice the discrepancy between the amounts referred to, \$9,500 and \$9,000, an obvious error in how the treaty was written. It would be interesting to know exactly which amount was used in meeting this provision, if the provision was actually met. Further investigation into subsequent appropriations is needed to clarify exactly how Congress dealt with this provision.

Trust Level:

This provision is likely to be interpreted as establishing an express fiduciary trust relationship with a specific time limitation. It would befall the Federal Government to prove that it had paid out the entire amount of the annuity in either money or goods, or the establishment and support of a school or schools for the tribal nation.

Comparative Legislative Analysis:

The treaty term *school* or *schools* is similar to the terms for *school* in Treaty 3, as such, the outcomes of the searches for school under Treaty 3 were used to inform the score sheet under each act for this treaty. Because this treaty provision is general to the Chippewa nation as a whole, insofar as funding is concerned, all Chippewa tribally

controlled schools comprise the beneficiary equivalent as established under previous treaties.

Indian Education Act:

If it could be shown that the Chippewa had, in fact, concluded that a portion or all of the funding stipulated in this article should go toward the establishment and support of a school or schools, and if it were argued that the United States never actually provided the amount of funding for this conclusion, then it would seem that the United States may have reason to argue that it has fulfilled this obligation, at least in part, by providing funding for schools that service Chippewa children under this act. For the purposes of this study, all such schools would also have to be tribally controlled. The most recent data shows that a combined amount for all such schools was \$787,102 (Department of Education, 2001). At current funding levels, therefore, it would take five years of funding under this act to equal an amount greater than the modern day equivalent of the treaty provision. Lastly, it is important to consider that further research into the subsequent appropriations relevant to this Treaty may reveal that a portion or all of these funds was actually spent on items other than schools or education, but still in line with the treaty article.

Indian Self-Determination and Education Assistance Act:

The most recent data shows that all Chippewa tribes that operate a tribally controlled school received a combined total of \$757,795 (Herrin, personal communication, February, 2003) under this act. It would take five years of funding at current levels under this act to equal an amount greater than the modern day equivalent of the treaty provision.

This act could be said to potentially provide for the establishment and support of a school or schools for the tribes party to this treaty. The act contains provisions for the acquisition, construction and maintenance of such schools for the citizens of American Indian tribes. The act further provides that tribes can request to contract with the federal government to administer their own educational programs at such schools.

Individuals with Disabilities Education Act:

The most recent data shows that all Chippewa tribally controlled schools received a combined total of \$3,834,140 (Herrin, personal communication, December, 2002) under this act. Thus, it could be argued that in one year, this act would provide enough funding at current levels to satisfy the modern day equivalent of the treaty provision.

An argument could be made that an educational obligation has never existed in regard to this treaty. However, if there was an amount available, and the tribe had determined that it did want the money put toward education, then it may still be obligated to some degree. The tribes party to this treaty could have an opportunity to request funding under this act for the establishment of a school or schools to meet the special education needs of their children.

Treaty 11: Treaty with the Chippewa, 1842

Article(s) Containing Educational Provision(s):

Article 4:

In consideration of the foregoing cession, the United States, engage to pay to the Chippewa Indians of the Mississippi, and Lake Superior, annually, for twenty-five years, twelve thousand five hundred (12,500) dollars, in specie, ten thousand five hundred (10,500) dollars in goods, two thousand (2,000) dollars in provisions and

tobacco, two thousand (2,000) dollars for the support of two blacksmiths shops, (including pay of smiths and assistants, and iron steel &c.) One thousand (1,000) dollars for pay of two farmers, twelve hundred (1,200) for pay of two carpenters, and two thousand (2,000) dollars for the support of schools for the Indians party to this treaty; and further the United States engage to pay the sum of five thousand (5,000) dollars as an agricultural fund, to be expended under the direction of the Secretary of War. (Kappler, 1972, p. 543)

Identification of Key Terms:

annually, for twenty-five years... two thousand (2,000) dollars for the support of schools for the Indians party to this treaty

Analysis of Key Terms:

Parties to this treaty included the "United States, and the Chippewa Indians of the Mississippi, and Lake Superior" (Kappler, 1972, p. 542). The designation Chippewa Indians of Lake Superior corresponds with the contemporary Bad River Band, Red Cliff Band, Lac Courte Oreilles Band, Lac du Flambeau Band, Fond du Lac Band, Keweenaw Bay Indian Community, Lac Vieux Desert Band, and Grand Portage Band. The designation of Chippewa Indians of the Mississippi corresponds with the contemporary Sandy Lake Band, Leech Lake Band, White Earth Bands, and Mille Lacs Band.

The educational annuity called for in this treaty, \$2,000 for 25 years, when adjusted for inflation would be worth approximately \$43,478 by today's standards. When multiplied by 25, it would equal \$50,000, or \$1,086,957 in 2001 dollars.

It is interesting to note that this annuity was "to be expended under the direction of the Secretary of War" (see above excerpt). This is a change from earlier treaties that

called for annuities to be expended under the direction of the President and/or the Senate. This may be an indication that at this point, administration of Indian programs has become a lower priority, that it has become too large for the President or Senate to handle directly, or both.

Trust Level:

This provision is likely to be interpreted as establishing an express fiduciary trust relationship with a specific time limitation. It would befall the Federal Government to prove that it had paid out the entire amount of the annuity in support of schools for the tribes party to this treaty.

Comparative Legislative Analysis:

There is little difference between this treaty and the previous as far as search terms. As such, please refer to Treaty 3 for search results relevant to this comparison. The differences in tribes and amounts of funding, however, are noted below.

Indian Education Act:

If it were argued, as in Treaty 10, that this educational provision had never been met as called for by the treaty wording, the United States could argue that it has met the provision in part or in whole by providing funding for schools that serve the modern day beneficiaries of this treaty under this act. Tribally controlled schools that fall under the jurisdiction of tribes referred to in this treaty include Bug-o-nay-ge-shig, Circle of Life, Fond du Lac Ojibwe, Lac Courte Oreilles, and Nay-ah-shing. Unlike the previous treaty, this was a specific amount, the equivalent being \$1,086,957 when adjusted for inflation, that was intended for use in support of schools for the tribes party to this treaty. When compared to the collective amount, \$259,557 (Department of Education, 2001), provided

to the schools listed above under this act for the most recent year data was available for, it would take five years of funding at current levels to provide an amount greater than the modern day equivalent to satisfy the treaty provision in total.

Indian Self-Determination and Education Assistance Act:

Tribes that would be considered modern day beneficiaries of the treaty educational provisions collectively received \$493,214 (Herrin, personal communication, February, 2003) during the most recent year that data was available for. It would take three years of funding at this level to provide an amount greater than the modern day equivalent under this act.

Individuals with Disabilities Education Act:

Tribal schools controlled by the tribes included in this treaty collectively received \$1,918,657 (Herrin, personal communication, December, 2002) during the most recent year that data was available. This amount is greater than the modern day equivalent of the amount included in the treaty educational provision.

Treaty 12: Treaty with the Potawatomi Nation, 1846

Article(s) Containing Educational Provision(s):

Preamble:

Whereas the various bands of the Pottowautomie Indians, known as the Chippewas, Ottawas, and Pottowautomies, the Pottowauomies of the Prarie, the Pottowautomies of the Wabash, and the Pottowautomies of Indiana, have subsequent to the year 1828, entered into separate and distinct treaties with the United States, by which they have been separated and located in different countries, and difficulties have arisen as to the proper distribution of the

stipulations under various treaties, and being the same people by kindred, by feeling, and by language, and having, in former periods, lived on and owned their lands in common; and being desirous to unite in one common country, and again become one people, and receive their annuities and other benefits in common, and to abolish all minor distinctions of bands by which they have heretofore been divided, and are anxious to be known only as the Pottowautomie Nation, thereby reinstating the national character; and whereas the United States are also anxious to restore and concentrate said tribes to a state so desirable and necessary for the happiness of their people, as well as to enable the government to arrange and manage its intercourse with them: now therefore, the United States and the said Indians do hereby agree that said people shall hereafter be known as a nation, to be called the Pottowautomie Nation. (Kappler, 1972, p. 557)

Article 8:

It is also agreed that, after the expiration of two years from the ratification of this treaty, the school-fund of the Pottowautomies shall be expended entirely in their own country, unless their people, in council, should, at any time, express a desire to have any part of the same expended in a different manner. (Kappler, 1972, p. 559)

Identification of Key Terms:

school-fund of the Pottowautomies shall be expended entirely in their own country

Analysis of Key Terms:

Parties to this treaty included "the United States, on the one part, and the various bands of the Pottowautomie, Chippewas, and Ottowas Indians on the other part"

(Kappler, 1972, p. 557). While the preamble to this treaty recognizes that the Potawatomy have been previously recognized as part of a sovereign treaty making group that includes Potawatomy, Chippewa, and Ottawa, it also recognizes the fact that the United States has treated different bands of Potawatomy as sovereign treaty making units as well. The preamble then goes on to officially recognize the Potawatomy as a nation in and of itself.

Although the treaty states that the Potawatomy are "anxious to be known only as the Pottowautomie Nation" (see above excerpt), further research into this may reveal a different picture. It is very possible that the United States was more anxious than the Potawatomy to recognize them as a nation apart from the rest of the Three Fires Confederacy. This point will be revisited in the next chapter.

It is not exactly clear which school fund the treaty references. It may be that the school fund is comprised of the many, different, prior treaty provisions included in treaties between the Anishinaabek and the United States. Without knowing the extent of the Potawatomy school fund at the time this treaty was written, it is difficult to determine an exact figure in regard to this treaty provision. This treaty does not provide any additional amount to that fund, but it does provide that the amount would be expended within Potawatomy country unless the tribe chose otherwise. This is an important point in and of itself, because it is an assertion of specific tribal control over educational resources in a treaty.

Trust Level:

It could be argued that this treaty provision establishes an express fiduciary trust relationship between the Pottawatomi and the Federal Government. There is no specific

duration included in the wording. As such it could be interpreted to mean that any funding for Potawatomi education appropriated by the Federal Government would have to be expended within Potawatomi country unless the Tribe or Tribes chose otherwise. This does not preclude the Federal Government from entering into a self-governance compact or a contract relationship with the Potawatomi, but it does establish a treaty basis for the fund in and of itself as well as for tribal control.

Comparative Legislative Analysis:

The specific search term for this treaty was the entire identified key terms *school-fund of the Pottowautomies shall be expended entirely in their own country*. No hits were produced under any of the acts for this term as might be expected given the reference to a particular tribe and a particular fund. Similar terms included researcher identified terms *tribally controlled school* and *self-governance contract*. The term *tribally controlled school* produced only one hit under the IEA, and the term *self-governance contract* produced only one hit under ISDEA. The conceptual clusters search produced five hits under the IEA, five hits under ISDEA, and nine hits under the IDEA.

Indian Education Act:

In this respect, if the funding under this act was allocated toward any school within Potawatomy country, and further determined to be linked to the Potawatomy school fund as described under this treaty, then it could be said that the act fulfills this treaty obligation at least in part. This may be the case with the Hannahville Indian Community's tribal school which received \$38,340 (Department of Education, 2001) under this act during the most recent year that data was available.

Indian Self-Determination and Education Assistance Act:

Depending on how the Potawatomi School Fund was defined today, this act may provide a mechanism for it to be expended entirely within their own country, given its provisions for self-governance contracts. It is possible that this fund has been spent previously, and no longer exists. Further research will help to clarify if this is the case. The Hannahville Indian Community received \$16,266 (Herrin, personal communication, February, 2003) under this act during the most recent year that data was available.

Individuals with Disabilities Education Act:

Like the other two acts, this act may be said to provide educational benefit to Potawatomi students within Potawatomi country, and could therefore be argued to meet this treaty provision at least in part. The Hannahville Indian School received \$558,257 (Herrin, personal communication, December, 2002) under this act during the most recent year that data was available.

Treaty 14: Treaty with the Chippewa, 1854

Article(s) Containing Educational Provision(s):

Article 4:

In consideration of and payment for the country hereby ceded, the United States agree to pay to the Chippewas of Lake Superior, annually, for the term of twenty years, the following sums, to wit: five thousand dollars in coin; eight thousand dollars in goods, household furniture and cooking utensils; three thousand dollars in agricultural implements and cattle, carpenter's and other tools and building materials, and three thousand dollars for moral and educational purposes, of which last sum, three hundred dollars per annum shall be paid to the Grand Portage band, to enable them to maintain a school at their village. (Kappler, 1972,

p. 649)

Identification of Key Terms:

annually, for the term of twenty years...three thousand dollars for moral and educational purposes, of which last sum, three hundred dollars per annum shall be paid to the Grand Portage band, to enable them to maintain a school at their village

Analysis of Key Terms:

Parties to this treaty included "the United States, and the Chippewa Indians of Lake Superior and the Mississippi" (Kappler, 1972, p. 648). Two groups of Chippewa are signatory to this treaty, but only one of the groups, the Lake Superior Chippewa, is actually included under the educational provisions. The designation Chippewa Indians of Lake Superior corresponds with the contemporary Bad River Band, Red Cliff Band, Lac Courte Oreilles Band, Lac du Flambeau Band, Fond du Lac Band, Keweenaw Bay Indian Community, Lac Vieux Desert Band, and the Grand Portage Band.

As to the annuity of \$3,000, this would be the approximate equivalent of \$62,500 by today's standards. When multiplied by 20, it would equal \$1,250,000 based on the rate of inflation. Even the \$300 set aside (to be deducted from the \$3000 per year) for the Grand Portage Band would equal approximately \$125,000 after adjusting for inflation and multiplying by 20 years. It is uncertain if \$300 per year could have actually maintained a school, but further historical research may clarify this point. It is also uncertain if this annuity was ever actually provided to any of the Lake Superior Chippewa bands. Further research into subsequent appropriations bills may help clarify this point.

According to the Minnesota Indian Affairs Council (2003) website, "a log school

building has provided the elementary school in Grand Portage since the 1930's. In 1997 a new school for student's K-6th grade was opened and linked to the community center. As a state public school operating under special legislation, the new facility will be leased to the Cook County Public School system. The old school building, the only log school in Minnesota, will become a museum for the Tribe. The students go to junior and senior high school in Grand Marais.” Regardless of the history of the Grand Portage school, it is not currently operated by the Grand Portage Band, and thus would not fall within the delimitations set forth in this study.

Trust Level:

It is likely that this provision would be interpreted to establish a express fiduciary trust relationship with a specific time limitation between the said Tribes and the Federal Government. It would befall the Federal Government to prove that it has actually provided the total amount of the annuities set forth by treaty.

Comparative Legislative Analysis:

The score sheet for this treaty is based on a combination of searches conducted for Treaty 3 (*school*), and Treaty 4 (*education*). There were no additional search terms under this treaty. A comparison of the treaty monetary provision with current funding under each act is included below.

Indian Education Act:

The amount specified under this treaty for moral or educational purposes was a set amount. Further research may clarify if this amount was actually appropriated for these purposes or not. Assuming that it has not been met by any previous means, this act would have had to provide approximately \$1,250,000 worth of educational services to the

schools that educate the children of the tribes party to this treaty. The combined amount of funding under this act, received by schools that are operated by tribes that fall within the Lake Superior Chippewa group, totaled \$110,648 (Department of Education, 2001) for the most recent year data was available. At the current rate of funding it would take 12 years to provide an amount greater than the modern day equivalent of the amount specified in the treaty.

The amount of funding provided to the Grand Portage school under this act equaled \$25,850 (Department of Education, 2001). If it were argued that the amount provided to the Grand Portage school under this act could be seen as meeting the treaty provision, then the amount provided to other schools that serve the children of other Lake Superior Chippewa bands should equal an amount greater than \$258,500 on an annual basis, as the portion of the treaty annuity for the Grand Portage school was 10% of the total annuity.

Indian Self-Determination and Education Assistance Act:

This act provides for the construction of schools, and that upon the request of the tribes, the federal government could contract with the tribes or schools to administer their own educational program at such schools. Thus, this act has the potential of providing for a school for the Grand Portage Band. Insofar as the amount of funding under this act that is currently provided to the tribes that fall under the umbrella of Lake Superior Chippewa and operate a tribal school, it would collectively equal \$182,044 (Herrin, personal communication, February, 2003). At the current rate, it would take seven years to provide a level of support that is greater than the modern day equivalent of the treaty amount.

Individuals with Disabilities Education Act:

This act provides for the construction of a school under certain circumstances, and thus has the potential of providing a school for the Grand Portage Band. This act provided \$927,916 to tribal schools that are operated by tribes that fall under the umbrella of Lake Superior Chippewa (Herrin, personal communication, December, 2002). At the current rate, it would take only two years to provide an amount greater than the modern day equivalent of the treaty amount.

Treaty 16: Treaty with the Ottawa and Chippewa, 1855

Article(s) Containing Educational Provision(s):

Article 1:

Nothing contained herein shall be so construed as to prevent the appropriation, by sale, gift, or otherwise, by the United States, of any tract or tracts of land within the aforesaid reservations for the location of churches, school-houses, or for other educational purposes, and for such purposes purchases of land may likewise be made from the Indians, the consent of the President of the United States, having, in every instance, first been obtained therefor. (Kappler, 1972, pp. 727-728)

Article 2:

The United States will also pay to the said Indians...Eighty thousand dollars for educational purposes to be paid in ten equal annual installments of eight thousand dollars each, which sum shall be expended under the direction of the President of the United States; and in the expenditure of the same, and the appointment of teachers and management of schools, the Indians shall be consulted, and their views and wishes adopted so far as they may be just and reasonable. (Kappler,

1972, p. 728)

Identification of Key Terms:

*Nothing... to prevent the appropriation... by the United States, of any tract or tracts of land within the aforesaid reservations for the location of...school-houses, or for other educational purposes

*Eighty thousand dollars for educational purposes to be paid in ten equal annual installments of eight thousand dollars each

*in the expenditure of the same, and the appointment of teachers and management of schools, the Indians shall be consulted, and their views and wishes adopted so far as they may be just and reasonable

Analysis of Key Terms:

Parties to this treaty included "the United States, and the Ottawa and Chippewa Indians of Michigan, parties to the treaty of March 28, 1836" (Kappler, 1972, p. 725). In the treaty of 1836, the parties were listed as "the Ottawa and Chippewa nations of Indians" (Kappler, 1972, p. 450). It is interesting to note that in 1855 the term *nation* is no longer used, and it is specific to Michigan.

The first educational provision contained within this treaty gave license to the federal government to designate "tracts of land within the aforesaid reservations for the location of churches, school-houses, or for other educational purposes" (see above excerpt). The inclusion of churches in the category of educational purposes reveals how the U.S. had been depending upon churches to deliver a portion of earlier treaty educational provisions. Obviously, the separation of church and state, in this respect, was practically non-existent at that time.

The second provision contained in this treaty is "eighty thousand dollars for educational purposes" (see above excerpt). This was to be "paid in ten equal annual installments of eight thousand dollars each" (see above excerpt). When adjusted for inflation, this amount would equal approximately \$1,632,653 by today's standards. This fund was to have been expended under the direction of the President of the United States, and the appointment of teachers and management of schools was to have been done in consultation with the Ottawa and Chippewa.

Importantly, the treaty also stipulates that the views and wishes of the Ottawa and Chippewa were to be "adopted so far as they may be just and reasonable" (see above excerpt). In accordance with the Canons of Treaty Construction, the ambiguous terms *just* and *reasonable* should be defined liberally in line with Indian understanding and to the benefit of the Ottawa and Chippewa. Like Treaty 12, this is an assertion of tribal control over educational resources within a treaty. Further research into subsequent appropriations and land allotments may reveal a clearer picture of how the educational provisions contained in this treaty were or were not met.

Trust Level:

It is likely that the provisions of this treaty would be seen as establishing two types of limited trust relationships between the Indian side of the house and the Federal Government. First, the land for educational purposes provision empowers the Federal Government with the power to determine if land is set aside for educational purposes for the Tribe. Reflecting on *United States v. Kagama*, 118 U.S. 375, 384-85 (1886), it could be asserted that because this provision grants the Federal Government this power, that the duty of protection of tribal interests is also assumed. This may be an ongoing limited

trust responsibility.

On the other hand, the provisions that are tied to the 10 year annuity would likely be seen as establishing an express fiduciary trust relationship with a specific time limitation. It would befall the Federal Government to prove that it had met the requirements of the provision, and that it had done so in consultation with the Indian side of the house, with their views and wishes being adopted if found just and reasonable. This may call for a clarification of how “just” and “reasonable” were determined in such a relationship.

Comparative Legislative Analysis:

The score sheet for this treaty is based on a combination of searches conducted for Treaty 3 (*school*), Treaty 4 (*education*), and Treaty 12 (specific references to tribal control). There were no additional search terms under this treaty. A comparison of the treaty monetary provision with current funding under each act is included below.

Indian Education Act:

This act does not provide a mechanism whereby the United States can make available a tract of land within a reservation for the location of a school or for educational purposes, and therefore cannot be said to fulfill that educational provision of this treaty. This act does provide an opportunity for tribes to apply for grant funding and can therefore be said to provide for tribal consultation in some respects. The last component, a provision of \$80,000 for educational purposes, would equal approximately \$1,632,653 when adjusted for inflation. Assuming that this provision has never been met, this act would have had to provide an amount equal to or greater than that amount to schools that serve the educational interests of the tribes party to this treaty. The only tribally operated

school in Michigan that receives funding under this act and serves the children of the tribes party to this treaty is the Baweting Anishinaabe PSA. This school received \$39,680 (Department of Education, 2001) during the most recent year that data was available. At this rate, it would take 42 years of funding to reach an amount greater than the modern day equivalent of the treaty provision.

Indian Self-Determination and Education Assistance Act:

Unlike the Indian Education Act, this act may provide for the designation of a tract of land within reservation areas set aside for the use and occupancy of the tribes party to this treaty. Additionally, this act may provide a mechanism for the support of educational programs for these tribes if the tribes requested to contract for such programs under this act. The act provides for tribal control of the educational funding available under this act. The Sault Ste. Marie Tribe of Chippewa Indians received \$210,300 (Herrin, personal communication, February, 2003) under this act during the most recent year that data was available. At this rate, it would take eight years to equal an amount greater than the modern day equivalent of the treaty provision.

Individuals with Disabilities Education Act:

This act would probably not have any bearing on the decision on where to locate a school or schools on reservation lands, but it may be used to fund the construction of such a school, if needed for special education purposes. Insofar as the act has provided special education benefits for the children of the tribes party to this treaty, it may be argued that this act has provided in full or in part for the \$80,000 (or its modern day equivalent of \$1,632,653) as specified within the article. The Baweting Anishinaabe PSA received \$198,665 (Herrin, personal communication, December, 2002) during the

most recent year that data was available. At current funding levels, it would take nine years to equal an amount greater than the modern day equivalent of the treaty provision.

