Addressing Educational Needs of Native American Students through Charter School Opportunities

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Introduction:

"The Charter School movement is really about hope and opportunity."

Minnesota is an educational leader in the charter school movement. The early visionaries believed the lack of school choice for both students and teachers was problematic for the public system at large. Historically, public education was not inclusive of any form of competition amongst the schools. Charter schools, however, were seen as the solution for keeping public schools public, while infusing an element of competition that would require the traditional public schools to compete for students. Choice, in other words, would enhance the prospects for more optimal academic outcomes. By giving parents a choice over the delivery of their children’s education – via traditional public school or via charter school – the advocates for charter schools thought this would spur the public schools to incorporate more innovative methods of teaching that would attract students and produce better student outcomes.

By giving charter schools the flexibility to incorporate more innovative methods of teaching, charter schools were intended to raise achievement rates through creative ways that were more responsive to the student population for whom the school was created. Because Native American graduation rates in Minnesota have historically been low, with currently approximately less than half of Minnesota Native students graduating from High School, charter school legislation offered the process by which schools could be established to address this disparity. Yet, charter school legislation does not allow for Minnesota Tribal governments to be school authorizers, the entities that grant the charter for the school to

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operate. This creates a barrier for Tribes to exercise their rights of self-determination and to provide for the educational needs of their tribal communities via charter schools.

This paper is divided into four main sections, each intended to provide relevant information on aspects of charter school legislation and the issue of Native American educational reform. Part I provides background on the origins of charter schools as part of an educational movement of reform intended to improve education and create additional access to quality education in the United States, starting with the first charter school law passed in 1991 in the State of Minnesota. As an early leader in the charter school movement, Minnesota is used as a frame of reference for setting the background on the discussion on improvements to the Native American educational experience. Part II discusses the failure of the public educational system to graduate Native Americans, including historical documentation discussing the failure of the public system and the current challenges in creating an educational system that is more compatible to the Native approach to education. Part III expands on the unique legal status of tribes and the relationship to the Federal and State governments. Understanding those relationships is important for understanding proposed corrective measures to charter school law. Part IV provides a discussion on charter school options as seen in examples both in the State of Minnesota and nationwide as a means to show the nexus between the options and the challenges to advocating for charter school changes for Native American students. Finally, Part V provides a concluding discussion with recommendations for further research and possible reforms to charter school law to allow tribes to authorize charter schools.
Part I Background

"Charter schools are a specialized remedy to the injustices that the traditional school model seemingly cannot fix, offering needed, immediate solutions to the problems of under-represented students."2

The Charter School movement was a great breakthrough for proponents of school choice. The early visionaries of the charter school movement – Albert Shanker, Ray Budde, Ted Kolderie, Joe Nathan and Elaine Salinas,3 for example – sought a change in the delivery of public education that would give teachers a choice in selecting where and what they would teach, and would give parents and students a choice in selecting a school.4 The charter concept gained attention in 1988 when the New York Times published a column supporting the American Federation of Teachers proposal to establish charter schools, the idea for which was to be credited to Ray Budde.5 Budde had originally proposed the concept of “education by charter” in a paper he presented in 1974 at the Society for General Systems Research.6 Schools that would be operated by parents, educators, and students with a shared vision would create a better learning environment that would likely result in better student outcomes.7

Adding to the educational reform movement was a 1983 report released by the Reagan Administration entitled, A Nation at Risk, which gave a bleak assessment of student

3 NATHAN, supra note 1, at 64.
5 Id. at 41.
6 Id. at 40.
7 Burns, supra note 2, at 4.
achievement across the nation. Of note: approximately 23 million Americans over eighteen were determined functionally illiterate; approximately forty percent of seventeen year olds were functionally illiterate in the minority population; and, in international comparisons of student achievement, the United States scored last seven times on nineteen academic tests. The traditional public school system required reform. Legislators across the nation took note of the A Nation at Risk report by quickly passing educational reforms. Minnesota was no exception. In 1985, Minnesota Governor Rudy Perpich launched an educational reform agenda called “Access to Education” designed to create more competition in education as a way to ensure all students had access to quality educational opportunities throughout the state. Governor Perpich believed educational competition was the way to inspire better public education. Other state governors believed increased public school funding was needed and others thought increased reliance on tests and stricter standards would generate better student outcomes.