Treaty 17: Treaty with the Chippewa of Saginaw, Etc., 1855

Article(s) Containing Educational Provision(s):

Article 1:

The United States will withdraw from sale, for the benefit of said Indians, as herein provided, all the unsold public lands within the State of Michigan embraced in the following description... And the provisions therein contained relative to the purchase and sale of land for school-houses, churches, and educational purposes, shall also apply to this agreement. (Kappler, 1972, p. 733)

Article 2:

The United States shall also pay to the said Indians... Thirty thousand dollars for educational purposes, to be paid in five equal annual installments of four thousand dollars each, and in five subsequent equal annual installments of two thousand dollars each, to be expended under the direction of the President of the United States. (Kappler, 1972, p. 733)

Identification of Key Terms:

*withdraw from sale, for the benefit of said Indians... the unsold public lands within the State of Michigan... for school-houses... and educational purposes

*Thirty thousand dollars for educational purposes

Analysis of Key Terms:

Parties to this treaty included "the United States, and the Chippewa Indians of Saginaw, parties to the treaty of January 14, 1837, and that portion of the band of

Chippewa Indians of Swan Creek and Black River, parties to the treaty of May 9, 1836, and now remaining in the State of Michigan” (Kappler, 1972, p. 733). In the treaty of 1837, the United States negotiated with "the Saginaw Chippewa tribe of the Chippewa nation" (Kappler, 1972, p. 482). In the treaty of 1836, the United States negotiated with "Swan-Creek and Black-River bands of the Chippewa nation, residing within the limits of Michigan" (Kappler, 1972, p. 461). Notice that the term *nation* is not being utilized in this treaty as compared to the previous treaties. Notice also that the United States negotiated the treaty of 1836, and this one, with only a portion of two bands that fell within the State of Michigan.

The first article basically withdraws unsold public lands that have been designated as lands for schools, churches and for other educational purposes from sale. In a sense, this is a reaffirmation that lands previously designated for such purposes will be taken off the market and will still be available for such purposes. Interestingly enough, the U.S. did sell land that was designated for educational purposes to the State of Michigan in 1934 under the Comstock Agreement. This point will be revisited in the subsequent chapter.

The second article of this treaty contains a provision of "thirty thousand dollars for educational purposes, to be paid in five equal annual installments of four thousand dollars each, and in five subsequent equal annual installments of two thousand dollars each". When adjusted for inflation, this amount would be equal to approximately \$612,245 by today's standards. This fund was to be "expended under the direction of the President of the United States." Further research into subsequent appropriations may reveal if this provision was ever met.

Trust Level:

Similar to Treaty 16, this treaty contains two types of trust relationships, one that is tied to land for educational purposes and the other to an annuity. In the first instance, it is likely to be argued that the land provision establishes a limited and continuous trust relationship. In the second instance, it is likely to be argued that the provision establishes an express fiduciary trust relationship with a specific time limitation that extends only to the duration of the ten years of the annuity. It would befall the federal government to prove that it had indeed met the requirements of the annuity provision.

Comparative Legislative Analysis:

The hit table results for this treaty are based on a combination of searches conducted for Treaty 3 (*land*), and Treaty 4 (*education*). There were no additional search terms under this treaty. Similar to Treaty 9, it is important to keep in mind that this treaty is relevant only to the Saginaw Chippewa Tribe, which does not receive funding under any of these acts, and does not currently operate a tribally controlled school that receives funding under any of the acts included in this study. While it is certainly plausible that the children of this Tribe could be receiving benefit from an education system that is supported in part by funding under these acts, it remains that this particular tribe does not operate a tribally controlled school that receives any funding under these acts. Thus, it was determined by the researcher that the potential level of fulfillment under each act for the monetary component was zero. If the Saginaw Chippewa Indian Tribal school began receiving funding under these acts, then the potential level of fulfillment would need to be reevaluated.

Indian Education Act:

This act has the potential to provide for support for educational purposes for the tribes party to this treaty, but as suggested above, the federally recognized Saginaw Chippewa Indian Tribe, which is the modern day equivalent of the tribes, does not receive funding under this act, nor does it operate a school that receives funding under this act. Thus, under strict scrutiny, this act could not be argued to meet any of the educational provisions set forth under this treaty.

Indian Self-Determination and Education Assistance Act:

This act has the potential to provide for support for educational purposes for the tribes party to this treaty, and to provide land for educational purposes. As with the Indian Education Act, however, this act does not currently provide any funding to the Saginaw Chippewa Indian Tribe, nor does it provide any funding to the school operated by the Tribe.

Individuals with Disabilities Education Act:

This act has the potential to provide for support for special educational purposes for the tribes party to this treaty, and under certain conditions to provide land for educational purposes. As with the other acts, however, this act does not currently provide any funding to the Saginaw Chippewa Indian Tribe, nor does it provide any funding to the school operated by the Tribe.

*Treaty 23: Treaty with the Chippewa of Saginaw, Swan Creek,
and Black River, 1864*

Article(s) Containing Educational Provision(s):

Article 4:

The United States agrees to expend the sum of twenty thousand dollars for the

support and maintenance of a manual-labor school upon said reservation:

Provided, that the Missionary Society of the Methodist Episcopal Church shall, within three years after the ratification of this treaty, at its own expense, erect suitable buildings for school and boarding-house purposes, of a value of not less than three thousand dollars, upon the southeast quarter of section nine, township fourteen north, of range four west, which is hereby set apart for that purpose. The superintendent of public instruction, the lieutenant governor of the State of Michigan, and one person, to be designated by said missionary society, shall constitute a board of visitors, whose duty it shall be to visit said school once during each year, and examine the same, and investigate the character and qualifications of its teachers and all other persons connected therewith, and report thereon to the Commissioner of Indian Affairs. The said Missionary Society of the Methodist Episcopal Church shall have full and undisputed control of the management of said school and the farm attached thereto. Upon the approval and acceptance of the school and boarding-house building by the board of visitors, the United States will pay to the authorized agent of said missionary society, for the support and maintenance of the school, the sum of two thousand dollars, and a like sum annually thereafter, until the whole sum of twenty thousand dollars shall have been expended....The United States reserves the right to suspend the annual appropriation of two thousand dollars for said school, in part or in whole, whenever it shall appear that said missionary society neglects or fails to manage the affairs of said school and farm in a manner acceptable to the board of visitors aforesaid; and if, at any time within a period of ten years after the establishment

of said school, said missionary society shall abandon said school or farm for the purposes intended in this treaty, then, and in such case, said society shall forfeit all of its rights in the lands, buildings, and franchises under this treaty, and it shall then be competent for the Secretary of the Interior to sell or dispose of the land hereinbefore designated, together with the buildings and improvements thereon and expend the proceeds of the same for the educational interests of the Indians in such manner as he may deem advisable. At the expiration of ten years after the establishment of said school, if said missionary society shall have conducted said school and farm in a manner acceptable to the board of visitors during said ten years, the United States will convey to said society the land before mentioned by patent in trust for the benefit of said Indians. In case said missionary society shall fail to accept the trust herein named within one year after the ratification of this treaty, then, and in that case, the said twenty thousand dollars shall be placed to the credit of the educational fund of said Indians, to be expended for their benefit in such manner as the Secretary of the Interior may deem advisable. It is understood and agreed that said missionary society may use the school-house now standing upon land adjacent to the land hereinbefore set apart for a school-farm, where it now stands, or move it upon the land so set apart (Kappler, 1972, p. 870).

Identification of Key Terms:

*United States agrees to expend the sum of twenty thousand dollars for the support and maintenance of a manual-labor school upon said reservation.

*Secretary of the Interior to sell or dispose of the land hereinbefore designated, together with the buildings and improvements thereon and expend the proceeds of the same for the

educational interests of the Indians.

*twenty thousand dollars shall be placed to the credit of the educational fund of said Indians.

Analysis of Key Terms:

Parties to this treaty included "the United States...and the Chippewas of Saginaw, Swan Creek, and Black River, in the State of Michigan aforesaid, parties to the treaty of August 2d, 1855" (Kappler, 1972, p. 868). Again, this treaty is specific to Michigan.

In the third article of this treaty, it makes an important distinction between "competents" and "those not so competent" (see above excerpt). In defining *competent*, the treaty states that these individuals are "intelligent, and have sufficient education, and are qualified by business habits to prudently manage their affairs." In defining the later it states that these persons are "uneducated, or unqualified in other respects to manage their affairs, or who are of idle, wandering, or dissolute habits" (see above excerpt). The last category also includes all orphans. The inclusion of *educated* in these definitions will be revisited in the next chapter.

In this treaty, the United States agree to expend \$20,000 for the support and maintenance of a manual labor school, on the Isabella Indian Reservation, for the educational interests of the Indians party to this treaty. It is important to note that the treaty does not stipulate the educational *needs*, but rather *interests*. While it does not indicate who is to determine the actual educational interests of the Indians party to this treaty, the ambiguity should be seen in favor of American Indian tribal self-determination. Following this logic, the tribes should determine their own educational interests regarding these funds that may yet be outstanding. The \$20,000, when adjusted

for inflation, would equal approximately \$222,222 by today's standard.

Although the treaty includes language about the educational interests of the Indians, it establishes that it would be the Missionary Society of the Methodist Episcopal Church that would have "full and undisputed control of the management" (see above excerpt) of the school and the farm attached to it. It also stipulates that "the superintendent of public instruction, the lieutenant governor of the State of Michigan, and one person, to be designated by said missionary society, shall constitute a board of visitors" (see above excerpt). This board was to report to the Commissioner of Indian Affairs their findings once per year on the condition of the school and character and qualifications of the teachers. The exclusion of tribal representation in the review of the school may be an indication of common attitudes about Indian education at that time, when it was believed that assimilation into the dominant society was the best practice regarding Indian education.

It is unclear if the appropriation for the educational provision was an extension of the previous Treaty of 1855 authorization, or if it was a new authorization entirely. It is also unclear exactly what became of the funding authorized by this treaty. Further investigation into subsequent appropriations and/or reports may reveal a clearer picture of the evolution of this educational provision.

We do know that the Missionary Society, through the Bradley Mission School, had already established itself as a provider of educational services to the local Anishinaabek, even prior to the signing of the Treaty of 1855 (State of Michigan, Bureau of History, 1985), and that in 1891, the U.S. Congress appropriated \$25,000 for the purchase of 200 or more acres of land to be used to develop an Indian Industrial School

in Isabella County, Michigan (Littlefield & Knack, 1996). The tracts of land included in this purchase were connected to, or part of, the original property that was designated as a mission site in the Treaty of 1864 (Reinhardt, 1998).

The federal government opened the Indian Industrial School in 1893, and it remained open until 1934 (Reinhardt, 1998). It was then sold to the State of Michigan for one dollar with an agreement to "receive and care for in State institutions Indians resident within the State on entire equality with persons of other races and without cost to the federal government" (Comstock, 1934). The Comstock Agreement will also be revisited in the next chapter.

This school has never reopened, and although seen as an historical location by the State of Michigan, it is in need of major repairs and the buildings are currently crumbling under their own weight. The Mt. Pleasant Center for Developmental Disabilities is now located on the same properties that once comprised the school.

Trust Level:

There are two different types of trust relationships established by the provisions of this treaty. In the first instance, it establishes an express fiduciary trust relationship in that the Federal Government was responsible for expending \$20,000 toward the education of the citizens of this Tribe. This could have happened in at least a couple of different ways, and it would befall the Federal Government to show how this was actually accomplished.

In the second instance, the treaty established that the Federal Government would oversee the sale of lands and buildings and apply the proceeds of the sales to the educational interests of the Tribe. While it seems that this provision also establishes an

express fiduciary trust relationship, it could also be argued that the way in which the sale of the lands and buildings was accomplished extended such a relationship beyond the mere act of selling the land. When the lands were sold to the State of Michigan in 1934, it was done so in agreement that the State of Michigan would provide for the education, among other needs, of American Indian people resident within the State. While this agreement may have in some sense shifted the burden of providing for the education of the citizens of this Tribe, it could be asserted that it did not shift the burden of protecting the educational interests of the same as it extends from this treaty relationship. Again reflecting on the Kagama decision, with the power comes the assumption of protection. Thus, it could be argued that a limited trust relationship, a protectorate relationship to be exact, still exists in this instance even if the State of Michigan is responsible for carrying out any fiduciary component.

Comparative Legislative Analysis:

The score sheet for this treaty is based on a combination of searches conducted for Treaty 3 (*school*), and *educational interests of...Indians* under this treaty. Again, as in Treaties 9 and 17, this treaty is relevant only to the Saginaw Chippewa Tribe, which does not receive funding under any of the acts included in this study, and does not currently operate a tribally controlled school that receives funding under any of the acts included in this study. It was determined by the researcher that the potential level of fulfillment under each act was zero given this strict scrutiny. Again, if the Saginaw Chippewa Indian Tribal school began receiving funding under these acts, then the potential level of fulfillment would need to be reevaluated.

Indian Education Act:

This act has the potential to provide support for a school for the tribes party to this treaty, and under certain conditions, a tribe could request to administer programs under this act. As suggested above, however, the federally recognized Saginaw Chippewa Indian Tribe, does not receive funding under this act, nor does it operate a school that receives funding under this act. Thus, under strict scrutiny, this act could not be argued to meet any of the educational provisions set forth under this treaty.

Indian Self-Determination and Education Assistance Act:

This act has the potential to provide support for a school for the tribes party to this treaty, and to provide for the educational interests of the tribes party to this treaty. As with the Indian Education Act, however, this act does not currently provide any funding to the Saginaw Chippewa Indian Tribe, nor does it provide any funding to the school operated by the Tribe.

Individuals with Disabilities Education Act:

This act has the potential to provide special education support for a school for the tribes party to this treaty. It does not address the educational interests of the tribe. As with the other acts, this act does not currently provide any funding to the Saginaw Chippewa Indian Tribe, nor does it provide any funding to the tribe's school.

Chapter Summary

This chapter included the results of a comparative socio-historical content analysis between 16 treaties and 3 pieces of current federal Indian education legislation. The treaties were selected due to their educational content, and relevance to American Indian tribes currently located within the State of Michigan. The three pieces of legislation were selected due to their current and ongoing impact on Indian education.

Each section of this chapter addressed the potential of the three pieces of legislation to meet the educational provisions set forth in the treaties. Each piece of legislation was searched for specific treaty terms, similar terms, and conceptual clusters. Each act was then given a score based on the outcomes of the searches. Additional scores were based on trust levels, how the acts addressed the relationship with tribes and treaties, monetary considerations, and other more qualitative components of the treaty provisions.

CHAPTER 5

Discussion

As a trustee, or protector, of American Indian treaty rights, it is the federal government's responsibility to ensure that such rights are upheld and interpreted according to strict guidelines. The United States Supreme Court's Canons of Treaty Construction provide such guidelines. According to these canons: Ambiguities in treaties must be resolved in favor of the Indians, Indian treaties must be interpreted as the Indians would have understood them, and Indian treaties must be construed liberally in favor of the Indians (Pevar, 1992).

In this chapter, the initial research questions are addressed with the findings from a comparative socio-historical content analysis of 16 treaties signed between the Anishinaabek and the United States and 3 pieces of subsequent federal Indian education legislation. There were two major components of the comparative socio-historical content analysis. The first was a socio-historical content analysis of the treaties themselves to determine what was obligated, and to whom it was obligated. The second was a comparison with current laws pertaining to Indian education to see how the provisions matched-up. The middle-ground between the two components required that the researcher incorporate a set of criteria regarding how the laws addressed the relationship with tribes and treaties. Finally, this chapter brings the educational trust corpus, or potential collective educational obligation into perspective.

Corrective Findings

This study corrects an earlier omission in a study conducted by the American Indian Policy Review Commission (1976) that had shown only 22 treaties signed

between the Anishinaabek and the United States that contained educational provisions. This study found that no educational provisions were included in the Treaty with the Potawatomi, 1832, contrary to the earlier claim, and that five other treaties containing educational provisions were excluded from the earlier list. The five treaties that had been left out of the earlier study include: the Treaty with the Wyandot, Etc., 1817 (Treaty 1), Treaty with the Chippewa, Etc., 1833 (Treaty 7), Treaty with the Chippewa (Detroit), 1837 (Treaty 9), Treaty with the Chippewa (St. Peters), 1837 (10), and the Treaty with the Potawatomi, 1867 (Treaty 25).

Research Questions

The questions guiding this study are related to current Indian educational issues in the State of Michigan. They are as follows:

1. What is the extent of educational obligations set forth by treaty for American Indian tribes located within Michigan?
2. Are current federal K-12 American Indian education laws intended to satisfy any portion of these treaty obligations?
3. If so, how do they satisfy these obligations?
4. Are there any portions of treaty educational obligations that have not been met, or are not addressed by current federal K-12 American Indian education legislation?
5. What is the responsibility of federal, state, and tribal governments in providing for the K-12 educational interests of American Indian tribal citizens within the State of Michigan?

These questions are answered in the next few sections of this chapter based on findings from this study.

Research Question One

The first research question was related to the socio-historical content analysis of treaties component of this study. It was: *What is the extent of educational obligations set forth by treaty for American Indian tribes located within Michigan?* While there is no simple answer to this question, this study has provided information that helps formulate a picture of the overall body of treaty educational obligations contained within treaties signed between the Anishinaabek and the United States, and further discerns what treaty provisions may be applicable to tribes currently located within the State of Michigan.

The Treaty Provisions Table, Appendix G (also accessible electronically by opening the Microsoft Excell file *treaty_provisions_table.xls* on the compact disk accompanying this study), summarizes the educational provisions of all 26 treaties, signed between the Anishinaabek and the United States. The table also categorizes each treaty by its relevance to Michigan tribes, groups of Anishinaabe tribes included (Chippewa, Ottawa, or Potawatomy), and which federally or state recognized tribes currently located within the State of Michigan may be included under each treaty provision.

Treaties signed between the Anishinaabek and the United States that contain educational provisions include the following:

1. Treaty with the Wyandot, Etc., 1817.
2. Treaty with the Ottawa, Etc., 1821.

3. Treaty with the Chippewa, 1826.
4. Treaty with the Potawatomi, 1826.
5. Treaty with the Chippewa, Etc., 1827.
6. Treaty with the Potawatomi, 1828.
7. Treaty with the Chippewa, Etc., 1833.
8. Treaty with the Ottawa, Etc., 1836.
9. Treaty with the Chippewa (Detroit), 1837.
10. Treaty with the Chippewa (St. Peters), 1837.
11. Treaty with the Chippewa, 1842.
12. Treaty with the Potawatomi Nation, 1846.
13. Treaty with the Chippewa of the Mississippi and Lake Superior, 1847.
14. Treaty with the Chippewa, 1854.
15. Treaty with the Chippewa, 1855.
16. Treaty with the Ottawa and Chippewa, 1855.
17. Treaty with the Chippewa of Saginaw, Etc., 1855.
18. Treaty with the Chippewa, Etc., 1859.
19. Treaty with the Ottawa of Blanchard's Fork and Roche De Boeuf,
1862.
20. Treaty with the Chippewa of the Mississippi and the Pillager and Lake
Winnibigoshish Bands, 1863.
21. Treaty with the Chippewa–Red Lake and Pembina Bands, 1863.
22. Treaty with the Chippewa, Mississippi, and Pillager and Lake
Winnibigoshish Bands, 1864.

23. Treaty with the Chippewa of Saginaw, Swan Creek, and Black River, 1864.

24. Treaty with the Chippewa–Bois Fort Band, 1866.

25. Treaty with the Potawatomi, 1867.

26. Treaty with the Chippewa of the Mississippi, 1867.

Only Treaties 1-12, 14, 16, 17 and 23 were ultimately included in the comparative socio-historical content analysis because they are Michigan inclusive and include an educational benefit to Michigan tribes.

Treaty Monetary Provisions

Looking first at the treaty monetary provisions, only 20 of the 26 treaties contain such provisions. These provisions are broken down into three categories: ambiguous annuities, specific annuities, and one-time cash payments. In determining which annuities were ambiguous, the researcher utilized the definition of ambiguity included in Webster's Dictionary (1983): "Ambiguous: doubtful or uncertain... inexplicable... capable of being understood in two or more possible senses or ways" (p.77). For example, if the annuity terms stated "...for the purposes of education, the annual sum of two thousand dollars" as it does in Treaty 3, the Treaty with the Chippewa, 1826, there is no time limitation included other than the reference to the annual basis, thus the terms are ambiguous. This ambiguous type of annuity is in contrast with specific annuities and one-time cash payments. Specific annuities are like the one included in Treaty 2, the Treaty with the Ottawa, Etc., 1821, which states "...to appropriate annually, for a term of ten years, the sum of fifteen hundred dollars" (Kappler, 1972, p. 200). In the ambiguous case, it cannot be ascertained how long the annuity was to last. In the specific case, it is

clear that it was to last 10 years. One time cash payments are simply monetary provisions that did not mention any type of annuity. An example of a one time cash-payment is like that which is included in Treaty 7, the Treaty with the Chippewa, Etc., 1833, where it stipulates “seventy thousand dollars for purposes of education and the encouragement of the domestic arts, to be applied in such a manner, as the President of the United States may direct” (Kappler, 1972, pp. 402-403). Note that there are cases where combinations of the different types of monetary provisions are included as well, including Treaty 5, the Treaty with the Chippewa, Etc., 1827; Treaty 24, the Treaty with the Chippewa–Bois Fort Band, 1866; and Treaty 26, Treaty with the Chippewa of the Mississippi, 1867.

There are 7 treaties total that include an ambiguous annuity. If all of the ambiguous annuities (considering only one year or the least number of years specified) were adjusted to 2001 dollars, the total amount of the ambiguous annuities would equal \$1,774, 227. Out of the 16 treaties that were included in the comparative socio-historic content analysis, only 5 contained ambiguous annuities. The total amount of ambiguous annuities relevant to Michigan tribes, therefore, is \$1,743,350 (in 2001 dollars) when adjusted for inflation. Given the generalities of tribes included under each treaty, which is discussed subsequently, this does not necessarily mean that this amount was specifically intended for Michigan tribes alone.

There are 12 treaties total that include a specific annuity. If all of the specific annuities were multiplied out to the maximum number of years stipulated, and inflated to 2001 dollars, the total amount of the specific annuities would equal \$11,933,961. Of the 16 treaties that were included in the comparative socio-historic content analysis, only 8

contained specific annuities. The total amount of specific annuities relevant to Michigan tribes, therefore, is \$8,668,572 (in 2001 dollars) when adjusted for inflation. As with the ambiguous annuities, this amount is not exclusive to Michigan tribes.

There are four treaties total that include a one-time cash payment. If all of the one-time cash payments were inflated to 2001 dollars, the total amount of one-time cash payments would equal \$1,574,696. Of the 16 treaties that were included in the content analysis, only 1 contained a one-time cash payment. The total amount of one-time cash payments relevant to Michigan tribes, therefore, is \$1,458,333 (in 2001 dollars) when adjusted for inflation. Like the other monetary provisions, this amount is not exclusive to Michigan tribes.

While this does not provide conclusive evidence of what ambiguous annuities, specific annuities, or one-time cash payments are still obligated to Michigan tribes, it does provide at least a sense of the value of treaty monetary provisions by today's standards. It is important to note that this does not account for any changes in the value or quality of Indian education since the treaties were written. For instance, the modern day equivalent of average pay for a teacher in Michigan today may be greater or less than the average pay for a teacher in Michigan during the time the treaty was written. Another example of a difference in value may include the educational needs of Anishinaabe students now as compared to then. Whereas probably most Anishinaabe students were fluent in Anishinaabemowin (the Native language of the Anishinaabek) during the treaty making period, most probably are not now, and may need immersion in Anishinaabemowin in order to revitalize the language within the community. Thus, *what* a monetary provision was intended to pay for should be weighed against the actual

amount that was provided in both historical and contemporary terms.

Treaty Non-Monetary Provisions

Non-monetary educational provisions included in these treaties range from education in general to specific references about Indian preference in the employment of teachers. All of the treaties contain some type of non-monetary educational provision. As alluded to previously, six treaties contain only non-monetary provisions--Treaties 1, 9, 12, 13, 19, and 25 (see treaties list on pages 194-195). Unlike unfunded mandates, under the U.S. Constitution treaties are to be considered the supreme law of the land, and therefore must be upheld even if there is no specific monetary provision attached to the educational provision. Alternately, if a treaty right is eliminated by an act of Congress just compensation must be provided (Canby, 1988).

Within the body of 26 treaties signed between the Anishinaabek and the United States, non-monetary educational provisions include: education in general, schools, teachers, blacksmiths for schools, land for educational purposes, training/instruction in agriculture, training/instruction in domestic arts, books in Anishinaabemowin, books and stationery in general, laborers for schools, specific references to tribal control of educational resources, and references to tribal or Indian preference in the employment of teachers. Within the body of the 16 treaties included in the content analysis are included the same provisions, except for the following: books and stationery in general, laborers for schools, and references to tribal or Indian preference in the employment of teachers. The bullets below summarize the non-monetary provisions as they are included in all 26 treaties signed between the Anishinaabek and the United States government that contain educational provisions, and subsequently in the treaties selected for the content analysis

due to their relevance to Michigan tribes (see treaties list on pages 194-195):

- * Fifteen of the 26 treaties (Treaties 1, 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 21, and 23) included references to education in general. Only 11 of the 16 treaties (Treaties 1, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 23) selected for the content analysis included such references.
- * Eleven of the 26 treaties (Treaties 3, 8, 10, 11, 13, 14, 18, 19, 23, 24, and 26) included references to schools. Only 6 of the 16 treaties (Treaties 3, 8, 10, 11, 14, and 23) selected for the content analysis included such references.
- * Five of the 26 treaties (Treaties 2, 8, 13, 15, and 24) included references to teachers. Only 2 of the 16 treaties (Treaties 3 and 8) selected for the content analysis included such references.
- * Three of the 26 treaties (Treaties 2, 13, and 15) included references to blacksmiths. Only 1 of the 16 treaties (Treaty 2) selected for the content analysis included such references.
- * Eight of the 26 treaties (Treaties 2, 3, 16, 17, 18, 19, 23, and 25) included references to land for educational purposes. Only 5 of the 16 treaties (Treaties 2, 3, 16, 17, and 23) selected for the content analysis included such references.
- * Two of the 26 treaties (Treaties 2 and 24) included references to training/instruction in agriculture. Only 1 of the 16 treaties (Treaty 2) selected for the content analysis included such references.
- * Three of the 26 treaties (Treaties 7, 20, and 22) included references to training/instruction in domestic arts. Only 1 of the 16 treaties (Treaty 7)

- selected for the content analysis included such references.
- * One of the 26 treaties (Treaty 8) included references to books in Anishinaabemowin. This treaty is not one of the treaties that was selected for the content analysis.
 - * One of the 26 treaties (Treaty 24) included references to books and stationery in general. This treaty is not one of the treaties that was selected for the content analysis.
 - * One of the 26 treaties (Treaty 13) included references to laborers for schools. This treaty is not one of the treaties that was selected for the content analysis.
 - * Six of the 26 treaties (Treaties 12, 15, 16, 19, 23, and 24) included specific references to tribal control of educational resources. Only 3 of the 16 treaties (Treaties 12, 16, and 23) selected for the content analysis included such references.
 - * One of the 26 treaties (Treaty 13) included references to tribal or Indian preference in the employment of teachers. This treaty is not one of the treaties that was selected for the content analysis.

While the treaty educational provisions table provides a summary of these non-monetary provisions, it is important to note that many of these provisions are also ambiguous in meaning, and as such may have been understood differently by the Anishinaabek and the Americans at the time these treaties were written.

Take the general term *education* for instance. This term appears in some form in 15 of the 26 treaties, and in 11 of those included in the comparison of treaties and current

laws. In a broad sense, all of the other more specific educational provisions contained within these treaties (which are all written in English) could be subsumed under this general term. Given the level of cross-cultural/cross-linguistic complexity, it is plain to see that there was much room for mis-understanding between the Anishinaabek and the Americans in this process. For more specific cross-cultural/cross-linguistic comparisons of ambiguous terms, see Chapter 4.

Relevance to Michigan Tribes

In establishing the relevancy of the 26 treaties to Michigan tribes, the researcher placed each treaty in one or more of the following categories: Michigan Specific; Michigan Non-Specific; Non-Michigan Non-Specific; and, Non-Michigan Specific. Michigan Specific indicates that the treaty educational provision in question is specific to a tribe, or tribes, located within the State of Michigan. Michigan Non-Specific indicates that the treaty educational provision in question is generalizable to a larger group that may extend beyond the State of Michigan. Non-Michigan Non-Specific indicates that the treaty educational provision in question is generalizable to a larger group that may be inclusive of tribes located within the State of Michigan. Lastly, Non-Michigan Specific indicates that the treaty educational provision in question is specific to a tribe, or tribes, that are outside of the State of Michigan.

Five of the 26 treaties fell into the Michigan Specific category, including Treaties 9, 11, 14, 17, and 23. As might be expected, all of these treaties were subsequently included in the comparative socio-historic content analysis. Seven of the 26 treaties fell into the Michigan Non-Specific category, including Treaties 1, 2, 3, 5, 6, 8, and 16. Again, as might be expected, all of these treaties were included in the comparative socio-

historic content analysis. Five of the 26 treaties fell into the Non-Michigan Non-Specific category, including Treaties 4, 7, 10, 12, and 25. All but Treaty 25 were subsequently included in the comparative socio-historical content analysis, due to finding that the educational provision included in Treaty 25 was actually a removal of an educational benefit from the tribes in question. Finally, 11 of the 26 treaties fell into the Non-Michigan Specific category, including Treaties 11, 13, 14, 15, 18, 19, 20, 21, 22, 24, and 26. Only two treaties, Treaties 11 and 14, included in this category were included in the comparative socio-historical content analysis, as they also fell into the Michigan Specific category. Both Treaty 11 and 14 referenced specific tribes located within Michigan and specific tribes located outside of Michigan. For a listing of treaties see pages 194-195.

Anishinaabe Tribes Included

In order to more fully understand the logic behind the categorization of relevance, it is important to understand the historical relationships between the tribal groups that are referred to as Chippewa, Ottawa, or Potawatomi. According to Benton-Banai (1988), sometime prior to colonization of this hemisphere by European nations, Chippewa, Ottawa, and Potawatomi people all belonged to the same cultural group known as the Anishinaabe Ojibway. This group was not governed by a single, centralized form of government, but rather by several smaller clan/family units that would come together, when necessary, to gain consensus on issues that impacted the larger group as a whole.

It was only after a migration to (or back to, as some would say) the Great Lakes Region that the groups now called the Ottawa (or Odawa) and Potawatomi (or Bodwewaadomi, or Ishkodewaadomi) split off from the original group to become distinct entities in and of themselves (Benton-Banai, 1988). It is not uncommon for the

Chippewa (or Ojibway) to be referred to as the Older Brother of the groups today.

Even after the splitting off from the original group, the Ottawa and Pottawatomi maintained close ties with the Chippewa. The three groups formed a confederacy to offer mutual support and to continue the tradition of consensus building among the clan and family groups regarding any decision making on issues that would impact the Anishinaabek as a whole. This confederacy form of government was in place when the United States began the treaty making process with the Anishinaabek, and remains in place today as the traditional governmental structure that now co-exists along with the new constitutional forms of tribal government that are recognized by the United States and the band councils that are recognized under the Canadian Indian Act where many Anishinaabe people live. Anishinaabe Chippewa, Ottawa, and Potawatomi tribes are the only federally or state recognized tribes in Michigan today.

The United States government entered into treaties with all three groups of the Anishinaabe Three Fires Confederacy in Treaty 1, the earliest of the treaties between the Anishinaabek and the United States that contain educational provisions. All three tribal groups were again made reference to in 2 more of the 26 treaties, including Treaties 7 and 12. All three of these treaties were included in the content analysis, as they are relevant to tribes currently located within the State of Michigan.

Treaty 1, the Treaty with the Wyandot, Etc., 1817, called for "Ottawa, Chippewa, and Potawatomy tribes...their children hereafter educated" (Kappler, 1972, p. 150). The reference to the children of these tribes is arguably more of a legal/political term to citizens of the tribes in question, than it is to the actual age of the individual beneficiaries of the educational provision. Applying the most liberal meaning to such a term would

widen the circle of applicability making it inclusive of all Chippewa, Ottawa, and Potawatomi citizens, whether within the borders of the United States or Canada.

Treaty 7, the Treaty with the Chippewa Etc. of 1833, states that "the united nation of Chippewa, Ottawa and Potawatamie Indians being desirous to create a perpetual fund for the purposes of education and the encouragement of the domestic arts, wish to invest the sum of seventy thousand dollars in some safe stock" (Kappler, 1972, p.402-403). The interest earned from this stock was to be applied to the education of these tribe's children. Again, the reference to children in this instance could be argued to mean the citizens of the united nation of Chippewa, Ottawa and Potawatamie Indians.

Treaty 12, the Treaty with the Potawatomi Nation of 1846, is somewhat different. In this treaty, it states in the preamble that "the various bands of the Pottowautomie Indians, known as the Chippewas, Ottawas, and Pottowautomies, the Pottowauomies of the Prarie, the Pottowautomies of the Wabash, and the Pottowautomies of Indiana, have subsequent to the year 1828, entered into separate and distinct treaties with the United States, by which they have been separated and located in different countries" (Kappler, 1972, p. 557). While this treaty does not really provide anything further to the educational provisions of the Three Fires Confederacy as a whole, it does provide perspective on what may have been Anishinaabe understanding of the relationship between the three tribal groups in reference to educational and other provisions. In other words, when Potawatomi, Chippewa, or Ottawa representatives were signing treaties with the United States, they may have been signing on behalf of the Anishinaabe Three Fires Confederacy whether the signatories of the United States understood this or not.

In fact, this might explain, at least to some degree, why the Chippewa are

included in 21 of the 26 treaties in this study, and why the Ottawa are included in only 8, and the Potawatomi in only 9. There are 16 instances (Treaties 3, 5, 9, 10, 11, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24, and 26) where the Chippewa are included without the Ottawa and Potawatomi. There is only 1 instance (Treaty 19) where only the Ottawa are included. There are 3 instances (Treaties 4, 6, and 25) where only the Potawatomi are included. There are also 2 instances where Chippewa and Ottawa are included without the Potawatomi, and 1 instance where the Ottawa and Potawatomi are included without the Chippewa (see treaties list on pages 194-195).

Michigan Tribes Included in Treaty

It is important to gain an understanding of what tribes in Michigan may be seen as the beneficiaries of these treaty educational provisions. For a complete listing of tribes in Michigan see Appendix A. See Appendix B for a map of federally recognized tribal locations in Michigan.

Federally Recognized:

Bay Mills Indian Community

Arguably, the Bay Mills Indian Community is included under 8 of the 26 treaties (Treaties 1, 3, 5, 7, 8, 10, 12, and 16) signed between the Anishinaabek and the United States that contain educational provisions. As might be expected, all of these treaties were included in the comparative socio-historical content analysis.

Grand Traverse Band of Ottawa/Chippewa

The Grand Traverse Band of Ottawa/Chippewa is included under 9 of the 26 treaties (Treaties 1, 2, 3, 5, 7, 8, 10, 12, and 16). All of these treaties were included in the comparative socio-historical content analysis.

Gun Lake Band of Pottawatomi Indians

The Gun Lake Band of Pottawatomi Indians, also called the Match-e-be-nash-she-wish Band of Pottawatomi, is included under 7 of the 26 treaties (Treaties 1, 2, 4, 6, 7, 12, and 25). All of these treaties except for Treaty 25 were included in the comparative socio-historical content analysis.

Hannahville Indian Community

The Hannahville Indian Community is included under the same 7 treaties (Treaties 1, 2, 4, 6, 7, 12, and 25) as the Gun Lake Band. Again, all of these treaties except for Treaty 25 were included in the comparative socio-historical content analysis.

Huron Potawatomi Inc.

The Huron Potawatomi Inc. is included under the same 7 of the 26 treaties (Treaties 1, 2, 4, 6, 7, 12, and 25) as the Gun Lake Band, and the Hannahville Indian Community. Again, all of these treaties except for Treaty 25 were included in the comparative socio-historical content analysis.

Keweenaw Bay Indian Community

The Keweenaw Bay Indian Community is included under 10 of the 26 treaties (Treaties 1, 3, 5, 7, 8, 10, 11, 12, 14, and 16). All of these treaties were included in the comparative socio-historical content analysis.

Lac Vieux Desert Band of Lake Superior Chippewa Indians

The Lac Vieux Desert Band of Lake Superior Chippewa Indians is included under the same 10 treaties (Treaties 1, 3, 5, 7, 8, 10, 11, 12, 14, and 16) as the Keweenaw Bay Indian Community. Again, all of these treaties were included in the comparative socio-historical content analysis.

Little River Band of Ottawa Indians

The Little River Band of Ottawa Indians is included under 6 of the 26 treaties (Treaties 1, 2, 7, 8, 12, and 16). All of these treaties were included in the comparative socio-historical content analysis.

Little Traverse Bay Bands of Odawa Indians

The Little Traverse Bay Bands of Odawa Indians is included under the same 6 treaties (Treaties 1, 2, 7, 8, 12, and 16) as the Little River Band of Ottawa Indians. Again, all of these treaties were included in the comparative socio-historical content analysis.

Pokagon Band of Potawatomi Indians

The Pokagon Band of Potawatomi Indians is included under the same 7 treaties (Treaties 1, 2, 4, 6, 7, 12, and 25) as the Gun Lake Band, the Hannahville Indian Community, and the Huron Potawatomi Inc.. Again, all of these treaties except for Treaty 25 were included in the comparative socio-historical content analysis.

Saginaw Chippewa Indian Tribe of Michigan

The Saginaw Chippewa Indian Tribe of Michigan is included under 11 of the 26 treaties (Treaties 1, 3, 5, 7, 8, 9, 10, 12, 16, 17, and 23). All of these treaties were included in the comparative socio-historical content analysis.

Sault Ste. Marie Tribe of Chippewa Indians

The Sault Ste. Marie Tribe of Chippewa Indians is included in the same 8 treaties (Treaties 1, 3, 5, 7, 8, 10, 12, and 16) as the Bay Mills Indian Community. Again, all of these treaties were included in the comparative socio-historical content analysis.

State Historic:

Burt Lake Band of Ottawa and Chippewa Indians

The Burt Lake Band of Ottawa and Chippewa Indians is included under the same 9 treaties (Treaties 1, 2, 3, 5, 7, 8, 10, 12, and 16) as the Grand Traverse Band of Ottawa/Chippewa. Again, all of these treaties were included in the comparative socio-historical content analysis.

Grand River Band of Ottawa Indians

The Grand River Band of Ottawa Indians is included under the same 6 treaties (Treaties 1, 2, 7, 8, 12, and 16) as the Little River Band of Ottawa Indians, and the Little Traverse Bay Bands of Odawa Indians. Again, all of these treaties were included in the comparative socio-historical content analysis.

Swan Creek/Black River Confederated Ojibway Tribes of Michigan

The Swan Creek/Black River Confederated Ojibway Tribes of Michigan are included under 12 of the 26 treaties (Treaties 1, 3, 5, 7, 8, 9, 10, 12, 16, 17, 18, and 23). All of these treaties were included in comparative socio-historical content analysis, with the exception of Treaty 18, as it was related specifically to the portion of this Tribe that was removed from Michigan, and therefore was not considered relevant to Michigan tribes today.

Research Question Two

The second research question was: *Are current federal K-12 American Indian education laws intended to satisfy any portion of these treaty obligations?*

As with the first research question, there is no simple answer for this question. In order to provide any coherent response to such a question, the researcher had to

address it from a legislative historical perspective, and the type of interaction required with tribes under each act.

After reviewing the legislative history of the three acts, it was determined that the Indian Self-Determination and Education Assistance Act was the only act included in this study that could actually be traced back to treaty educational obligations. Thus, under the scoring criteria for *relationship with treaties*, this act received a score of one, whereas the other acts received a score of zero.

After reading through each act to determine the level of interaction with tribes required, it was found that only the ISDEA requires specific interaction with tribes in general, whereas the IEA and IDEA require specific interaction with American Indian tribal citizens in general, but do not require specific interaction with tribes. Thus, under the scoring criteria for *relationship with tribes*, the ISDEA received a score of two, whereas the other acts received a score of one.

Research Question Three

The third research question was related to the second. It was: *If so, how do they satisfy these obligations?* While it was determined that only the ISDEA was actually intended to satisfy treaty obligations in some sense, it could be argued that all three of the acts included in this study may satisfy such obligations, even if not necessarily intended to. Given such a hypothetical argument, the researcher used three different types of searches, and a comparison of monetary provisions with current funding to determine how each act satisfies the treaty provisions. Each act was subsequently given a score per search and further compared for potential to fulfill monetary provisions.

Terms Searches

The three types of searches included: a specific terms search; a similar terms search; and, a conceptual clusters search. Specific terms searches included terms taken directly from the treaty provisions themselves. Similar terms searches included terms that were synonymous or related to the specific terms according to the Microsoft Word Thesaurus. Similar terms searches also included researcher identified similar terms. The number of specific and similar search term hits were recorded in hit tables. Finally, in the conceptual clusters searches the researcher read through each act to determine if there were conceptual clusters or ideas that may constitute equivalents of the ideas contained within the treaty provisions. These conceptual clusters were then copied and pasted into the search hit tables. For specific data on searches for each of the 16 treaties included in the comparison, see the individual hit tables included within Appendix G.

Monetary Provisions/Funding Comparison

In comparing the amounts of funding provided under the IEA and IDEA to the modern day equivalent of the amounts included in the treaty provisions, the researcher determined that only those schools that received funding under the acts and were operated by Anishinaabe tribes would be considered in the study. This determination was made in respect to tribal sovereignty and the relationship between the tribes and the federal government and/or the relationship between the tribes and the individual citizens of those tribes. It was also a practicality, given that there is currently no data available on how many Anishinaabe students actually benefit from these acts on the national level. On the tribal level, however, it can be shown that most of the 3,428 students who attended Anishinaabe tribal schools in 2002 were actually Anishinaabe tribal citizens or

descendants thereof (Glen Allison, BIA Education Specialist, personal communication, December, 2002).

Under the above limitation only two tribal schools located in Michigan were included. These were the Hannahville Indian Community's Nah Tah Wahsh PSA (the Hannahville Indian School), and the Sault Ste. Marie Tribe of Chippewa Indians' Bahweting Anishinaabe PSA. Other Anishinaabe tribal schools outside of Michigan included: the Leech Lake Band of Ojibwe's Bug-O-Nay-Ge-Shig School; the White Earth Band of Ojibwe's Circle of Life School; the Fond du Lac Band of Chippewa's Fond du Lac Ojibwe School; the Lac Courte Orielles Band of Lake Superior Chippewa's Lac Courte Orielles School; the Mille Lacs Band of Ojibwe's Nay-ah-shing School; and the Turtle Mountain Band of Chippewa Indians' Ojibwa Indian School, Dunseith School, Turtle Mountain Schools, and Trenton School. Anishinaabe tribal schools outside of Michigan were included in the analysis if the educational provisions were found to be general enough to be inclusive of all Anishinaabe tribes, or all Chippewa, Ottawa, or Potawatomi tribes.

It is important to note that there is a significant difference between the amount of funding for tribal schools in Michigan under the IEA and all schools in Michigan. Michigan tribal schools funding total was \$78,020 in 2001 (Department of Education, 2001), as compared to the total funding, \$3,582,235 (Department of Education, 2001) for all Michigan schools under this act during the same year. The amount of funding provided to all Anishinaabe schools during the same year was \$825,442 (Department of Education, 2001).

Beyond funding for special education at tribal schools specifically, there is

currently no mechanism in place to determine what tribe the American Indian students belong to who are receiving special education benefits under the IDEA. As such, only the amount of funding provided to Anishinaabe tribal schools, \$4,392,397 (Herrin, personal communication, December, 2002), was determined to be useable data for this study. Michigan tribal schools received only \$756,922 (Herrin, personal communication, December, 2002) during the most recent year that data was available.

In reference to the ISDEA, only those Anishinbaabe tribes that receive funding under this act and operate a school were considered in this study. The reason the ISDEA was treated this way was for consistency with the other two acts. Under this act, tribes that do not operate a school may still receive funding for educational purposes. These tribes received a total of \$774,061 (Herrin, personal communication, February, 2003) under this act during the most recent year that data was available. Michigan tribes that operate tribal schools received a total of \$226,566 (Herrin, personal communication, February, 2003) under this act during this same year. The only exception to the above limitation was the Grand Traverse Band of Ottawa/Chippewa, which received \$42,900 (Herrin, personal communication, February, 2003) during the same year, as it is the only other tribe in Michigan that received funding under this act for education during the most recent year that data was available (Herrin, personal communication, February, 2003). In the case of the Grand Traverse Band, the researcher determined that it was important to include this tribe in the comparison as the study ultimately results in implications for tribes in the State of Michigan which together received \$269,466 (Herrin, personal communication, February, 2003) under this act.

Ultimately, it was determined by the researcher that all acts have the potential to

provide a maximum level of fulfillment for the monetary provisions of treaties included in the comparison, with the exception of Treaties 4, 6, 14, 17, and 23. Under Treaties 4 and 6, it was determined that the IEA and IDEA provide maximum fulfillment, but that the ISDEA provides only partial fulfillment, based on the fact that the treaty monetary provisions are ambiguous annuities, and that the funding provided to the Hannahville Indian Community under this act on an annual basis, \$16,266, does not provide an amount which is equal to or greater than the modern day equivalent of the annuities. Under Treaty 14, it was determined that regardless of how much funding is provided under each of the acts for tribes or tribal schools, the best the potential level of fulfillment could be for the monetary provision was maximum fulfillment for only certain components. The acts could not be seen as providing maximum fulfillment for all components, as the treaty called for a portion of the annuity to be provided to the Grand Portage Indian School which does not currently exist. Lastly, under Treaties 17 and 23, it was determined that the acts could not be seen as providing any level of fulfillment for the monetary provisions, because the intended beneficiaries of the provisions are citizens of the Saginaw Chippewa Indian Tribe, and this Tribe does not currently operate a tribal school that receives any funding under any of the acts included in this study, nor does the Tribe receive any funding for education under the ISDEA. For specific comparisons of funding under each act with treaty monetary provisions, see the comparative analysis subsections in the previous chapter.

Research Question Four

The fourth research question was: *Are there any portions of treaty educational obligations that have not been met, or are not addressed by current federal K-12*

American Indian education legislation? Due to the limitations of this study, it is not possible to provide a complete answer to this question. In looking at the three pieces of federal Indian education legislation included in this study, however, there are certain components of the treaty educational obligations that are not addressed by the acts.

The acts failed to provide a maximum level of fulfillment for the following provisions or components of provisions:

1. None of the acts provide a comprehensive program of *education* for all Anishinaabe students as indicated in Treaty 1.
2. IEA and ISDEA do not provide direct funding for *teachers* as stipulated in Treaties 2 and 8. IDEA provides direct funding for teachers, but only for special education purposes.
3. None of the acts provide for the provision of a *blacksmith*, as called for in Treaty 2, although both ISDEA and IDEA have the potential to provide for a *maintenance person*.
4. Neither IEA nor IDEA provide for *land* provisions, as included under Treaties 2, 3, 16, 17, and 23.
5. *A person to instruct the Ottawas in agriculture* is similar to *teacher*. IEA and ISDEA do not provide direct funding for a person to instruct the Ottawa in agriculture as stipulated in Treaty 2. IDEA provides direct funding for instruction, but only for special education purposes.
6. It was determined that the IEA and ISDEA provided no level of fulfillment for the *encouragement of the domestic arts* as called for

in Treaty 7. IDEA could provide partial fulfillment for this provision under transition services, but again, it would be only for special education purposes.

7. The IEA and IDEA provide only partial fulfillment for the *tribal control* provisions included under Treaties 12, 16, 19, and 23. The IEA allows for tribes to apply for funding if a Local Education Agency chooses not to apply if it can be shown that over 50% of the eligible students are tribal citizens. IDEA funding can be applied to tribally controlled schools through the BIA, but it is not applied to tribes directly.

Thus, of the 16 treaties included in the comparative legislative analysis, 10 of them have provisions, or components of provisions, that are not addressed by the three acts included in this study.

Research Question Five

The fifth, and final, research question was: *What is the responsibility of the federal, state, and tribal governments in providing for the K-12 educational interests of American Indian tribal citizens within the State of Michigan?* This question should be addressed from multiple vantage points. In this study, it is proposed that such vantage points include considerations of: aboriginal rights to self-government, including the right to self-education; educational provisions included in treaties; the history of educational interactions between the Anishinaabek, the United States, and the State of Michigan; and current federal, state, and tribal policies and court cases that address the trust responsibility for the education of American Indian tribal citizens.

Much information and perspective has been provided in Chapters 1 and 2 regarding the historical and contemporary relationships between the tribes, federal, and state governments in regard to Indian education in the State of Michigan. Given the outcomes of the comparative legislative analysis, it is asserted that there are instances where general, limited, express, and implicit trusts may remain in place and are not addressed by these three pieces of Indian education legislation.

Education as a General Trust

Regarding the level of general trust, it is asserted that the Treaty with the Wyandot, Etc. of 1817 (Treaty 1) established a first instance of general trust responsibility between the Federal Government and the Anishinaabek for the education of Anishinaabe citizens. Subsequent treaty provisions, laws, policies, and official government actions have supported that this treaty provision formed the basis of a general trust relationship that still exists and has never been abrogated by the United States Congress. That this trust relationship has been breeched on several occasions is another story to be told, and would certainly have a bearing for reparations or just compensation under the other trust criteria.

Education as a Limited Trust

Regarding the level of limited trust, it is asserted that there are at least 5 of the 16 treaties that establish such a relationship between the Anishinaabek and the Federal Government. The Treaty with the Ottawa, Etc. of 1821 (Treaty 2) established a limited trust relationship between the Federal Government and the Ottawa and Potawatomy tribes as a whole regarding the land set aside for the residence of teachers of these tribes. Unless this educational provision has been abrogated and just compensation rendered,

this limited trust relationship may still exist.

It is also asserted that a limited trust relationship was established in the Treaty with the Chippewa of 1826 (Treaty 3) regarding the section of land that was to accommodate a school for the Chippewa tribes as a whole. Like Treaty 2, this limited trust relationship may still exist if it cannot be shown that Congress abrogated this provision and provided just compensation.

In the Treaty with the Ottawa and Chippewa of 1855 (Treaty 16), the Federal Government is empowered to determine if certain lands are set aside for educational purposes for the Chippewa and Ottawa tribes as a whole. Under *United States v. Kagama*, 118 U.S. 375, 384-85 (1886), it is asserted that this provision imparts the duty of protection of tribal interests along with the power to determine land use. Thus, if there remains any land determined by the Federal Government to be used for educational purposes for the Ottawa and Chippewa tribes in Michigan as a whole, the Federal Government should be seen as having a limited trust responsibility to protect tribal interests in such properties.

In the Treaty with the Chippewa of Saginaw, Etc. of 1855 (Treaty 17), we find a similar situation with that of Treaty 16. In this instance, the Federal Government has been empowered to remove any unsold lands from public sale for the educational benefit of the Chippewa who belong to the Saginaw, Swan Creek, and Black River Bands of Chippewa. Although it does not specifically state that the Federal Government will act as a fiduciary for these lands or the proceeds from these lands, it does establish an ongoing protectorate relationship. Unless this provision has been abrogated by Congress and just compensation rendered, this provision remains in effect.

The limited educational trust relationship established between the Federal Government and the Chippewa of Saginaw, Swan Creek, and Black River is further defined under the terms of the Treaty with the Chippewa of Saginaw, Swan Creek, and Black River of 1864 (Treaty 23). In this treaty, the Federal Government is empowered to sell the properties comprising the Mt. Pleasant Indian Boarding School, which it eventually does do under the Comstock agreement of 1934. While the sale of these properties and the application of such monies to the educational benefit of the Chippewa is an instance of express fiduciary trust (discussed more subsequently), the protectorate relationship is arguably what remains in effect today. Even if the State of Michigan accepted the fiduciary duty to provide for Indian education, the protection of such education remains in the hands of the Federal Government. Due to the wording of the Comstock Agreement, the protection actually extends beyond this treaty and applies to all treaty based educational relationships in the State of Michigan. This will be discussed further subsequently.

Education as an Express Trust

Express fiduciary trust relationships are what probably concerns the Federal Government most in addressing treaty obligations. These are the types of relationships that require the handling of money that has often been unaccounted for. It is asserted here that a full accounting of all funding associated with Anishinaabe treaty educational provisions should be accomplished to determine what has actually been appropriated for the intended purposes and how it was actually used.

All but Treaty 1 contain express fiduciary trust relationships. While the monetary provisions of the 16 treaties have been spelled out in a previous section, it will not be

reiterated here, but a few comments on the type of specific express relationships that may remain is beneficial.

Treaties 2, 3, 4, 5, 6, 8, 10, 11, 14, 16, and 17 all contain provisions for annuities for a specified period of time. The period of time indicated may make some amounts ambiguous however (i.e., the “at the pleasure of Congress” clause). Thus, it will require a great deal more research to determine the amounts actually expended by the Federal Government under these express fiduciary trust obligations and how such amounts were actually handled. Further research may reveal that certain amounts remain obligated, thus necessitating a continuous express trust relationship.

Treaties 7, 9, 12, and 23 all contain instances of express fiduciary trust relationships without specific time limitations. In Treaty 7, the President of the United States was to invest \$70,000 in some safe stock, and the interest of this stock was to have been used for educational purposes among other things for the Anishinaabek as a whole. Regardless of how this fund was actually spent, it remains that the President’s office is responsible for this fund, and the outcomes of how this fund was handled. At the very least, it could be argued that this treaty provision establishes a direct line between the Anishinaabe tribal governments and the President’s office regarding education.

Treaty 9 is very similar to Treaty 7 in respect to the type of express fiduciary trust established. Again it is the President who is to invest certain proceeds from land sales into public stock, and the account was to be kept at the Federal Treasury. Although it is certainly possible that this funding no longer exists, it remains that the President’s office and the Treasury were responsible for the handling of funds for the Saginaw Band of Chippewa. A full accounting of this fund should be conducted to clarify what, if any,

funds were ever allocated toward education and how such funds were handled.

Treaty 12 is a bit different in that it does not necessarily provide any new funding for education, rather it provides definition of the relationship between the Anishinaabek and the Federal Government regarding the fund known as the “school-fund of the Pottowautomies.” The express fiduciary educational trust relationship established under the terms of this treaty provide a mechanism for the Anishinaabek to determine if they want to have their educational funds administered by a Federal agency, or by their own agency. This may be a treaty basis for the self-governance compact or a contract relationships with the Anishinaabek that are in place today.

Treaty 23 provides that the Federal Government would be responsible for expending \$20,000 toward the education of the Chippewa citizens included in this treaty. It also provides that the Federal Government would oversee the sale of lands and buildings and apply the proceeds of the sales to the educational interests of the Tribe. As suggested earlier, how the initial funds and proceeds from sales were actually invested extends the treaty relationship beyond the mere exchange of money, and requires that the Secretary of the Interior be responsible for the protection of the educational interests of the Tribe. While the actual fiduciary responsibility may have shifted in 1934 to the State of Michigan under the Comstock Agreement, it could be argued that ultimately, the Federal Government is responsible for making sure that such provisions are being met. If they are not being met, it would be the Secretary’s responsibility to make it so. If not, it would be grounds for a court case against the Department of the Interior by the Saginaw Chippewa Tribe.

Education as an Implicit Trust

Finally, in the implicit trust category there are at least five instances where such a relationship between the Anishinaabek and the Federal Government were determined to exist by the researcher. The first is in Treaty 3 which contained the following ambiguous wording in regard to the type of relationship established “this annuity shall continue only during the pleasure of the Congress of the United States.” In drawing on the Canons of Treaty Construction, you could surmise that if Congress appropriated any funding that supported an establishment for the education of citizens of this Tribe today, it could be argued to have a treaty basis.

In Treaty 4, similarly ambiguous wording was found in regard to the duration of the educational annuity “as long as the Congress of the United States may think proper.” Again it could be argued here that if Congress ever appropriates any amount of money towards the education of Potawatomi people, that it has a treaty basis.

In Treaty 5, it was again found that such ambiguous language exists as follows: “shall be annually thereafter appropriated as long as Congress think proper.” Following the logic of the two previous treaty analyses, it could be argued that if Congress ever appropriates funds toward the education of Chippewa, Menominee, and Winebago tribal citizens, that it does so based on implicit treaty relationships.

In Treaty 6, it was found again that the wording surrounding the educational relationship between the Potawatomi and the Federal Government is ambiguous. It states that the annuity shall continue “as long as Congress may think the appropriation may be useful.” Thus, it could be argued that if Congress appropriates funds toward the education of Potawatomi citizens that it finds it useful to do so and that it is based in

treaty.

Lastly, in Treaty 8, Ottawa and Chippewa tribes could argue that the educational provisions of this treaty implicate a continuous trust relationship between themselves and the Federal Government. In this treaty it states that the educational annuity would continue “as long thereafter as Congress may appropriate for the object.” Thus, as long as Congress appropriates any funds toward the education of Ottawa and Chippewa citizens it can be argued to be treaty based.

In the comparison of treaties with current legislation, it was necessary to use a subjunctive perspective. It is difficult to argue that a piece of legislation actually fulfills a certain treaty provision, especially: when the provision is ambiguous, when the legislation does not specifically mention any treaty provisions, when the record of treaty provision fulfillment is incomplete, or when the chronological relationship between the legislation and treaty provisions has not been well researched or documented. The insights gained from a subjunctive perspective are, nonetheless, useful in that it allows for an examination, or reexamination, of policies from different historical eras that are still in place and impacting the lives of American Indian people and their tribal First Nations.

This study has provided insight into several aspects that may have been overlooked in, or excluded from, previous studies of the same nature. But this study is also limited in scope, as it focused on a comparison of treaty educational provisions and current federal K-12 Indian education legislation. It did not focus on Aboriginal rights, although it did include references to traditional educational practices and cross-linguistic equivalents. It also did not focus on how the State of Michigan is dealing with its

responsibilities under the Comstock Agreement of 1934. It could be argued, however, that in order to understand the historical relationships between the federal laws included in this study and the treaty provisions, it requires an understanding of the impact the Comstock Agreement had on the relationship between all three levels of government—tribal, federal, and state. Thus, from an American Indian (Anishinaabek) governmental standpoint, several statements can be made about the responsibilities of tribal, federal, and state governments for the education of American Indian tribal citizens within the State.

First, it should be stated that the 12 federally recognized tribes that maintain jurisdiction over reservation areas that share borders with the State of Michigan are the entities that are recognized by the United States of America as the legal heirs of the aboriginal and treaty rights of the original tribes that comprise the Anishinaabe Three Fires Confederacy--the Chippewa, Ottawa, and Potawatomi. It should also be stated that the Anishinaabek Three Fires Confederacy is recognized by citizens of the 12 federally recognized tribes in Michigan as their true sovereign governmental entity. As such, it must also be pointed out that the traditional homelands of the Anishinaabe Three Fires Confederacy extend beyond the borders of Michigan into other states and even beyond the borders of the United States into Canada. This does not account for the jurisdiction of the Anishinaabe Three Fires Confederacy into its activities that extend into interactions with other sovereign entities beyond its traditional territorial boundaries. As with other sovereign entities, the Anishinaabek Three Fires Confederacy maintains all of the rights to govern over the education of its citizens that have not been surrendered by treaty with another sovereign entity.

Whereas the Anishinaabe Three Fires Confederacy maintains a certain level of sovereignty over the education of its citizens, the United States has entered into 26 treaties with the Anishinaabek that have included educational provisions. The scope of these provisions, according to this study, includes instances of ambiguity that according to the United States Supreme Court's *Cannons of American Indian Treaty Construction*, should: be resolved in favor of the Anishinaabek, be interpreted as the Anishinaabek would have understood them, and be construed liberally in favor of the Anishinaabek (Pevar, 1992).

Although the United States may have met certain of these educational provisions previous to this study, a subjunctive perspective was utilized to compare current federal Indian education legislation with the educational provisions contained within the treaties. It was found that there were several instances where components of the provisions may not have been met. Thus, there may be a certain amount of educational obligation that has yet to be addressed by the Federal Government in regard to its treaty agreements with the Anishinaabek.

In 1934, then Governor of Michigan, William Comstock, entered into an agreement with the Congress of the United States that in exchange for certain lands that comprised the Mt. Pleasant Indian Boarding School, the State of Michigan would accept full responsibility for the education of American Indian people resident within the State of Michigan at no further cost to the federal government. Based on this study, what the Governor accepted was not just an obligation to educate Indian people, but an obligation to educate Indian people in accordance with the federal obligations as set forth by treaty and subsequent legislation that may have addressed, or have been addressing treaty

obligations up to that point. This was not an instance of granting sovereignty over the education of Anishinaabe citizens over to the State of Michigan by the federal government. The federal government could not have granted something that was not theirs to grant, as the Anishinaabek have never given up their right to educate their citizens the way they see fit.

Following the Comstock Agreement, Anishinaabe citizens in Michigan did not receive any benefit from any federal Indian education program until 1972 when the Indian Education Act was passed. It was at this time that funds under this act and the Johnson O'Malley Act of 1934 were finally provided to schools in Michigan that were serving the educational needs of Anishinaabe citizens. Thus, there was a period of 38 years when absolutely no federal or state Indian education programs were provided within the State of Michigan. In fact, the State of Michigan did not provide any program specifically designed to meet its obligation set forth by the Comstock Agreement until 1976, when the Legislature passed PA 174 of 1976, the Michigan Indian Tuition Waiver Act, which provided a waiver for certain American Indian residents of Michigan. This is the only piece of legislation passed by the State of Michigan that is directly linked to its obligation under the Comstock Agreement. Unfortunately, this piece of legislation has been the object of a political battle between former Governor John Engler and the federally recognized tribes of Michigan.

While it is acknowledged in this study that the Anishinaabek in Michigan are also considered citizens of the United States, and thus citizens of Michigan, it is also recognized that the education provided by the State of Michigan to Anishinaabe citizens may not rise to the level of the obligations set forth by treaty between the Anishinaabek

and the United States. It is also recognized that the Anishinaabek have not been included in many respects in the governance of the educational system that has been utilized by the State of Michigan to provide all residents of Michigan with an education. While the last point is complicated somewhat by the tribal/BIA/state charter hybrid schools—Bahweting Anishinaabe PSA and Nah Tah Wahsh PSA--it should be pointed out that these schools educate less than 10% of the American Indian student population within the State of Michigan.

While the Indian Education Act, the Indian Self-Determination & Education Assistance Act, the Individuals with Disabilities Act, and other acts have provided funding for certain Indian education programs within the State of Michigan, and have even provided for a certain amount of Indian participation in the delivery of these programs, based on the findings in this study it could be argued that, at least in the case of these three acts, they have not been meeting the treaty educational obligations set forth by the United States between 1817 and 1867, nor have they adequately addressed the sovereign authority of the Anishinaabek in determining how the educational needs of their citizens should be met.

Based on the research findings in this study, there are several key points that should be considered by all three levels of government that are responsible for the education of Anishinaabe citizens as shown in the conceptual model in the first chapter of this study. Based on the general trust responsibility of the Federal Government for the education of Anishinaabe citizens, and the U.S. Supreme Court's Canons of Treaty Construction, in order to determine the type of education that would be most beneficial to Anishinaabe citizens in today's society, Tribal governments in Michigan, in collaboration

with other federally recognized Anishinaabe tribes in other states, should work together with the Anishinaabe First Nations of Canada to articulate standards for the education of Anishinaabe citizens regardless of tribal, state, provincial, or federal borders.

It is recommended that Anishinaabe tribes in Michigan utilize the findings of this study in cooperation with other Anishinaabe tribes in the United States and Canada to resolve the extent of legal obligation that the United States has in meeting the educational needs of Anishinaabe citizens based on treaties and subsequent federal Indian education legislation. Any Anishinaabe standards for the education of their citizens should then be compared with the federal obligation. If it is found that the standards developed by the Anishinaabe Three Fires Confederacy go beyond what is legally obligated by the United States based on treaties and subsequent legislation, then it befalls the tribes to self-determine a course of action that will help meet those needs.

The federal government should assist the Anishinaabe tribes in determining the extent of the federal obligation for the education of Anishinaabe citizens. While it may seem that there is a disincentive for doing so, it is ultimately a responsibility of the United States to uphold its trust responsibilities forged by agreements that were made in good faith between sovereign governments. The federal government should also remind the State of Michigan that it accepted responsibility for Indian education in Michigan in 1934 under the Comstock Agreement. Thus, any federal spending on Indian education in Michigan should be seen as a bonus for the State, not as a replacement for what the State is obligated to, based on the federal obligation as delegated to the State through the Comstock Agreement. The United States should also require that the State of Michigan and other states that are educating Anishinaabe citizens include the Anishinaabek in

governance decisions that impact the education of Anishinaabe citizens and ultimately the educational interests of Anishinaabe tribes.

Based on the Comstock Agreement of 1934, the State of Michigan should work cooperatively with the federally and state recognized tribes to assist the tribes in articulating tribal standards for education of Anishinaabe citizens in the State of Michigan. The State inherited the federal obligation for Indian education in the State of Michigan, and thus must be held to the same trust standards as a delegate of the Federal Government in this regard. In this respect, the State of Michigan should not be seen as a state government, but as an agent of the Federal Government. Given the fact that over 90% of the tribal children attend State run schools beyond tribal jurisdictional boundaries, the Comstock Agreement requires the State to uphold the federal trust responsibilities to meet the educational needs of these students and to protect tribal interests in that process.

While this may seem counterintuitive to the idea of the protection of state sovereignty, it is asserted here that this could provide positive opportunities for reassessment of state standards in regard to tribal diversity. The State of Michigan should seek to redress the negligence of the State since 1934 by providing compensatory educational programs designed to meet the educational needs of Anishinaabe citizens and tribes, as determined by the tribes within the state. The State should also move forward with a proactive agenda on developing innovative ways to build on the strengths of its educational relationships with the tribes that it shares borders with. The general public education of Michigan citizens could be greatly enhanced through more inclusive and diverse curriculum materials and alternative teaching methods.

Chapter Summary

This chapter has provided an explanation of how the data produced in this study helped answer the initial research questions. Findings from a comparative socio-historical content analysis of 16 treaties signed between the Anishinaabek and the United States and three pieces of subsequent federal Indian education legislation were summarized in relationship to each of the questions. This chapter also provided a summary of the processes used in developing data to address the research questions.

CHAPTER 6

Conclusion

All of the findings in this study are ultimately intended to inform decision makers, like tribal council representatives, the Governor of Michigan, U.S. Supreme Court justices, or the U.S. Congress, about the relationship between treaty educational provisions and contemporary Indian education laws. More specifically, this study is an attempt to offer some clarity regarding the corpus of the educational trust relationship between the United States and the Anishinaabek—Chippewa, Ottawa, and Potawatomi as it applies to such tribes currently located within the State of Michigan. Twenty-six of 42 treaties signed between the Anishinaabek and the U.S. contain some type of educational provision. The educational provisions contained within 16 of such treaties may actually have implications for contemporary educational relationships between the Anishinaabe tribes located within the State of Michigan and the United States. In this study, a content analysis was conducted on each of these provisions to determine the nature of the relationship forged by such provisions (both individually and collectively) between the Anishinaabek and the United States. Subsequently, such findings were compared to the provisions of three pieces of current federal Indian education legislation. Findings were ultimately reported according to the categorical definitions that originate in the trust doctrine.

Socio-Historical Context

In order to set the stage for a discussion within the proper socio-historical context, the researcher provided a brief overview of the history of American

Indian education in the United States in general, and in Michigan in specific. The overview included major policies and social considerations from different historical eras—including a focus on Indian education as a trust responsibility. The two era of focus for the materials included in the content analysis can be characterized as the Constitutional/Treaty Provisions Era (1776-1881), and the Revitalization Era (1972-present). It was during these two era that the treaties were written and the current federal Indian education legislation was first enacted or made available to tribes located within the State of Michigan.

Treaties Included

In an initial review of treaties signed between the Anishinaabe Three Fires Confederacy which includes the Chippewa, Ottawa, and Potawatomi, the researcher found that the Treaty with the Potawatomi, 1832 did not contain any educational provisions as had been proposed in an earlier study by the American Indian Policy Review Commission (1976), and that five treaties had been left out of the earlier study including: the Treaty with the Wyandot, Etc., 1817; Treaty with the Chippewa, Etc., 1833; Treaty with the Chippewa (Detroit), 1837; Treaty with the Chippewa (St. Peters), 1837; and the Treaty with the Potawatomi, 1867. Thus, it was determined that 26 of the 42 treaties signed between the Anishinaabek and the United States contain educational provisions. Ultimately, only 16 of the 26 were included in the comparative legislative analysis component of this study, due to their relevance to Michigan tribes.

Laws Included

The three pieces of federal Indian education legislation included in the content analysis were: the Indian Education Act of 1972 (as amended), the Indian Self-Determination & Education Assistance Act of 1975 (as amended), and the Individuals with Disabilities Education Act of 1997 (as amended). These acts were selected based on their inclusion in other major Indian education research efforts, like the Native American Rights Fund project (McCoy, 1997), and the scope of the laws in addressing the needs of American Indian students.

Canons of Treaty Construction and Trust Criteria

The U.S. Supreme Court's Canons of Treaty Construction, requires that ambiguities in treaties be resolved in favor of the Indians, be interpreted as Indians would have understood them, and be construed liberally (Pevar, 1992). The definition of ambiguity utilized in this study was borrowed from the Webster's Dictionary (1983): "Ambiguous: Doubtful or uncertain... inexplicable... capable of being understood in two or more possible senses or ways." Thus, in the instance that ambiguity was found within the treaty educational provisions, the researcher attempted to find meaning of the terms by incorporating historical references or cross-linguistic references. A liberal definition was adhered to for any terms that were capable of being interpreted either way, and the most favorable outcome of the interpretive process was always followed where the Anishinaabe side of the treaty was concerned.

The trust criteria utilized in this study were developed from a cursory study of the American Indian trust doctrine and was scrutinized by Senior Judge, William Canby, of the United States Court of Appeals, Ninth District, and by Staff Attorney, Melody

McCoy, of the Native American Rights Fund. The application of the trust criteria to the treaty educational provisions in this study was not reviewed by either Canby or McCoy however. See pages 78-79 for a review of the trust criteria.

Summary of Research Findings

The first research question was: *What is the extent of educational obligations set forth by treaty for American Indian tribes located within Michigan?* All of the 26 treaties signed between the Anishinaabek and the United States were analyzed for monetary and non-monetary provisions, and relevance to Michigan tribes.

Only 20 of the 26 treaties actually contain monetary provisions. Of the 20 only 13 of treaties actually apply to tribes located within the State of Michigan. Under monetary provisions, it was found that there were ambiguous amounts, specific amounts, and one-time cash payments. Only 5 of the 13 contain ambiguous amounts. Only 8 contain specific amounts. Lastly, only 1 of the treaties included in the comparative legislative analysis contained a one-time cash payment.

Non-monetary provisions were found in all 26 treaties. Thus, all 16 treaties that apply to tribes within the State of Michigan contain such provisions. All of the non-monetary educational provisions included in these treaties could be categorized into one of the following areas as it pertains to tribes located within the State of Michigan: education (Treaties 1, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 23); schools (Treaties 3, 8, 10, 11, 14, and 23); teachers (Treaties 2 and 8); blacksmiths (Treaty 2); land (Treaties 2, 3, 16, 17, and 23); training in agriculture (Treaty 2); training in domestic arts (Treaty 7); books in their own language (Treaty 8); and tribal control (Treaties 12, 16, and 23) (see Appendix G for a complete list of treaties).

Relevance to Michigan tribes was determined by application of the Canons of Treaty Construction to the wording of the relevant treaties in regard to whom the United States was making the treaties with. The outcomes of this part of the analysis was also explained more fully by considering historical references to the relationship between the Anishinaabe Three Fires Confederacy of Chippewa, Ottawa, and Potawatomy.

It was found that 3 of the 26 treaties (Treaties 1, 7, and 12) include all 3 tribal groups. Twenty-one of the treaties (Treaties 1, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, and 26) include the Chippewa. Seven of the 26 treaties (Treaties 1, 2, 7, 8, 12, 16, and 19) include the Ottawa. Seven of the 26 treaties (Treaties 1, 2, 4, 6, 7, 12, and 25) include the Potawatomy. Depending on the circumstance, it could be argued that a treaty signed by any group may have been understood to be relevant to the other groups as well. In this study, only those treaties that specifically mentioned all three were categorized as such.

In regard to tribes currently located within the State of Michigan, it was found that the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians are included within the scope of Treaties 1, 3, 5, 7, 8, 10, 12, and 16. The Grand Traverse Band of Ottawa and Chippewa, and the Burt Lake Band of Ottawa and Chippewa Indians are included within the scope of Treaties 1, 2, 3, 5, 7, 8, 10, 12, and 16. The Saginaw Chippewa Indian Tribe and the Swan Creek/Black River Confederated Ojibway Tribes of Michigan are included within the scope of Treaties 1, 3, 5, 7, 8, 9, 10, 12, 16, 17, and 23. The Little Traverse Bay Band of Odawa, the Little River Band of Ottawa, and the Grand River Band of Ottawa Indians are included within the scope of Treaties 1, 2, 7, 8, 12, and 16. The Gun Lake Band of Pottawatomi Indians, the Huron

Potawatomi, Inc., the Hannahville Indian Community, and the Pokagon Band of Potawatomi Indians are included within the scope of Treaties 1, 2, 4, 6, 7, 12, and 25. The Keweenaw Bay Indian Community and the Lac Vieux Desert Band of Lake Superior Chippewa Indians are included within the scope of Treaties 1, 3, 5, 7, 8, 10, 11, 12, 14, and 16. For an overview of educational provisions per treaty, see Appendix G (also accessible electronically by opening the Microsoft Excell file *treaty_provisions_table.xls* on the compact disk accompanying this study).

The second research question was: *Are current federal K-12 American Indian education laws intended to satisfy any portion of these treaty obligations?* After a careful review of the legislative history of the three acts included in this study, it was determined that the Indian Self-Determination and Education Assistance Act was the only act included in this study that could actually be traced back to treaty educational obligations. Under the scoring criteria for *relationship with treaties*, the ISDEA received a score of one (on a scale from 0-3), because the legislative history of the law is clearly linked to treaty obligations. IEA and IDEA received a score of zero, because their legislative history is not clearly linked to treaty obligations. After reading through each act to determine the level of interaction with tribes required, it was found that only the ISDEA requires specific interaction with tribes in general, whereas the IEA and IDEA require specific interaction with American Indian tribal citizens in general, but do not require specific interaction with tribes. Thus, under the scoring criteria for *relationship with tribes*, the ISDEA received a score of two (also on a scale from 0-3), whereas the other acts received a score of one.

The third research question was related to the second. It was: *If so, how do they satisfy these obligations?* While it was determined that only the ISDEA was actually intended to satisfy treaty obligations in some sense, it could be argued that all three of the acts included in this study satisfy such obligations even if not necessarily intended to. In order to determine the alignment of provisions within the acts to provisions within the treaties, the researcher used three different types of searches, and a comparison of the contemporary equivalent of monetary provisions with current funding under each act.

The three types of searches included: a specific terms search, a similar terms search, and a conceptual clusters search. Specific terms searches included terms taken directly from the treaty provisions themselves. Similar terms searches included terms that were synonymous or related to the specific terms according to a thesaurus or as identified by the researcher. The researcher read through each act, several times, to determine if there were conceptual clusters or ideas that may constitute equivalents of the ideas contained within the treaty provisions. The number of hits were recorded for each type of search, and the conceptual clusters were copied and pasted into the search hit tables. Ultimately, it was found that the three acts do meet many of the educational provisions set forth by treaty for tribes within the State of Michigan. See Appendix G for outcomes of the searches.

The funding under each act for tribal schools, tribal education programs, or other educational concerns that could be argued in some way to represent the contemporary version of intended beneficiary of the treaty educational provisions was also considered in the analysis. Ultimately, it was found that all three of the acts could be argued to provide, at least in part, a level of funding for Indian education in the State of Michigan

that meets or exceeds the modern day equivalent of many of the monetary provisions included in the body of treaties relevant to tribes located within the State of Michigan. There are instances, however, where the level of funding falls short, or where the provision is so ambiguous that it was impossible to draw any conclusions. For a specific comparison of funding data see the analysis under each under act per treaty in Chapter 4. For a comparison of funding under each act for Anishinaabe Tribal Schools throughout the United States with a focus on Michigan totals, see Appendix H.

The fourth research question was: *Are there any portions of treaty educational obligations that have not been met, or are not addressed by current federal K-12 American Indian education legislation?* Because this study is limited to three pieces of current Indian education legislation selected, the findings in this respect are inconclusive in a general sense. The comparison of the three laws with treaty educational provisions, however, filtered out some important parts of treaty provisions that are not met by the components of the three laws.

When the provisions of the three acts included in this study were compared with the provisions of the treaties, it was found that they failed to provide a maximum level of fulfillment for the following provisions or components of provisions:

1. None of the acts provide a comprehensive program of *education* for all Anishinaabe students as indicated in Treaty 1.
2. IEA and ISDEA do not provide direct funding for *teachers* as stipulated in Treaties 2 and 8. IDEA provides direct funding for teachers, but only for special education purposes.
3. None of the acts provide for the provision of a *blacksmith*, as called for

in Treaty 2, although both ISDEA and IDEA have the potential to provide for a *maintenance person*.

4. Neither IEA nor IDEA provide for *land* provisions, as included under Treaties 2, 3, 16, 17, and 23.

5. *A person to instruct the Ottawas in agriculture* is similar to *teacher*.

IEA and ISDEA do not provide direct funding for a person to instruct the Ottawa in agriculture as stipulated in Treaty 2. IDEA provides direct funding for instruction, but only for special education purposes.

6. It was determined that the IEA and ISDEA provided no level of fulfillment for the *encouragement of the domestic arts* as called for in Treaty 7. IDEA could provide partial fulfillment for this provision under transition services, but again, it would be only for special education purposes.

7. The IEA and IDEA provide only partial fulfillment for the *tribal control* provisions included under Treaties 12, 16, 19, and 23. The IEA allows for tribes to apply for funding if the LEA chooses not to apply if it can be shown that over fifty percent of the eligible students are tribal citizens. IDEA funding can be applied to tribally controlled schools through the BIA, but it is not applied to tribes directly.

Thus, of the 16 treaties included in the comparative legislative analysis, 10 of them have non-monetary provisions, or components of non-monetary provisions, that are not addressed by the three acts included in this study.

In regard to the monetary provisions, this study did not provide conclusive

evidence of what ambiguous annuities, specific annuities, or one-time cash payments are still obligated to Michigan tribes. Further research will be required to make a conclusive statement in this respect. This study did, however, provide a sense of the value of treaty monetary provisions by today's standards, and how current funding levels of each act might stack up against these modern day equivalents, by comparing the amounts of funding under each act allocated to tribally controlled schools (or Michigan tribes that receive funding under these acts) that fall within the purview of each treaty with each of the modern day equivalents of the treaty monetary provisions. In some cases, it would take multiple years of funding at current levels to provide an amount equal to or greater than the modern day equivalents of the treaty monetary provision, whereas in other cases it would take only a single year. In cases where the duration of the provision was ambiguous, it could be argued that there is really no way to tell what the total amount would be. In cases where the amount was fixed, it may be the case that these acts have already provided an amount equal to or greater than the modern day equivalent of the monetary provision.

What can be concluded from the findings of this study is that certain of the treaty non-monetary provisions if fulfilled would have costs related to them even if not specifically linked to a monetary provision. Unlike unfunded mandates, under the U.S. Constitution, treaties are to be considered the *supreme law of the land*, and would, therefore, not be subject to subsequent unfunded mandate legislation. The potential problem arises when a contemporary interpretation of trust responsibility is applied to the treaty provisions and it is not clear about an

exact amount of money, how the money or resources were to be handled, and who was to administer the provision. It was also pointed out in this study that the change in value of certain educational provisions over time, location, and cultural orientation should be considered in any subsequent court case that may arise based on the fulfillment of these treaty provisions.

The fifth research question brings the study back into focus on the conceptual model included in Chapter One, and on the meaning of the findings for the current status of, and ultimately, the future of Michigan Indian education as a trust responsibility. The fifth research question was: *What is the responsibility of the federal, state, and tribal governments in providing for the K-12 educational interests of American Indian tribal citizens within the State of Michigan?* Based on the data generated in this study, several key points were made regarding each level of government.

Michigan Indian Education as a Trust Responsibility

Establishing a baseline for further discussion of the trust responsibility of the Federal Government for the education of Anishinaabe citizens was one of the most important outcomes of this study. Utilizing the trust criteria (see pages 78-79), certain determinations were made about the level of trust established under the treaty educational provisions and subsequent Indian education legislation.

It was determined that Treaty 1, the Treaty with the Wyandot, Etc. of 1817, establishes a general educational trust relationship between the United States and the Anishinaabek. The ambiguous wording of the treaty provision includes “Ottawa, Chippewa, and Potawatomy tribes...some of their children hereafter educated” (Kappler, 1972, p.150). Whereas no explicit wording was included as to how the children (or

citizens) were to be educated, it leaves the interpretation to the U.S. Supreme Court's Canons of Treaty Construction.

It was determined that a limited trust relationship was established in Treaty 2-3, 16-17, and 23. These instances of limited trust are primarily focused on the provision of land for educational purposes. In such a relationship, the Federal Government may be seen to have committed itself to holding land or schools in trust for Indian tribes, but that trust relationship may not rise to the level of the Federal Government acting as a fiduciary.

Treaties 2-23 establish an express trust relationship between the United States and the Anishinaabek where it is clear that the United States has supervisory or fiduciary responsibilities over tribal funding or resources. Treaties 2-6, 8, 10-11, 14, 16-17 have specific time limitations, whereas Treaties 7, 9, 12, and 23 establish an express trust relationship without a specific time limitation. Language as to how long an appropriation was to last was, regardless of the ambiguity, was counted as an instance of a specific time period. Only those instances completely void of any wording as to a time frame were counted as not having a specific time limitation. This is an important distinction and may have a bearing on later differentiations between express and implicit trust relationships.

Finally, Treaties 3-6, and 8 were found to establish an implicit form of trust relationship. Given that ambiguous language must be resolved in favor of the Indian side of the house under the Canons of Treaty Construction, the ambiguity of clauses like the following found in Treaty 8, the Treaty with the Ottawa, Etc., 1836, must be resolved to favor the Anishinaabek currently "as long thereafter as Congress may appropriate for the object". The implicit relationship thus being forged in the uncertainty of the time frame

as long thereafter and terms of the actual educational benefit *appropriate* and *object*. In this instance, the relationship could be liberally interpreted to imply that anytime Congress appropriates any money for the education of Anishinaabe citizens (like under the Indian Education Act) that it is at least partially based in the express treaty educational provision of the educational annuity even if the current legislation was not written to expressly fulfill a treaty obligation.

Michigan Indian Education as a Tribal Responsibility

It is asserted here that the tribes in Michigan have a responsibility to work to resolve their legal/political identity as part of the Anishinaabe Three Fires Confederacy in cooperation with other Anishinaabe tribes in the United States and First Nations in Canada. This would have to preclude the development of clear and unambiguous tribal standards for the education of Anishinaabek citizens based on aboriginal rights to self-governance (which includes rights to determine self-education). Once developed, these tribal education standards should be compared to the legal obligation of the United States as brought forth by treaties and subsequent federal Indian education legislation. Outstanding educational obligations should then be compared to the tribal standards to determine what responsibilities Michigan tribes have in providing for the education of their citizens in relationship to the federal government and subsequently state government. Such standards should then be impressed by the tribes upon all governmental entities involved in the education of Anishinaabe citizens.

Michigan Indian Education as a Federal Responsibility

The federal U.S. government has a trust responsibility to assist and protect the Anishinaabe tribes' interest in determining the extent of the federal obligation for the

education of Anishinaabe citizens, and a responsibility to uphold its end of the agreements that were made in good faith between sovereign governments. The federal government also has a responsibility to enforce the terms of the Comstock Agreement. It should remind the State of Michigan that any federal spending on Indian education in this state is as a bonus, not as a replacement for what the State is obligated to, based on the Comstock Agreement. The United States also has a responsibility to ensure that the State of Michigan includes the tribes in governance decisions that impact the education of Anishinaabe citizens and ultimately Anishinaabe tribes.

Michigan Indian Education as a State Responsibility

The State of Michigan, in this instance, should be seen as an agent of the Federal Government, and as such it has a responsibility to uphold its end of the Comstock Agreement. The State should work cooperatively with the tribes to assist them in articulating tribal standards for education of Anishinaabe tribal citizens in the State of Michigan. The State also has responsibility to redress the negligence of the State since 1934 by providing compensatory educational programs designed to meet the educational needs of Anishinaabe citizens and tribes, as determined by the tribes within the state.

The responsibilities of the tribes, federal, and state governments for the education of Anishinaabe citizens is also impacted by the constitutions of each form of government, as Anishinaabe citizens are also considered U.S. citizens and subsequently citizens of the states in which they live. As such, what is afforded to all citizens of the U.S. and citizens of the State of Michigan should be afforded to Anishinaabe citizens living within the State as well. Put differently, the general provision of education by federal and state governments should be seen as a bare minimum of education for all citizens of the state,

but should not preclude the federal and state governments from upholding added responsibilities for the education of Anishinaabe citizens based on aboriginal and treaty rights and subsequent federal and state Indian education legislation.

Implications for School Policy

The following are implications for school policy. They are based on the outcomes of this study.

1. Indian education, whether implemented in a tribal school, public, or private school, when rooted in aboriginal and treaty rights, must be protected under the trust responsibilities of the United States.
2. Schools are often arenas of contestation between tribes, or individual tribal citizens, and school leadership due to differences in cultural educational practices, and a difference of rights.
3. Where general school policy is contrary to the treaty rights of American Indian tribes and individuals, the policy must be modified to allow for an exception to be in compliance with the Constitutional protections set forth under the Supremacy Clause.
4. Where the law is vague in reference to retained American Indian aboriginal rights, policy must also be modified to allow for an exception to the rule if in conflict as established in the trust relationships between the US and American Indian tribes.
5. To avoid conflicts, school boards should develop proactive policies regarding the inclusion of American Indian tribes, tribal citizens, content, methods, and philosophies in their schools.
6. School leadership should communicate with other school leadership, tribal, state, and federal lawmakers, administrators, the judiciary, Indian education organizations, and

higher education entities about policy issues they face in their schools due to cross-cultural legal and political misunderstandings.

7. School leadership should also share information about policy initiatives that have improved cross-cultural legal and political relations with the entities previously mentioned.

Implications for School Practice

The following are implications for school practice. They are also based on the outcomes of this study.

1. While American Indian tribes should be acknowledged by federal and state entities as the authority regarding the educational welfare of their citizens, this is usually not the case in public schools where nearly 90% of American Indian children receive their education.
2. Regardless of the prevailing politics, school leadership should uphold the principles of law and seek ways to accommodate American Indian tribal interests in the education of their youth.
3. While it may be easier to involve tribal educational interests in tribal schools, all schools should be aware of how they are including, or excluding, American Indian tribes, individuals, content, methodologies, and philosophies.
4. School improvement plans should include opportunities to address specific Native American inclusion components under all categories.
5. Professional development activities for school staff should include training in history, law, and best practices in Indian education.
6. School leadership should communicate with tribal, state, and federal lawmakers, and

higher education entities about the need for mandated training in Indian education for pre-service teachers prior to certification.

7. School leadership should share information about their Native American inclusion efforts and best practices with the entities mentioned previously.

Recommendations for Further Study

Finally, based on the historical interactions between the Anishinaabe Three Fires Confederacy, the United States, and the State of Michigan, and the findings of this study, the researcher makes the following recommendations for further study:

1. Each treaty provision included in this study should be further researched to determine if it has been fulfilled through appropriations under laws other than those included in this study. The same model should be applied to each mechanism to provide greater reliability.
2. The outcomes of this study should be compared with other like studies in the future to determine the validity of the findings.
3. The change in value of educational provisions from the time the treaties included in this study were written should be further researched to determine a more precise level of educational obligation.
4. Historical Anishinaabe perspectives on education, teachers, and other ambiguous terms from the time the treaties were written should be further researched and compared to current Anishinaabe perspectives on the same. This is in line with the Canons of Treaty Construction.

Footnotes

¹The term *American Indian* is utilized throughout this document when referring to the Indigenous peoples of the Americas in a general sense. This is consistent with the historical use in treaties and law. There are times, however, when *Native American* is also used. This is consistent with more contemporary uses in law and practice. Lastly, when referring to a specific tribe or cultural group, such as the Ojibway or Anishinaabe, the preference was for their actual name.

²The meaning of Self-education in this study is derived from Lomawaima's (1998) assertion that there are three components of sovereignty: self-government, self-determination and self-education. In this context, tribal self-education can be said to have evolved along side of education that has been done to American Indian nations without their consent.

³The Anishinaabek (plural form of Anishinaabe) are the only American Indian cultural group that maintains reservation lands within Michigan today. This group is also referred to as the *Anishinaabe Ojibway Nation*, the *Three Fires Confederacy*, or even as the United Nation of Chippewa, Ottawa, and Potawatomi.

⁴Shingwauk was also called Shingwaukonce or Little Pine (Chute, 1998).

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APPENDIX A

American Indian Tribes in Michigan

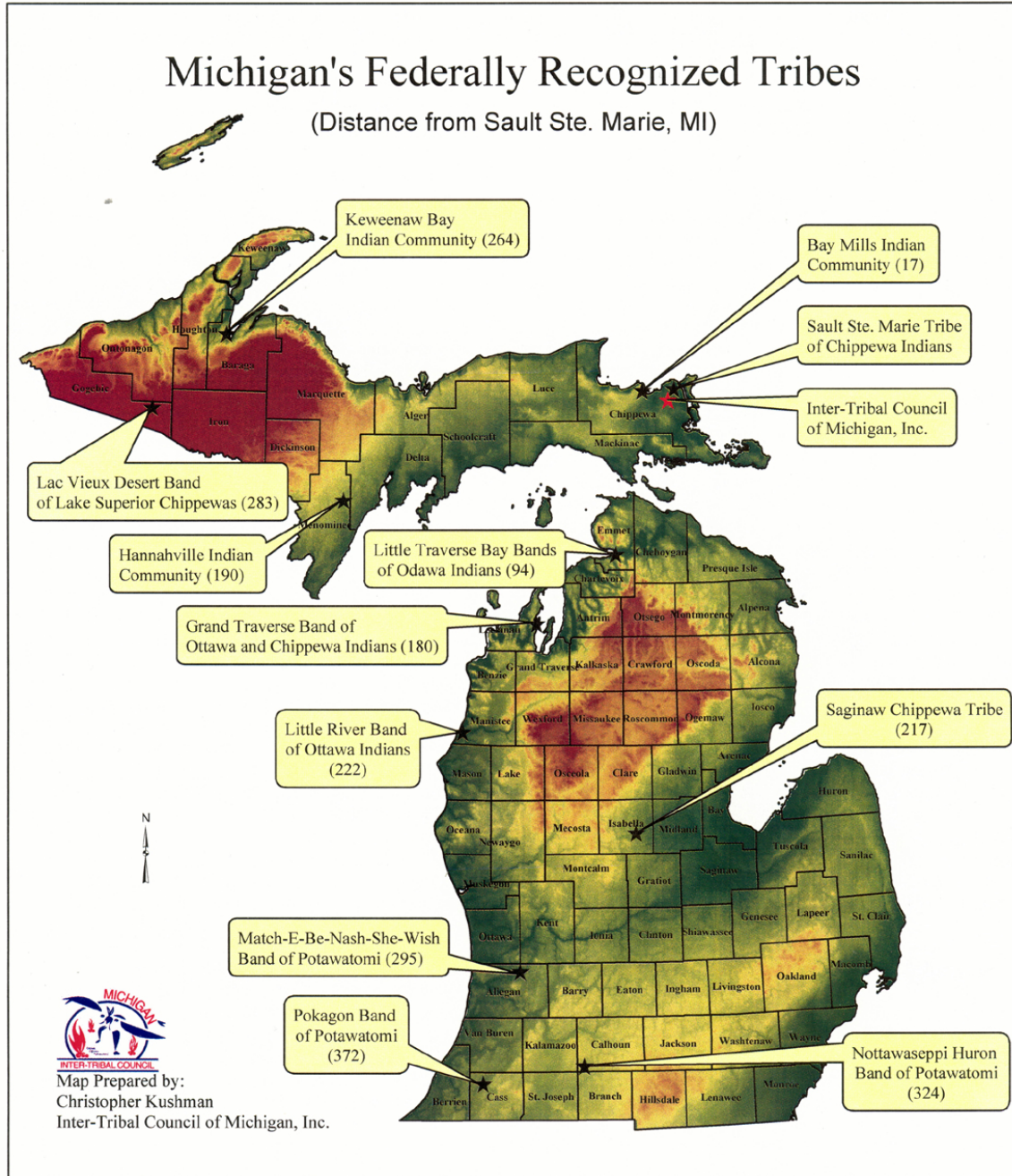
Federally Recognized:

1. Bay Mills Indian Community
2. Grand Traverse Band of Ottawa/Chippewa
3. Gun Lake Band of Pottawatomi Indians
4. Hannahville Indian Community
5. Huron Potawatomi Inc.
6. Keweenaw Bay Indian Community
7. Lac Vieux Desert Band of Lake Superior Chippewa Indians
8. Little River Band of Ottawa Indians
9. Little Traverse Bay Bands of Odawa Indians
10. Pokagon Band of Potawatomi Indians
11. Saginaw Chippewa Indian Tribe of Michigan
12. Sault Ste. Marie Tribe of Chippewa Indians

State Historic:

1. Burt Lake Band of Ottawa and Chippewa Indians
2. Grand River Band of Ottawa Indians
3. Swan Creek/Black River Confederated Ojibway Tribes of Michigan

APPENDIX B



APPENDIX C

Comstock Agreement

State of Michigan
Executive Office
Lansing
William A. Comstock, Governor

May 28th, 1934

Honorable Harold L. Ickes
Secretary of the Interior
Washington, D.C.

My dear Sir:

In accordance with an Act of Congress, approved by the President on February 19th, 1934, granting certain property to the State of Michigan for institutional purposes, I hereby accept for the State of Michigan the property known and designated as the "Mount Pleasant Indian School," located at Mount Pleasant, Michigan.

As Governor of the State, in accepting this grant, I acknowledge the condition that the State of Michigan will receive and care for in State institutions Indians resident within the state on entire equality with persons of other races and without cost to the Federal government.

I also recognize the condition that the right is reserved by the Secretary of the Interior to retain until July 1st, 1934, dormitory and other space needed for the housing and care of Indian pupils now accommodated at said School.

Respectfully yours,

Governor of Michigan

APPENDIX D

A Synopsis of the
History of American Indian Education: National

- 1492 Columbus claims the New World and all its resources for Spain, including the Indigenous peoples whom he mistakenly calls *Indians*.
- 1494 The Pope recognizes Spain and Portugal as rightful owners of the New World under the right of discovery in the Treaty of Tordesillas.
- 1512 The *Law of the Burgos* holds that all American Indian people under Spanish rule shall have the virtues of Christianity and civilization.
- 1568 Jesuit missionaries begin the long history of non-Indian education of American Indian children by opening a school in Havanah, Cuba, whose primary mission is the civilization of American Indian students.
- 1615 French explorer Samuel de Champlain encounters the Ottawa on the shore of the Georgian Bay.
- 1619 The first British school for American Indian people is opened by the Virginia Company.
- 1670 England, France, and the Netherlands claim portions of the New World in the Treaty of Madrid citing the doctrine of effective occupation.
- Early 1700's European Royal Courts concede that Indian tribes are sovereign nations and enjoy title to their land, and that if European nations want the land they must pursue it through treaty negotiation.
- 1776 The United States of America claims independence from Britain.
- 1778 The United States of America signs their first treaty with the Indigenous peoples of this continent - Treaty with the Delaware.
- 1789 The Constitution of the United States of America is ratified by Congress.
- 1789 Congress places Indian Affairs within the War Department.
- 1790 Congress approves the first act affecting trade and intercourse with Indian tribes.
- 1792 President George Washington's administration creates policy aimed at civilizing Indians.

- 1794 Educational provisions appear in U.S. treaties with Onieda, Tuscarora, and Stockbridge Indians.
- 1802 Congress passes a law authorizing \$15,000 per annum to promote civilization among American Indian people.
- 1819 Congress appropriates \$10,000 to support the churches in teaching American Indian people how to read, write, do arithmetic, and farm.
- 1823 The U.S. Supreme Court rules, in *Johnson v. McIntosh*, that tribal sovereignty was diminished based on European rights of discovery.
- 1824 The Bureau of Indian Affairs is established within the War Department.
- 1831 The U.S. Supreme Court, in *Cherokee Nation v. Georgia*, characterizes American Indian tribes as domestic-dependent nations that could not be regarded as foreign states.
- 1832 Congress appoints the first Commissioner on Indian Affairs.
- 1849 The Bureau of Indian Affairs is moved from the War Department to the Department of the Interior.
- 1860 The Bureau of Indian Affairs opens the first federally operated school for American Indian children on the Yakima Reservation.
- 1868 The United States of America Indian Peace Commission negotiates the last of the “Indian” treaties with the Nez Perce people.
- 1869 President of the United States of America Ulysses S. Grant creates the Board of Indian Commissioners to oversee “Indian” appropriations.
- 1870 Congress authorizes appropriations of \$100,000 to operate federal industrial schools for Indians.
- 1871 Treaty making period ends terminating power of executive agreement, replaced by statutory law and congressional oversight.
- 1879 The first federal off-reservation boarding school for American Indian children is opened at Carlisle, Pennsylvania, under the direction of Henry Pratt whose motto is *kill the Indian and save the man*.
- 1882 Congress passes an act which provides that abandoned military posts may be turned over to the Department of the Interior for use as schools for American Indian people.

- 1887 The Land in Severalty Act (Dawes Allotment Act) is passed by Congress.
- 1889 Commissioner of Indian Affairs, Thomas Morgan, presents a detailed plan for a national system of Indian schools modeled after state public school systems.
- 1893 Congress authorizes the Secretary of the Interior to assign Indian School superintendents as Indian agents.
- 1897 Congress passes an act appropriating funds for the education of American Indian children in sectarian schools.
- 1900 By this time, the federal government has established 147 reservation day schools, 81 reservation boarding schools, and 25 off-reservation boarding schools.
- 1907 Commissioner on Indian Affairs, Francis Leupp, submits an annual report in which he encourages the expansion of the on-reservation Indian day school system.
- 1918 Congress passes the Legislative Act, thereby settling a policy of providing funds for American Indian children in sectarian schools.
- 1921 Congress passes the Snyder Act which authorizes the BIA to spend federal funds to educate and support the acculturation of American Indian people.
- 1924 Congress passes the American Indian Citizenship Act, declaring all American Indian people living within the borders of the U.S. citizens of the United States.
- 1928 The Brookings Institution publishes the *Meriam Report*, calling for a new approach to federal relations with American Indian tribes and people in the area of education.
- 1929 Congress authorizes state officials to enter upon tribal lands in order to enforce compulsory school attendance of American Indian students.
- 1934 The Howard-Wheeler Act (Indian Reorganization Act) and the Johnson O'Malley Act are passed by Congress as part of the Indian New Deal legislation. This officially ended the allotment process, and provided funding to public schools for Indian education programs.
- Circa 1934 The National Congress of American Indians is established as an outgrowth of IRA related inter-tribal contact.

- 1936 The Johnson O'Malley Act is amended to permit contracting with states, territories, colleges and universities, schools, or appropriate state or private corporations.
- 1941 Congress passes the Lanham Act, providing educational assistance to schools in communities that are affected by federal governmental activities.
- 1950 Congress passes the Navajo-Hopi Rehabilitation Act, allowing funds for school construction, and permitted Navajo and Hopi children to attend public schools.
- 1950 Congress passes the Federal Impact Aid laws, extending the provisions of Lanham Act to include funds for the construction and operation of schools.
- 1951 Congress amends the Federal Impact Aid laws, thus entitling schools to receive funds due to the presence of non-taxable American Indian lands within the school districts.
- 1952 Urban relocation programs are officially established for American Indians.
- 1953 Congress adopts a policy of termination of the relationship between the federal government and American Indian tribes, intending to subject American Indian people to the same laws, privileges and responsibilities as other U.S. citizens.
- 1953 Congress passes the Transfer of Federal Property Act, authorizing the Secretary of the Interior to transfer federal property to states or local education agencies to assist with educational activities of American Indian students.
- 1956 Congress passes the Indian Adult Vocational Act, authorizing the BIA to provide programs that would assist American Indian adults to obtain employment (this later became known as the Indian Relocation Program)
- 1963 Congress passes the Vocational Education Act, providing for the construction of vocational schools, and extending the Impact Aid laws.
- 1966 The Rough Rock Demonstration School, the first American Indian controlled school, is opened on the Navajo reservation with funding from the BIA and the Office of Economic Opportunity.
- 1968 Congress passes the Indian Civil Rights Act, which extends many of the provisions of the Bill of Rights to American Indian tribal citizens living within the jurisdiction of tribal governments.

- 1968 The Navajo Community College, the first tribally controlled community college, is opened on the Navajo reservation.
- 1969 A Special U.S. Senate Subcommittee on Indian Education submits a report titled *Indian Education: A National Tragedy—A National Challenge*. The Committee emphasizes a need for cultural relevance, and the need for greater control by American Indian tribes and parents in their children's education.
- 1970 U.S. President, Richard Nixon, delivers a special message on Indian Affairs to Congress, attacking termination policies and setting forth a new direction in U.S. American Indian policy—American Indian self-determination.
- 1971 The NAACP Legal Defense Fund and the Harvard Center for Law and Education report that state and local school officials have misused millions of federal dollars earmarked for American Indian education.
- 1971 Congress passes the Bilingual Education Act, providing grants for programs that address the needs of children who come from homes where English is not the primary language spoken.
- 1972 Congress passes the Indian Education Act, which authorized funding for the improvement of educational opportunities for American Indian children and adults, established an Office of Indian Education within the U.S. Department of Education, and created a National Advisory Council on Indian Education.
- 1974 Congress amends the Johnson O'Malley Act, discontinuing financial support to public school general operation budgets, and requiring American Indian parent participation in determining the unique educational needs of their children.
- 1975 Congress passes the Indian Self-Determination and Education Assistance Act, which provided maximum American Indian participation in programs and services conducted by the federal government for American Indian people.

- 1977 The American Indian Policy Review Commission published a final summary of reports which included two fundamental concepts that it suggested must guide future policy determination: 1. That Indian tribes are sovereign political bodies, having power to determine their own membership and power to enact laws and enforce them within the boundaries of their reservations, and 2. That the relationship which exists between the tribes and the United States is premised on a special trust that must govern the conduct of the stronger toward the weaker.
- 1978 Congress passes the Tribally Controlled Community Colleges Act providing grants for the operation and improvement of tribally controlled community colleges to insure continued and expanded educational opportunities for American Indian students.
- 1978 Congress passes the Education Amendments Act. Title IX of the Act provided standards for the basic education of American Indian children in BIA schools, national criteria for dormitory situations, facilities construction, BIA education functions, allotment formula, policy for American Indian control of American Indian education, education personnel, recruitment of American Indian educators, and rights of American Indian students. This act also restored authority for basic education support within the Snyder Act, and the Johnson O'Malley Act.
- 1978 Congress passes the Indian Child Welfare Act which articulates the rights of tribes in determining the custody status of American Indian children—a tribe's most precious natural resource. This Act is significant because it extends the jurisdiction of a tribe beyond reservation borders in cases of child welfare.
- 1981 The U.S. Department of Education provides funding for the Bay Mills Indian Community to begin a vocational education program.
- 1981 President Ronald Reagan's paper "America's New Beginning: A Program for Economic Recovery" is released, outlining proposed changes to the federally funded education programs. These changes entailed program consolidation, budget reductions, and the establishment of block grants.
- 1983 President Ronald Reagan states that since 1975 little more than rhetoric had been accomplished in the area of promoting tribal self-government. He proposes to focus on tribal economic development, deregulate reservations, build partnerships between tribes, federal government and industry, and encourage tribes to provide a greater share of the cost of their governance.

- 1988 The BIA report on education is released. This report reasserted the federal government's official policy perspective on American Indian tribal self-determination, explained the evolution of American Indian education policy since the 1960s, and detailed the programmatic areas of BIA education.
- 1988 Congress passes the Tribally Controlled Schools Act, which recognized that BIA control over the contracting process outlined in the Indian Self-Determination Education Assistance Act had not provided an opportunity for American Indian people to effectively voice their perspectives in the planning and implementation of programs developed for their benefit. This act authorized funding for programs to meet the unique linguistic and cultural needs of American Indian tribes and communities, as well as funding for tribal departments of education.
- 1990 Congress passes the Miscellaneous Indian Law Amendments, permitting federally recognized tribes and tribal grant schools to include all BIA appropriated facilities funds into P.L. 100-297 grants.
- 1994 Congress reauthorizes the Elementary and Secondary Education Act.
- 1997 Congress passes the Individuals with Disabilities Education Assistance Act.
- 1997 The National Indian Education Association publishes a Comprehensive Federal Indian Education Policy Statement intended to set national guidelines in American Indian education for federal agencies, including the Departments of Education, Interior, Health and Human Services, Agriculture, Commerce, and Labor. The Statement also recognizes and supports tribal sovereignty, treaty rights, the government-to-government relationships between the U.S. and American Indian tribes, the trust relationship of the federal government with American Indian people, and American Indian self-determination.
- 1999 President Bill Clinton signs Executive Order 13096 inviting nominations for comprehensive Federal technical assistance for the school year 1999-2000.
- 2000 President Bill Clinton signs Executive Order 13175 calling for consultation and coordination of Indian education efforts with Indian tribal governments.

- 2000 Reauthorization of Elementary and Secondary Education Assistance Act.
- 2000 Reauthorization of the Individuals with Disabilities Education Assistance Act.
- 2004 President George W. Bush signs an executive order creating a working group on Indian education co-chaired by the Secretary of the Interior and the Secretary of Education.

APPENDIX E

A Synopsis of the
History of American Indian Education: Michigan

- 1720 France claims sovereignty over the Great Lakes Region.
- 1763 Britain claims sovereignty over the Great Lakes Region under the Treaty of Paris.
- 1783 The United States of America claims sovereignty over the Great Lakes Region under the Treaty of Paris.
- 1785 The Anishinaabek enter into their first treaty with the United States of America. This treaty stipulated for U.S. ownership of property within the current State of Michigan.
- 1787 Congress passes the Northwest Ordinance which encouraged schools and the means of education in addition to guaranteeing that American Indian lands and properties would never be taken from them without their consent.
- 1805 The Territory of Michigan is established with a population of about 4,800 non-Indian people (the state of Ohio had about 230,000 at that time).
- 1805 The U.S. Secretary of War establishes the Michigan Superintendency.
- 1808 The first appropriation for the purpose of educating American Indian children in the Michigan Territory was approved by President Thomas Jefferson.
- 1811 The Anishinaabek enter into the war of 1812 against the United States of America.
- 1817 For the first time educational provisions are included in a treaty between the U.S. and the Anishinaabek.- Treaty with the Wyandot, Etc.; Article 16.
- 1821 Educational provisions included in the Treaty with the Ottawa, Etc.; Article 4.
- 1826 Educational provisions included in the Treaty with the Chippewa; Article 6.

- 1826 Educational provisions included in the Treaty with the Potawatomi; Article 3.
- 1827 Educational provisions included in the Treaty with the Chippewa; Article 5.
- 1828 Educational provisions included in the Treaty with the Potawatomi; Article 2.
- 1832 Educational provisions included in the Treaty with the Potawatomi; Article 4.
- 1833 Educational provisions included in the Treaty with the Chippewa, Etc.; Article 3
- 1836 Educational provisions included in the Treaty with the Ottawa, Etc.; Article 4.
- 1837 Michigan statehood ratified by Congress.
- 1837 Educational provisions included in the Treaty with the Chippewa (Detroit); Article 3.
- 1837 Educational provisions included in the Treaty with the Chippewa (St. Peters); Article 3.
- 1842 Educational provisions included in the Treaty with the Chippewa; Article 4.
- 1846 Educational provisions included in the Treaty with the Potawatomi Nation; Article 8.
- 1847 Educational provisions included in the Treaty with the Chippewa of the Mississippi and Lake Superior; Article 3.
- Circa 1850 Bradley Mission School and Indian Cemetery established on property that would become the Isabella Indian Reservation.
- 1852 The Bureau of Indian Affairs Mackinac Agency becomes the only remaining Indian agency in Michigan.
- 1854 Educational provisions included in the Treaty with the Chippewa; Article 4.
- 1855 Educational provisions included in the Treaty with the Chippewa; Article 3.

- 1855 Educational provisions included in the Treaty with the Ottawa and Chippewa; Articles 1 & 2.
- 1855 Educational provisions included in the Treaty with the Chippewa of Saginaw, Etc.; Article 2.
- 1859 Educational provisions included in the Treaty with the Chippewa, Etc.; Articles 1 & 3.
- 1862 Educational provisions included in the Treaty with the Ottawa of Blanchard's Fork and Roche De Boeuf; Article 6.
- 1863 Educational provisions included in the Treaty with the Chippewa of the Mississippi and the Pillager and Lake Winnibigoshish Bands; Article 13.
- 1863 Educational provisions included in the Treaty with the Chippewa–Red Lake and Pembina Bands; Article 3.
- 1864 Educational provisions included in the Treaty with the Chippewa, Mississippi, and Pillager and Lake Winnibigoshish Bands; Articles 9 & 13.
- 1864 Educational provisions included in the Treaty with the Chippewa of Saginaw, Swan Creek, and Black River; Articles 2 & 4.
- 1866 Educational provisions included in the Treaty with the Chippewa–Bois Fort Band; Article 3.
- 1867 Educational provisions included in the Treaty with the Potawatomi; Article 11.
- 1867 Educational provisions included in the Treaty with the Chippewa of the Mississippi; Article 3.
- Circa 1880 Nine American Indian day schools are in operation under the jurisdiction of the Bureau of Indian Affairs Mackinac Agency.
- 1891 Congress passes Public Act 74, providing for the ceding of property from the State of Michigan to the United States of America for Indian Industrial School purposes.
- 1891 Congress appropriates \$25,000 for the purchase of 200 or more acres of land to be used to develop an Indian Industrial School in Isabella County, Michigan.

- 1919 U.S. Bureau of Indian Affairs Mackinac Agency closes due to cutbacks in federal spending.
- 1934 Mt. Pleasant Indian Boarding School closes, and is sold to the State of Michigan by the federal government for \$1 along with an agreement for the State to “receive and care for in State institutions Indians resident within the State on entire equality with persons of other races and without cost to the federal government.”
- 1952 Urban relocation programs are officially established for American Indians bringing many American Indian families to urban areas of Michigan.
- 1957 Indian Commission established in the Michigan governor’s office.
- 1957 Superintendent of the Great Lakes Indian Agency, Emmett Riley, reports that there have been no federal services rendered to American Indian people in Michigan since 1932, except to keep lands in a restricted status.
- 1965 Superintendent of the Great Lakes Indian Agency, Emmett Riley, reports that since about 1932, the agency has been phasing out its activities in the state due to indications by Governor William Comstock that the state would shoulder a larger share of taking care of American Indian people within the state.
- 1965 Billy Bolin is assigned to Gladstone, Michigan, as a Resident Indian Agent. This is the first resident agent in the state since 1935.
- 1970 Resident Indian Agent for Michigan, Billy Bolin, was moved from Gladstone to Sault Ste. Marie in an effort to help more American Indian people.
- 1972 Due to the efforts of Senator Robert Griffin, Johnson O’Malley funds are first allocated to Michigan schools, although the Act passed in 1934.
- 1973 The State Superintendent of Public Instruction appoints Indian Education Coordinator, Lester Gemmill.
- 1973 The Michigan State Board of Education creates an eleven member Indian Education Advisory Council.
- 1974 Indian Education Coordinator, Lester Gemmill, reports that only 19 out of 132 eligible school districts in Michigan had applied for Indian education funds during the previous year.

- 1974 Judge Edward Deake rules that a class action lawsuit by the Children of the Chippewa, Ottawa, and Potawatomy Indians is an appropriate vehicle for litigating their claim against the University of Michigan based on the Treaty with the Wyandot Etc., 1817.
- 1975 The Keeweenaw Bay Indian Community charts the first tribally controlled community college in the state.
- 1976 The Michigan Indian Tuition Waiver Act, introduced by State Representative Jackie Vaughn, is signed into law by Governor William Milliken, guaranteeing a waiver of tuition charges for American Indian tribal citizens resident within the state at all public colleges and universities. The original language of the legislation and subsequent house discussion over the Act articulate its treaty foundation.
- 1976 The first tribally controlled school in the state, the Nah Tah Wash (Soaring Eagle) School, is opened on the Hannahville Potawatomi Indian Reservation, with initial funding from a Bi-Centennial Commission Cultural Grant.
- 1979 In *Children of the Chippewa, Etc. v. Regents of the University of Michigan*, the Washtenaw County Circuit Court finds that a trust relationship had not been established between the Anishinaabek and the U.S. in the Treaty with the Wyandot, Etc., 1817.
- 1979 Governor William Milliken states that he will call for a policy to improve the quality of life for the American Indian population of Michigan, foster Indian self-determination, and encourage intergovernmental cooperation between tribal, state, and local governments.
- 1984 The Bay Mills Indian Community charts the Bay Mills Community College, which is designed to be a student centered institution that promotes the preservation of the customs and beliefs of American Indian people.
- 1984 The State of Michigan Board of Education requests that then Superintendent, Dr. Phillip Runkle, appoint a special committee, working in concert with the Michigan American Indian community, to study the educational condition of American Indian people in Michigan.

- 1994 The Sault Ste. Marie Tribe of Chippewa Indians opens the Bahweting Sault Ojibway Elementary School. This school was designed to offer tribal children a well-rounded education program that includes both an emphasis on Michigan standards as well as incorporating linguistic and cultural programming.
- 1994 Senator Jackie Vaughn introduces legislation that would require the board of a school district to ensure that instruction in the history, culture, and tribal sovereignty of the federally recognized tribes in Michigan is included as part of the social studies curriculum in Michigan schools, and that the State Board shall not grant a teaching certificate to an applicant unless that applicant has received instruction in the same.
- 1995 Governor John Engler announces that he will not support the continuation of the Michigan Indian Tuition Waiver Program based on the social and economic changes that have taken place for American Indian tribes in Michigan. He contests the idea that the program was based on legal obligations.
- 1995 Both the Hannahville Indian School (Nah Tah Wahsh PSA) and the Bahweting Anishinaabe PSA receive charter status under Northern Michigan University.
- 1996 Michigan Indian Tuition Waiver Funding is buried in the base budgets of Michigan public colleges and universities to protect it from a line item veto.
- 2003 Bay Mills Community College becomes the first tribally controlled community college to charter K-12 schools.
- 2003 Bay Mills Indian Community opens the Bay Mills Ojibwe Charter School with a charter from Bay Mills Community College.

APPENDIX F

Treaty Provisions Tables

Treaty #	Treaty
Treaty 1	Treaty with the Wyandot, Etc. 1817
Treaty 2	Treaty with the Ottawa, Etc. 1821
Treaty 3	Treaty with the Chippewa, 1826
Treaty 4	Treaty with the Potawatomi, 1826
Treaty 5	Treaty with the Chippewa, Etc. 1827
Treaty 6	Treaty with the Potawatomi, 1828
Treaty 7	Treaty with the Chippewa, Etc. 1833
Treaty 8	Treaty with the Ottawa, Etc. 1836
Treaty 9	Treaty with the Chippewa (Detroit), 1837
Treaty 10	Treaty with the Chippewa (St. Peters), 1837
Treaty 11	Treaty with the Chippewa, 1842
Treaty 12	Treaty with the Potawatomi Nation, 1846
Treaty 13	Treaty with the Chippewa of the Mississippi and Lake Superior, 1847
Treaty 14	Treaty with the Chippewa, 1854
Treaty 15	Treaty with the Chippewa, 1855
Treaty 16	Treaty with the Ottawa and Chippewa, 1855
Treaty 17	Treaty with the Chippewa of Saginaw, Etc. 1855
Treaty 18	Treaty with the Chippewa, Etc. 1859
Treaty 19	Treaty with the Ottawa of Blanchard's Fork and Roche de Boeuf, 1862
Treaty 20	Treaty with the Chippewa of the Mississippi and the Pillager and Lake Winnibigoshish Bands, 1863
Treaty 21	Treaty with the Chippewa-Red Lake and Pembina Bands, 1863
Treaty 22	Treaty with the Chippewa, Mississippi, and Pillager and Lake Winnibigoshish Bands, 1864
Treaty 23	Treaty with the Chippewa of Saginaw, Swan Creek, and Black River, 1864
Treaty 24	Treaty with the Chippewa-Bois Fort Band, 1866
Treaty 25	Treaty with the Potawatomi, 1867
Treaty 26	Treaty with the Chippewa of the Mississippi, 1867

Note: Highlighted treaties were included in the socio-historical content analysis.

Treaty #	Monetary Provisions					
	Ambiguous Annuity	Modern Day Equivalent	Specific Annuity Total	Modern Day Equivalent	One-Time Cash Payment	Modern Day Equivalent
Treaty 1						
Treaty 2			\$30,000	\$364,864		
Treaty 3	\$1,000	\$17,857				
Treaty 4	\$2,000	\$35,714				
Treaty 5	\$1,500	\$22,543	\$3,000	\$45,086		
Treaty 6	\$1,000	\$18,519				
Treaty 7					\$70,000	\$1,458,333
Treaty 8	\$100,000	\$1,648,717				
Treaty 9						
Treaty 10			\$190,000	\$3,454,545		
Treaty 11			\$50,000	\$1,086,957		
Treaty 12						
Treaty 13						
Treaty 14			\$60,000	\$1,250,000		
Treaty 15			\$60,000	\$1,224,490		
Treaty 16			\$80,000	\$1,632,653		
Treaty 17			\$30,000	\$612,245		
Treaty 18					\$2,000	\$42,553
Treaty 19						
Treaty 20	\$1,000	\$17,049				
Treaty 21			\$100,000	\$1,388,889		
Treaty 22	\$1,000	\$13,828				
Treaty 23			\$20,000	\$222,222		
Treaty 24			\$16,000	\$175,820	\$1,300	\$14,286
Treaty 25						
Treaty 26			\$40,000	\$476,190	\$5,000	\$59,524
Totals	\$107,500	\$1,774,227	\$679,000	\$11,933,961	\$78,300	\$1,574,696
Modern Day Equivalents Total: \$15,282,884						

Treaty #	Primary Non-Monetary Provisions						
	Education / Training	Schools	Teachers	Blacksmith / Laborer	Land	Books / Native Language	Tribal Control/Indian Preference
Treaty 1	X						
Treaty 2	X		X	X	X		
Treaty 3		X			X		
Treaty 4	X						
Treaty 5	X						
Treaty 6	X						
Treaty 7	X						
Treaty 8	X	X	X			X	
Treaty 9	X						
Treaty 10		X					
Treaty 11		X					
Treaty 12							X
Treaty 13		X	X	X			X
Treaty 14	X	X					
Treaty 15	X		X	X			X
Treaty 16	X				X		X
Treaty 17	X				X		
Treaty 18	X	X			X		
Treaty 19	X	X			X		X
Treaty 20	X						
Treaty 21	X						
Treaty 22	X						
Treaty 23	X	X			X		X
Treaty 24	X	X	X			X	X
Treaty 25					X		
Treaty 26		X					

Treaty #	Relevance to Michigan Tribes			
	Michigan Specific	Michigan Non-Specific	Non-Michigan Non-Specific	Non-Michigan Specific
Treaty 1		X		
Treaty 2		X		
Treaty 3		X		
Treaty 4			X	
Treaty 5		X		
Treaty 6		X		
Treaty 7			X	
Treaty 8		X		
Treaty 9	X			
Treaty 10			X	
Treaty 11	X			X
Treaty 12			X	
Treaty 13				X
Treaty 14				X
Treaty 15				X
Treaty 16		X		
Treaty 17	X			
Treaty 18				X
Treaty 19				X
Treaty 20				X
Treaty 21				X
Treaty 22				X
Treaty 23	X			
Treaty 24				X
Treaty 25			X	
Treaty 26				X

Treaty #	Anishinaabe Tribes Included		
	Chippewa	Ottawa	Potawatomi
Treaty 1	X	X	X
Treaty 2		X	X
Treaty 3	X		
Treaty 4			X
Treaty 5	X		
Treaty 6			X
Treaty 7	X	X	X
Treaty 8	X	X	
Treaty 9	X		
Treaty 10	X		
Treaty 11	X		
Treaty 12	X	X	X
Treaty 13	X		
Treaty 14	X		
Treaty 15	X		
Treaty 16	X	X	
Treaty 17	X		
Treaty 18	X		
Treaty 19		X	
Treaty 20	X		
Treaty 21	X		
Treaty 22	X		
Treaty 23	X		
Treaty 24	X		
Treaty 25			X
Treaty 26	X		

Federally Recognized Tribes:

BM= Bay Mills Indian Community
GL= Gun Lake Band of Pottawatomi Indians
GT= Grand Traverse Band of Ottawa/Chippewa
HI= Hannahville Indian Community
HP= Huron Potawatomi Inc.
KB= Keweenaw Bay Indian Community
LR= Little River Band of Ottawa Indians
LT= Little Traverse Bay Bands of Odawa Indians
PB= Pokagon Band of Potawatomi Indians
SC= Saginaw Chippewa Indian Tribe of Michigan
SS= Sault Ste. Marie Tribe of Chippewa Indians

State Recognized Tribes:

BL= Burt Lake Band of Ottawa and Chippewa Indians
GR= Grand River Bands of Ottawa Indians
SB= Swan Creek/Black River Confederated Ojibway Tribes of Michigan

APPENDIX G

SEARCH HIT TABLES

Treaty 1

Terms for Treaty with the Wyandot, Etc., 1817 Some of the Ottawa, Chippewa, and Potawatomy tribes...some of their children hereafter educated.	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	0	0	3
<i>Educated</i>	0	0	3
Similar Term(s):	103	50	839
<i>Cultured (S)</i>	0	0	0
<i>Knowledgeable (S)</i>	0	0	5
<i>Well-Informed (S)</i>	0	0	0
<i>Well-Read (S)</i>	0	0	0
<i>Sophisticated (S)</i>	0	0	0
<i>Skilled (S)</i>	0	0	0
<i>Learned (S)</i>	0	0	0
<i>Erudite (S)</i>	0	0	0
<i>Scholarly (S)</i>	0	0	0
<i>Educate (R)</i>	1	0	2
<i>Education (*)</i>	33	38	365
<i>Educational (*)</i>	69	12	474
Conceptual Cluster(s):	4	11	48
to support the efforts of local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities to meet the unique educational and culturally related academic needs of American Indian and Alaska Native students (IEA)			
authorizing programs of direct assistance for — (1) meeting the unique educational and culturally related academic needs of American Indians and Alaska Natives; (2) the education of Indian children and adults; (3) the training of Indian persons as educators and counselors, and in other professions serving Indian people; and (4) research, evaluation, data collection, and technical assistance. (IEA)			
Each application submitted under subsection (a) shall include a description of a comprehensive program for meeting the needs of Indian children served by the local educational agency, including the language and cultural needs of the children (IEA)			
The services and activities referred to in subsection (a) may include — (1) culturally related activities that support the program described in the application submitted by the local educational agency; (2) early childhood and family programs that emphasize school readiness; (3) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging State academic content and student academic achievement standards; (4) integrated educational services in combination with other programs that meet the needs of Indian children and their families;			

<p>(5) career preparation activities to enable Indian students to participate in programs such as the programs supported by the Carl D. Perkins Vocational and Technical Education Act of 1998, including programs for tech-prep education, mentoring, and apprenticeship;</p> <p>(6) activities to educate individuals concerning substance abuse and to prevent substance abuse;</p> <p>(7) the acquisition of equipment, but only if the acquisition of the equipment is essential to achieve the purpose described in section 7111;</p> <p>(8) activities that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency;</p> <p>(9) activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency;</p> <p>(10) family literacy services; and</p> <p>(11) activities that recognize and support the unique cultural and educational needs of Indian children, and incorporate appropriately qualified tribal elders and seniors.(IEA)</p>
<p>the appropriate Secretary may – (1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings (ISDEA)</p>
<p>The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory. (ISDEA)</p>
<p>The Secretary of the Interior, in making any contract authorized by sections 452 to 457 of this title, may permit such contracting party to utilize, for the purposes of said sections, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance. (ISDEA)</p>
<p>The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for the purpose of carrying the provisions of sections 452 to 457 of this title into effect: Provided, That such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts, as herein provided, are to be effective. (ISDEA)</p>
<p>The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: Provided, That where students other than Indian students participate in such programs, money expended under such contract shall be</p>

<p>prorated to cover the participation of only the Indian students. (ISDEA)</p>
<p>Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students. (ISDEA)</p>
<p>The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.(ISDEA)</p>
<p>provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and (2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.(ISDEA)</p>
<p>No funds from any grant or contract pursuant to this part shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this part, available to the local school district. (ISDEA)</p>
<p>The Secretary is authorized and directed to provide funds, pursuant to this subchapter; the the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.); or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school. (ISDEA)</p>
<p>The assistance provided in this subchapter for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801 et seq.). (ISDEA)</p>
<p>to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; (IDEA)</p>
<p>to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; (IDEA)</p>
<p>to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; (IDEA)</p>
<p>to assess, and ensure the effectiveness of, efforts to educate children with disabilities. (IDEA)</p>

<p>If the Secretary determines that a program authorized under this Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes. (IDEA)</p>
<p>The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part. (IDEA)</p>
<p>With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented. (IDEA)</p>
<p>The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis. (IDEA)</p>
<p>A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. (IDEA)</p>
<p>All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. (IDEA)</p>
<p>An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d). (IDEA)</p>
<p>To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (IDEA)</p>
<p>Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8). (IDEA)</p>
<p>To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools,</p>

<p>provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services. (IDEA)</p>
<p>Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State. (IDEA)</p>
<p>In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies. (IDEA)</p>
<p>Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (IDEA)</p>
<p>Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. (IDEA)</p>
<p>If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(10)(A), the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection. (IDEA)</p>
<p>Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed –</p> <ul style="list-style-type: none"> (i) the number of children with disabilities participating in the schoolwide program; multiplied by (ii) (I) the amount received by the local educational agency under this part for that fiscal year; divided by (II) the number of children with disabilities in the jurisdiction of that agency. (IDEA)
<p>In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency –</p> <ul style="list-style-type: none"> (A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and (B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools. (IDEA)
<p>Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to</p>

<p>improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school. (IDEA)</p>
<p>A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part. (IDEA)</p>
<p>A local educational agency shall ensure that a reevaluation of each child with a disability is conducted –</p> <p>(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and</p> <p>(B) in accordance with subsections (b) and (c). (IDEA)</p>
<p>The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part –</p> <p>(1) to children with disabilities aged 3 through 5, inclusive; and</p> <p>(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year. (IDEA)</p>
<p>It is therefore the policy of the United States to provide financial assistance to States --</p> <p>(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;</p> <p>(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);</p> <p>(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and</p> <p>(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services. (IDEA)</p>
<p>Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment. (IDEA)</p>
<p>The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis. (IDEA)</p>

<p>The purpose of this subpart is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. (IDEA)</p>
<p>Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that --</p> <ul style="list-style-type: none"> (1) is consistent with the purposes of chapter 1, chapter 2, or both; and (2) involves – (A) research; (B) personnel preparation; (C) parent training and information; (D) technical assistance and dissemination; (E) technology development, demonstration, and utilization; or (F) media services. (IDEA)
<p>The purpose of this chapter is to provide Federal funding for coordinated research, demonstration projects, outreach, and personnel-preparation activities that –</p> <ul style="list-style-type: none"> (1) are described in sections 672 through 674; (2) are linked with, and promote, systemic change; and (3) improve early intervention, educational, and transitional results for children with disabilities. (IDEA)
<p>In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that lead to the production of new knowledge. (IDEA)</p>
<p>In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts. (IDEA)</p>
<p>In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts. (IDEA)</p>
<p>The Secretary shall, on a competitive basis, make grants to, or enter into contracts or cooperative agreements with, eligible entities --(1) to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children. (IDEA)</p>
<p>In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low-incidence disabilities. (IDEA)</p>
<p>In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a). (IDEA)</p>
<p>In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that are of national significance and have broad applicability. (IDEA)</p>

In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), to benefit children with high-incidence disabilities, such as children with specific learning disabilities, speech or language impairment, or mental retardation. (IDEA)
The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e). (IDEA)
The Secretary shall, directly or through grants, contracts, or cooperative agreements, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide – (A) a free appropriate public education to children with disabilities; and (B) early intervention services to infants and toddlers with disabilities and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them. (IDEA)
The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order – (A) to determine the effectiveness of this Act in achieving its purposes; (B) to provide information to the President, the Congress, the States, local educational agencies, and the public on how to implement the Act more effectively; and (C) to provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively. (IDEA)
The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section. (IDEA)
The Secretary may make grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities – (1) to meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and (2) to be prepared to lead productive independent adult lives, to the maximum extent possible. (IDEA)
The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 682 and 683. (IDEA)
The Secretary shall, by competitively making grants or entering into contracts and cooperative agreements with eligible entities, provide technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities. (IDEA)
In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and utilization of technology. (IDEA)

In carrying out this section, the Secretary shall support –

- (1) educational media activities that are designed to be of educational value to children with disabilities;
- (2) providing video description, open captioning, or closed captioning of television programs, videos, or educational materials through September 30, 2001; and after fiscal year 2001, providing video description, open captioning, or closed captioning of educational, news, and informational television, videos, or materials;
- (3) distributing captioned and described videos or educational materials through such mechanisms as a loan service;
- (4) providing free educational materials, including textbooks, in accessible media for visually impaired and print-disabled students in elementary, secondary, postsecondary, and graduate schools;
- (5) providing cultural experiences through appropriate nonprofit organizations, such as the National Theater of the Deaf, that – (A) enrich the lives of deaf and hard-of-hearing children and adults; (B) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard-of-hearing persons; or (C) promote the integration of hearing, deaf, and hard-of-hearing persons through shared cultural, educational, and social experiences; and
- (6) compiling and analyzing appropriate data relating to the activities described in paragraphs (1) through (5). (IDEA)

Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 2

Terms for Treaty with the Ottawa, Etc., 1821, Article 4: annually, for a term of ten years, the sum of fifteen hundred dollars...in the support of a Blacksmith, of a Teacher, and of a person to instruct the Ottawas in agriculture...also... to pay to the Potawatamie nation... annually, for the term of fifteen years, the sum of one thousand dollars... in the support of a Blacksmith and a Teacher. And one mile square shall be selected...on the north side of the Grand River, and one mile square on the south side of the St. Joseph, and within the Indian lands...upon which the...teachers employed for the said tribes, respectively, shall reside.	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	4	0	44
<i>A. Teacher</i>	4	0	44
<i>B. a person to instruct the Ottawas in agriculture</i>	0	0	0
<i>C. Blacksmith</i>	0	0	0
<i>D. one mile square shall be selected...on the north side of the Grand River, and one mile square on the south side of the St. Joseph, and within the Indian lands...upon which the...teachers employed for the said tribes, respectively, shall reside.</i>	0	0	0
Similar Term(s):	0	11	6
<i>A. Educator (S)</i>	0	0	3
<i>A. Tutor (S)</i>	0	0	0
<i>A. Instructor (S)</i>	0	0	0
<i>A. Coach (S)</i>	0	0	0
<i>A. Trainer (S)</i>	0	0	0
<i>A. Lecturer (S)</i>	0	0	0
<i>A. Professor (S)</i>	0	0	1
<i>A. Governess (S)</i>	0	0	0
<i>A. Educationalist (S)</i>	0	0	0
<i>A. Schoolteacher (S)</i>	0	0	0
<i>A. Teacher Training (*)</i>	0	0	2
<i>B. Agricultural Instruction (*)</i>	0	0	0
<i>C. General Maintenance Personnel (*)</i>	0	0	0
<i>D. Land (*)</i>	0	11	0
<i>D. Residential location for Teachers(*)</i>	0	0	0
Conceptual Cluster(s):	8	14	26
<i>A.</i>	4	1	12
<i>B.</i>	4	1	12
<i>C.</i>	0	6	1
<i>D.</i>	0	6	1
A. & B. the training of Indian persons as educators and counselors, and in other professions serving Indian people (IEA)			
A. & B. professional development opportunities that will be provided, as needed, to ensure that — (A) teachers and other school professionals who are new to the Indian			

community are prepared to work with Indian children; and (B) all teachers who will be involved in programs assisted under this subpart have been properly trained to carry out such programs (IEA)
A. & B. activities that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency (IEA)
A. & B. activities that recognize and support the unique cultural and educational needs of Indian children, and incorporate appropriately qualified tribal elders and seniors. (IEA)
C. The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to section 13 of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for - (1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources); (ISDEA)
C. The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable. (ISDEA)
D. the acquisition of land in connection with items (1) and (2) above: Provided, That in the case of land within Indian country (as defined in chapter 53 of title 18) or which adjoins on at least two sides lands held in trust by the United States or the tribe or for individual Indians, the Secretary of ^[1] Interior may (upon request of the tribe) acquire such land in trust for the tribe. (ISDEA)
C. & D. the appropriate Secretary may - (1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance; (ISDEA)
D. donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration (ISDEA)
D. The Secretary of the Interior may accept donations of funds or other property for the advancement of the Indian race, and he may use the donated property in accordance with the terms of the donation in furtherance of any program authorized by other provision of law for the benefit of Indians. (ISDEA)
A., B. & C. The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts,

<p>moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory. (ISDEA)</p>
<p>C. & D. The Secretary of the Interior, in making any contract authorized by sections 452 to 457 of this title, may permit such contracting party to utilize, for the purposes of said sections, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance. (ISDEA)</p>
<p>C. & D. The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands. (ISDEA)</p>
<p>A. & B. to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services (IDEA)</p>
<p>C. & D. If the Secretary determines that a program authorized under this Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes. (IDEA)</p>
<p>A. & B. The purpose of this subpart is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. (IDEA)</p>
<p>A. & B. Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that -- (1) is consistent with the purposes of chapter 1, chapter 2, or both; and (2) involves -- (A) research; (B) personnel preparation; (C) parent training and information; (D) technical assistance and dissemination; (E) technology development, demonstration, and utilization; or (F) media services. (IDEA)</p>
<p>A. & B. The purpose of this chapter is to provide Federal funding for coordinated research, demonstration projects, outreach, and personnel-preparation activities that -- (1) are described in sections 672 through 674; (2) are linked with, and promote, systemic change; and (3) improve early intervention, educational, and transitional results for children with disabilities. (IDEA)</p>
<p>A. & B. Demonstrating and applying research-based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel. (IDEA)</p>

A. & B. The Secretary shall, on a competitive basis, make grants to, or enter into contracts or cooperative agreements with, eligible entities --(1) to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children. (IDEA)

A. & B. Activities that may be carried out under this subsection include activities such as the following: (A) Preparing persons who -- (i) have prior training in educational and other related service fields; and (ii) are studying to obtain degrees, certificates, or licensure that will enable them to assist children with disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with disabilities to achieve the outcomes described in their individualized family service plans described in section 636. (B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with disabilities. (C) Preparing personnel in the innovative uses and application of technology to enhance learning by children with disabilities through early intervention, educational, and transitional services. (D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children. (E) Preparing personnel to be qualified educational interpreters, to assist children with disabilities, particularly deaf and hard-of-hearing children in school and school-related activities and deaf and hard-of-hearing infants and toddlers and preschool children in early intervention and preschool programs. (F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities. (IDEA)

A. & B. Activities that may be carried out under this subsection include activities such as the following: (A) Preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services for children with disabilities. (B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities. (IDEA)

A. & B. The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e). (IDEA)

A. & B. The purposes of this chapter are to ensure that -- parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such persons, through systemic-change activities and other efforts, to improve early intervention, educational, and transitional services and results for children with disabilities and their families; (IDEA)

A. & B. The Secretary may make grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to

participate effectively in helping their children with disabilities (IDEA)
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A. & B. The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 682 and 683. (IDEA)
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Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 3

Treaty with the Chippewa, 1826, Article 6: annual sum of one thousand dollars...to...support...an establishment for their education, to be located upon some part of the St. Mary's river...for the accommodation of such school, a section of land is hereby granted.	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	29	51	70
<i>A. School</i>	29	40	70
<i>B. Land</i>	0	11	0
Similar Term(s):	0	40	22
<i>A. Educational Institution (*)</i>	0	0	0
<i>A. Educational Establishment (*)</i>	0	0	0
<i>A. Educational Facility (*)</i>	0	0	0
<i>A. Training Facility (*)</i>	0	0	0
<i>A. College (*)</i>	0	2	11
<i>A. University (*)</i>	0	2	9
<i>B. Ground (S)</i>	0	0	0
<i>B. Earth (S)</i>	0	0	0
<i>B. Terra Firma (S)</i>	0	0	0
<i>B. Soil (S)</i>	0	0	0
<i>B. Terrain (S)</i>	0	0	0
<i>B. Property (*)</i>	0	36	2
Conceptual Cluster(s):	3	8	21
A.	3	4	21
B.	0	4	0
A. to support the efforts of local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities to meet the unique educational and culturally related academic needs of American Indian and Alaska Native students (IEA)			
A. authorizing programs of direct assistance for — (1) meeting the unique educational and culturally related academic needs of American Indians and Alaska Natives; (2) the education of Indian children and adults; (3) the training of Indian persons as educators and counselors, and in other professions serving Indian people; and (4) research, evaluation, data collection, and technical assistance. (IEA)			
A. The services and activities referred to in subsection (a) may include — (1) culturally related activities that support the program described in the application submitted by the local educational agency; (2) early childhood and family programs that emphasize school readiness; (3) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging State academic content and student academic achievement standards; (4) integrated educational services in combination with other programs that meet the needs of Indian children and their families; (5) career preparation activities to enable Indian students to participate in programs such as the programs supported by the Carl D. Perkins Vocational and Technical Education			

<p>Act of 1998, including programs for tech-prep education, mentoring, and apprenticeship;</p> <p>(6) activities to educate individuals concerning substance abuse and to prevent substance abuse;</p> <p>(7) the acquisition of equipment, but only if the acquisition of the equipment is essential to achieve the purpose described in section 7111;</p> <p>(8) activities that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency;</p> <p>(9) activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency;</p> <p>(10) family literacy services; and</p> <p>(11) activities that recognize and support the unique cultural and educational needs of Indian children, and incorporate appropriately qualified tribal elders and seniors.(IEA)</p>
<p>B. The acquisition of land in connection with items (1) and (2) above: Provided, That in the case of land within Indian country (as defined in chapter 53 of title 18) or which adjoins on at least two sides lands held in trust by the United States or the tribe or for individual Indians, the Secretary of ^[1] Interior may (upon request of the tribe) acquire such land in trust for the tribe. (ISDEA)</p>
<p>A. The appropriate Secretary may – (1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings (ISDEA)</p>
<p>B. donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration (ISDEA)</p>
<p>B. The Secretary of the Interior may accept donations of funds or other property for the advancement of the Indian race, and he may use the donated property in accordance with the terms of the donation in furtherance of any program authorized by other provision of law for the benefit of Indians. (ISDEA)</p>
<p>A. The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory. (ISDEA)</p>
<p>A. The Secretary of the Interior, in making any contract authorized by sections 452 to 457 of this title, may permit such contracting party to utilize, for the purposes of said sections, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance. (ISDEA)</p>
<p>A. & B. The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities</p>

(including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands. (ISDEA)
A. to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; (IDEA)
A. to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; (IDEA)
A. If the Secretary determines that a program authorized under this Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes. (IDEA)
A. The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part. (IDEA)
A. The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis. (IDEA)
A. Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed – (i) the number of children with disabilities participating in the schoolwide program; multiplied by (ii) (I) the amount received by the local educational agency under this part for that fiscal year; divided by (II) the number of children with disabilities in the jurisdiction of that agency. (IDEA)
A. In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency – (A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and (B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools. (IDEA)
A. Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to

<p>improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school. (IDEA)</p>
<p>A. The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis. (IDEA)</p>
<p>A. The purpose of this subpart is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. (IDEA)</p>
<p>A. Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that --</p> <ol style="list-style-type: none"> (1) is consistent with the purposes of chapter 1, chapter 2, or both; and (2) involves – (A) research; (B) personnel preparation; (C) parent training and information; (D) technical assistance and dissemination; (E) technology development, demonstration, and utilization; or (F) media services. (IDEA)
<p>A. The purpose of this chapter is to provide Federal funding for coordinated research, demonstration projects, outreach, and personnel-preparation activities that –</p> <ol style="list-style-type: none"> (1) are described in sections 672 through 674; (2) are linked with, and promote, systemic change; and (3) improve early intervention, educational, and transitional results for children with disabilities. (IDEA)
<p>A. In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that lead to the production of new knowledge. (IDEA)</p>
<p>A. In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts. (IDEA)</p>
<p>A. In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts. (IDEA)</p>
<p>A. The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers</p>

to carry out activities under this section. (IDEA)
<p>A. The Secretary may make grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities –</p> <p>(1) to meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and</p> <p>(2) to be prepared to lead productive independent adult lives, to the maximum extent possible. (IDEA)</p>
<p>A. The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 682 and 683. (IDEA)</p>
<p>A. The Secretary shall, by competitively making grants or entering into contracts and cooperative agreements with eligible entities, provide technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities. (IDEA)</p>
<p>A. In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and utilization of technology. (IDEA)</p>
<p>A. In carrying out this section, the Secretary shall support –</p> <p>(1) educational media activities that are designed to be of educational value to children with disabilities;</p> <p>(2) providing video description, open captioning, or closed captioning of television programs, videos, or educational materials through September 30, 2001; and after fiscal year 2001, providing video description, open captioning, or closed captioning of educational, news, and informational television, videos, or materials;</p> <p>(3) distributing captioned and described videos or educational materials through such mechanisms as a loan service;</p> <p>(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print-disabled students in elementary, secondary, postsecondary, and graduate schools;</p> <p>(5) providing cultural experiences through appropriate nonprofit organizations, such as the National Theater of the Deaf, that – (A) enrich the lives of deaf and hard-of-hearing children and adults; (B) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard-of-hearing persons; or (C) promote the integration of hearing, deaf, and hard-of-hearing persons through shared cultural, educational, and social experiences; and</p> <p>(6) compiling and analyzing appropriate data relating to the activities described in paragraphs (1) through (5). (IDEA)</p>

Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 4

Treaty with the Chippewa, 1826, Article 6: for the purposes of education, the annual sum of two thousand dollars	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	33	38	365
<i>Education</i>	33	38	365
Similar Term(s):	71	12	516
<i>Teaching (S)</i>	1	0	9
<i>Learning (S)</i>	1	0	21
<i>Schooling (S)</i>	0	0	1
<i>Tutoring (S)</i>	0	0	0
<i>Instruction (S)</i>	0	0	11
<i>Edification (S)</i>	0	0	0
<i>Culture (S)</i>	0	0	0
<i>Educational (*)</i>	69	12	474
Conceptual Cluster(s):	4	11	48
Refer to conceptual clusters results under the terms for Treaty1, Treaty with the Wyandot, Etc., 1817.			

Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 7

Treaty with the Chippewa, Etc., 1833, Article 3: Seventy thousand dollars for purposes of education and the encouragement of the domestic arts	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	33	38	365
<i>Domestic Arts</i>	0	0	0
Similar Term(s):	71	12	516
<i>Domesticity Training(*)</i>	0	0	0
<i>Homemaker Education(*)</i>	0	0	0
<i>Home Economics(*)</i>	0	0	0
Conceptual Cluster(s):	4	11	51
The term 'transition services' means a coordinated set of activities for a student with a disability that -- (A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (B) is based upon the individual student's needs, taking into account the student's preferences and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. (IDEA)			
a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler (IDEA)			
(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources; 2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available; (IDEA)			

Note: Scores reflect combined results of the searches under Treaty 4 with the additional searches under Treaty 7.

Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 8

Treaty with the Ottawa, Etc., 1836, Article 3 Five thousand dollars per annum, for the purpose of education, teachers, school-houses, and books in their own language, to be continued twenty years, and as long thereafter as Congress may appropriate for the object.	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	66	78	479
<i>A. Books In Their Own Language</i>	0	0	0
<i>B. Education</i>	33	38	365
<i>C. School</i>	29	40	70
<i>D. Teacher</i>	4	0	44
Similar Term(s):	71	16	542
<i>A. Native Language Curriculum Materials(*)</i>	0	0	0
<i>B. Please see Treaty 4 for similar terms.</i>	71	12	516
<i>C. Please see Treaty 3 for similar terms.</i>	0	4	20
<i>D. Please see Treaty 2 for similar terms.</i>	0	0	6
Conceptual Cluster(s):	13	17	86
<i>A.</i>	2	1	5
<i>B. Please see Treaty 4 for conceptual clusters.</i>	4	11	48
<i>C. Please see Treaty 3 for conceptual clusters.</i>	3	4	21
<i>D. Please see Treaty 2 for conceptual clusters.</i>	4	1	12
A. Each local educational agency that receives a grant under this subpart shall use the grant funds, in a manner consistent with the purpose specified in section 7111, for services and activities that — (1) are designed to carry out the comprehensive program of the local educational agency for Indian students, and described in the application of the local educational agency submitted to the Secretary under section 7114(a); (2) are designed with special regard for the language and cultural needs of the Indian students (IEA)			
A. activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency (IEA)			
A. The assistance provided in this subchapter for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801 et seq.). (ISDEA)			
A. Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child. (IDEA)			
A. Each local educational agency shall ensure that -- (A) tests and other evaluation materials used to assess a child under this section -- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) are provided and administered in the child's native language or other mode of communication, unless it is			

clearly not feasible to do so. (IDEA)
A. procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so (IDEA)
A. The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so (IDEA)
A. Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section. (IDEA)

Note: Scores reflect combined results of the searches under Treaties 2, 3, and 4 with the additional searches under Treaty 8. Under Treaty 2, the results from searches for the specific term *teacher*, along with the related results of similar terms and conceptual clusters are included here. Under Treaty 3, the results from searches for the specific term *school*, along with the related results of similar terms and conceptual clusters are included here. Under Treaty 4, the searches for the specific term *education*, with the related results of similar terms and conceptual clusters are included here.

Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 12

Treaty with the Potawatomi Nation, 1846, Article 8: school-fund of the Pottowautomies shall be expended entirely in their own country	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	0	0	0
<i>School-fund of the Pottowautomies...Expended Entirely in Their Own Country</i>	0	0	0
Similar Term(s):	1	1	0
<i>Tribally Controlled School (*)</i>	1	0	0
<i>Self-governance Contract (*)</i>	0	1	0
Conceptual Cluster(s):	5	5	9
The Secretary may make grants, from allocations made under section 7113, to local educational agencies and Indian tribes, in accordance with this section and section 7113. (IEA)			
If a local educational agency that is otherwise eligible for a grant under this subpart does not establish a committee under section 7114(c)(4) for such grant, an Indian tribe that represents not less than 1/2 of the eligible Indian children who are served by such local educational agency may apply for such grant. (IEA)			
The Secretary shall treat each Indian tribe applying for a grant pursuant to paragraph (1) as if such Indian tribe were a local educational agency for purposes of this subpart, except that any such tribe is not subject to section 7114(c)(4), section 7118(c), or section 7119. (IEA)			
Subject to subsection (e), in addition to the grants awarded under subsection (a), the Secretary shall allocate to the Secretary of the Interior an amount equal to the product of — (A) the total number of Indian children enrolled in schools that are operated by — (i) the Bureau of Indian Affairs; or (ii) an Indian tribe, or an organization controlled or sanctioned by an Indian tribal government, for the children of that tribe under a contract with, or grant from, the Department of the Interior under the Indian Self-Determination Act or the Tribally Controlled Schools Act of 1988. (IEA)			
Notwithstanding any other provision of this section, in calculating the amount of a grant under this subpart to a tribal school that receives a grant or contract from the Bureau of Indian Affairs, the Secretary shall use only one of the following, as selected by the school:(1) A count of the number of students in the schools certified by the Bureau.(2) A count of the number of students for whom the school has eligibility forms that comply with this section. (IEA)			
The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities. (ISDEA)			
"self-determination contract" means a contract (or grant or cooperative agreement utilized			

under section [450e-1](#) of this title) entered into under part A of this subchapter between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: Provided, That except as provided ^[1] the last proviso in section [450j\(a\)](#) ^[2] of this title, no contract (or grant or cooperative agreement utilized under section [450e-1](#) of this title) entered into under part A of this subchapter shall be construed to be a procurement contract. (ISDEA)

The provisions of this subchapter shall not be subject to the requirements of chapter [63](#) of title 31: Provided, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under sections [450f](#) and [450g](#) [1] of this title when mutually agreed to by the appropriate Secretary and the tribal organization involved. (ISDEA)

The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs - (A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.); (B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) (25 U.S.C. 13), and any Act subsequent thereto; (C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended (42 U.S.C. 2001 et seq.); (D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and (E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed. The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractable. The administrative functions referred to in the preceding sentence shall be contractable without regard to the organizational level within the Department that carries out such functions. (ISDEA)

The Secretary is authorized and directed to provide funds, pursuant to this subchapter; the ^[1] Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.); or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school. (ISDEA)

The term 'local educational agency'... includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs. (IDEA)

The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged

<p>5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year. (IDEA)</p>
<p>With funds appropriated under subsection (j), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c). (IDEA)</p>
<p>The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties. (IDEA)</p>
<p>In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State -- (1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State. (IDEA)</p>
<p>A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State. (IDEA)</p>
<p>The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year. (IDEA)</p>
<p>For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all</p>

tribes, tribal organizations, or consortia. (IDEA)
--

Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart: (G) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act). (IDEA)
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Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 16

Treaty with the Ottawa and Chippewa, 1855: in the expenditure of the same, and the appointment of teachers and management of schools, the Indians shall be consulted, and their views and wishes adopted so far as they may be just and reasonable	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	0	0	0
<i>Indians shall be consulted, and their views and wishes adopted</i>	0	0	0
Similar Term(s):	1	1	0
<i>Tribally Controlled School (*)</i>	1	0	0
<i>Self-governance Contract (*)</i>	0	1	0
Conceptual Cluster(s):	5	5	9
Please refer to conceptual clusters results under the terms for Treaty 12, Treaty with the Potawatomi Nation, 1846			

Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

(*)= Researcher Identified Similar Term

(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

Treaty 23

Treaty with the Chippewa of Saginaw, Swan Creek, and Black River, 1864, Article 4:: United States agrees to expend the sum of twenty thousand dollars for the support and maintenance of a manual-labor school upon said reservation. Secretary of the Interior to sell or dispose of the land hereinbefore designated, together with the buildings and improvements thereon and expend the proceeds of the same for the educational interests of the Indians. twenty thousand dollars shall be placed to the credit of the educational fund of said Indians.	Hits		
	IEA	ISDEA	IDEA
Specific Term(s):	0	0	0
<i>educational interests of...Indians</i>	0	0	0
Similar Term(s):	1	1	0
<i>Educational Welfare of Indians (S*)</i>	0	0	0
<i>Educational Benefit of Indians (S*)</i>	0	0	0
<i>Educational Wellbeing of Indians (S*)</i>	0	0	0
<i>Tribally Controlled School (*)</i>	1	0	0
<i>Self-governance Contract (*)</i>	0	1	0
Conceptual Cluster(s):	5	5	9
Refer to conceptual clusters results under the terms for Treaty12, Treaty with the Potawatomi Nation, 1846			

Key:

(S)= Microsoft Word Synonym

(R)= Microsoft Word Related Term

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(IEA)= Indian Education Act

(ISDEA)= Indian Self Determination & Education Assistance Act

(IDEA)= Individuals with Disabilities Education Act

**Appendix H
Anishinaabe Tribal Schools U.S.A.**

Tribally Operated School	Prelim student Count Sep. 2002	Governing Tribe	IEA Funding	ISDEA Funding	IDEA Funding
	(Glen Allison, 2002) BIA		DOE, 2001	(Joe Herrin, 2003, 2002) BIA	
Bahweting	152	Sault Ste. Marie Tribe of Chippewa Indians	\$39,680.00	\$210,300.00	\$198,665.00
Bug-o-nay-ge-shig	264	Leech Lake Band of Ojibwe	\$59,987.00	\$161,700.00	\$376,869.00
Circle of Life	135	White Earth Band of Chippewa	\$34,816.00	\$100,570.00	\$202,480.00
Fond Du Lac Ojibwe School	192	Fond Du Lac Band of Chippewa	\$35,757.00	\$98,900.00	\$480,002.00
Hannahville (Nah Tah Wahsh)	141	Hannahville Indian Community	\$38,340.00	\$16,266.00	\$558,257.00
Lac Courte Oreilles	244	Lac Courte Orielles Band of Lake Superior Chippewa	\$74,891.00	\$83,144.00	\$447,914.00
Nay-ah-shing	246	Mille Lacs Band of Ojibwe	\$54,106.00	\$48,900.00	\$411,392.00
Ojibwa Indian School	331	Turtle Mountain Band of Chippewa Indians	\$64,280.00	\$39,345.00	\$163,000.00
Dunseith	144	Turtle Mountain Band of Chippewa Indians	\$101,455.00		\$279,008.00
Turtle Mountain Schools:		Turtle Mountain Band of Chippewa Indians	\$322,130.00		
Elementary	604				\$439,310.00
Middle	334				\$279,500.00
High School	578				\$492,400.00
Trenton	63	Turtle Mountain Band of Chippewa Indians	\$0.00	\$14,936.00	\$63,600.00
Totals	3428		\$825,442.00	\$774,061.00	\$4,392,397.00

Total Combined Funding \$7,591,403

Michigan Tribal Schools Total
Michigan total

\$78,020.00 \$226,566.00 \$756,922.00
\$3,582,235.00 \$269,466.00 \$756,922.00

Three Acts Funding Per Capita Per Student \$2214.53

Appendix I

Law Summary Chart: Indian Self-Determination and Education Assistance Act of 1975 as Amended					
Primary Purpose(s)	Main Component(s)	Eligibility Requirement(s)	Authorized Funding	Current Appropriation	Other Important Considerations
<p>“To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.”</p>	<p>Authorizes Secretaries of Interior and HEW to contract with Indian tribes or organizations for operation of programs heretofore provided by the Bureau of Indian Affairs; also amends the Intergovernmental Personnel Act regarding contracts, grants, and transferring of certain benefits for former Federal employees under employment of a tribal organization. Authorizes tribes to request funding for school construction or renovation, maintenance, and equipment for schools that serve tribal members on or near a reservation.</p>	<p>“The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization...” “The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization...”</p>	<p>“There are authorized to be appropriated such sums as may be necessary to carry out this part.”</p> <p>“The assistance provided in this subchapter for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801 et seq.).”</p>	<p>“For expenses necessary for the operation of Indian programs, as authorized by law, including the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 et seq.), as amended, the Education Amendments of 1978 (25 U.S.C. 2001-2019), and the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.), as amended, \$1,799,809,000, to remain available until September 30, 2003.”</p>	<p>“The Congress further finds that: (1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles; (2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and (3) parental and community control of the educational process is of crucial importance to the Indian people.”</p>

Law Summary Chart: Individuals with Disabilities Education Act as Amended					
Primary Purpose(s)	Main Component(s)	Eligibility Requirement(s)	Authorized Funding	Current Appropriation	Other Important Considerations
<p>"To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families; to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and to assess, and ensure the effectiveness of, efforts to educate children with disabilities."</p>	<p>Authorizes the Secretary of Education and the Secretary of the Interior to provide funding for special education purposes to states, tribes, and Local Education Agencies for: research and innovation; personnel preparation; studies and evaluations; parent training and information centers; community parent resource centers; technical assistance and dissemination; technology development, demonstration, and utilization, and media services.</p>	<p>A state program must include: free appropriate public education; full educational opportunity; child find; individualized education programs; least restrictive environment; procedural safeguards; evaluation; confidentiality; transition programs; provides for children in private schools; general supervision; procedures for LEA eligibility; personnel development and standards; performance goals and indicators; participates in assessments; and others. Tribes are eligible entities under the Secretary of the Interior.</p>	<p>Part B:</p> <p>"From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (i)."</p> <p>Part C:</p> <p>"The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year."</p>	<p>For the fiscal year 2001, the amount of \$7,439,948,000 was available to carry out the provisions of this act.</p>	<p>"Secretary of the Interior shall establish...under the BIA, an advisory board composed of Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior."</p>

Law Summary Chart: Indian Education Act of 1972 as Amended					
Primary Purpose(s)	Main Component(s)	Eligibility Requirement(s)	Authorized Funding	Current Appropriation	Other Important Considerations
<p>"...to provide financial assistance to local educational agencies to develop and carry out elementary and secondary school programs specially designed to meet these special educational and culturally related academic needs, or both."</p>	<p>This act provides: grants for the improvement of educational opportunities for Indian children; support for planning, pilot, and demonstration projects; assistance in developing and establishing educational services and programs; training for Indian education personnel; and evaluation and technical assistance.</p>	<p>Local education agencies are required to report the name of the tribe with which a child, or the child's parents or grandparent, claim membership.</p> <p>An LEA is eligible to receive a grant if the number of eligible Indian children is at least 10, or constitutes at least 50 percent of its total enrollment. This does not apply in Alaska, California, and Oklahoma, or on or near an Indian reservation.</p> <p>Tribes and tribal schools are also eligible to receive a grant under this act. If an eligible school does not apply for a grant, a tribe may apply for a grant for the children in such school.</p>	<p>"For the purpose of carrying out subpart 1 of this part, there are authorized to be appropriated to the Department of Education \$61,300,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years. For the purpose of carrying out subparts 2, 3, and 4 of this part, there are authorized to be appropriated to the Department of Education \$26,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years. For the purpose of carrying out subpart 5 of this part, there are authorized to be appropriated to the Department of Education \$3,775,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years."</p>	<p>For the fiscal year 2001, the amount of \$92,765,000 was available to carry out the provisions of this act.</p>	<p>The Bureau of Indian Affairs is treated as an LEA for BIA funded schools.</p> <p>Student eligibility is not necessarily based on membership in a federally recognized tribe.</p> <p>There is currently no mechanism in place to determine how many members of any certain tribe receive benefit under this act.</p>

Martin Reinhardt, Ph.D.
1582 M-28 East, Marquette, MI 49855

Community Orientation:

Crane Clan Anishinaabe Ojibway. Enrolled citizen of the Sault Ste. Marie Tribe of Chippewa Indians (Garden River First Nation ancestry).

Educational Background:

Pennsylvania State University, Ph.D., 2004
Educational Leadership/Concentration in Special Education

Central Michigan University, M.A., 1998
Sociology

Lake Superior State University, B.S., 1994
Sociology/Native American Studies – Minor/Archaeological Field School

Work Experience:

Northern Michigan University:
Director of the Center for Native American Studies (2001-Present)

National Indian School Board Association
External Support, Nah Tah Wahsh PSA/Hannahville Indian School (2001-Present)

Michigan Rural Systemic Initiative (A National Science Foundation Sponsored Project)
Regional Coordinator/Co-Primary Investigator (2000-2003)

Lake Superior State University:
Adjunct Instructor/Program Coordinator, Native American Studies/Sociology/Education (2000)

Bay Mills Community College:
Adjunct Instructor, Native American Studies (2000)

United States Department of the Interior, Bureau of Indian Affairs, Michigan Agency:
Intern (1994, 1999)

Central Michigan University:
Director of Native American Programs/Ojibwe Traditions Workshop Instructor (1996 - 1998)

Military Service:

United States Army:
Vehicle Mechanic/Non-Commissioned Officer (1986 - 90)

Honors:

American Indian Special Education and Educational Administration Doctoral Program Fellowship
Pennsylvania State University (1998 - 2001)

King/Chavez/Parks Fellowship
Central Michigan University (1994 - 96)

Native American Leadership Program Fellow
Lansing Community College (1992)

Joseph K. Lumsden Memorial Scholarship
Sault Ste. Marie Tribe of Chippewa Indians (1992)