Shortly thereafter, the Minnesota Legislature passed legislation that resulted in Minnesota becoming a leader in public school education in two important areas. First, in 1988, the legislature passed a law allowing for voluntary open enrollment whereby parents could select schools outside their school district that were thought to be a better educational opportunity for their children (with qualifications such as availability of space

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8 Id. at 3.
10 JUNGE, supra note 4, at 3.
11 Id. at 23.
12 Id.
13 Id.
at the prospective receiving school). Secondly, in 1991, Minnesota became the first state to pass “outcome-based” education legislation that allowed for the creation of what are now called Charter Schools. The intent of the law was to create choices for teachers and students.

In her book, Zero Chance of Passage: The Pioneering CHARTER SCHOOL STORY, former Minnesota State Senator Ember Reichgott (now Reichgott Junge), recounts in detail the events that lead up to the passage of Charter School legislation and the intended outcomes desired by such legislation. Junge’s narrative discusses many important factors in the legislative process that led to passage, including the fact that the legislation represented a bipartisan effort. The legislation described the new academic institutions it authorized as “outcome-based schools” to ensure that charter schools were not viewed as a voucher system – a sensitive issue, given that the Minnesota legislature (including chief author-Senator Reichgott) had a history of opposing the voucher system within both parties.

The original outcome-based schools were contracts between a “public school, school district, or group of districts and the department of education” for the purpose of enabling schools to “develop outcome-based programs that improve pupils’ educational

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14 Id. at 28. In 1988, MN also passed the Post-Secondary Enrollment Options law, which gave high school students the option to take college classes for credit.
15 Id.
16 Id. at 36.
18 JUNGE, supra note 4, at 4.
19 Id. at 75 and 125.
achievement through instructional opportunities that recognize pupils’ individual needs. “20

Charter schools would be public schools, part of the state’s public education system, and
would fall under the same requirements for high school graduation. 21

The original law that was passed had six purposes under which the outcome-based schools were to be formed:

1) improve pupil learning;

2) increase learning opportunities for pupils;

3) encourage the use of different and innovative teaching methods;

4) require the measurement of learning outcomes and create different and innovative forms of measuring outcomes;

5) establish new forms of accountability for schools, and;

6) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site. 22

In addition, the final bill spelled out the steps by which a school could obtain a “charter” to begin operating a charter school. Originally, only a school board could sponsor a charter school, with the law allowing for a maximum of two sponsorships per school board. 23 Only eight charter schools would be allowed statewide. 24 To begin operating, schools would need authorization from the Minnesota State Board of Education.

22 JUNGE, supra note 4, at 339.
23 Id.
24 Id.
Educational reform was increasingly proving necessary, providing added impetus to the movement for innovative concepts. In 1990, a National Governors Association report made clear the need for educational reform, noting that the challenges were more significant than those set forth in the \textit{A Nation At Risk} report, declaring the urgency to “invent a new education system for the twenty-first century.”\footnote{Id. at 72-73.} In 1991, only eight years after \textit{A Nation at Risk} was released, about 3.9 million people between the ages of sixteen and twenty-four in the United States did not have a high school diploma, and were not enrolled in school, representing about 12.5\% of the total U.S. population in that age group.\footnote{Dropout Rates in the United States: 1991, \textsc{Nat’l Center for Education Statistics}, vii (Sept. 1992), \textit{available at} nces.ed.gov/pubs92/92129.pdf.} Without proactive steps, the educational status quo would not meet the needs of the nation.

For the chief author of the Minnesota charter school legislation, chartered schools were intended to have the “freedom to become innovative and to create new ways of helping our children learn.”\footnote{\textsc{Junge}, supra note 4, at 58.} To generate new learning options, the charter schools were envisioned to be the research component of the public schools, where new methods would be explored, and the schools would share successful learning models to improve all the schools across the district.\footnote{Id. at 77.} Charter schools would introduce competition for students into the school system by giving parents and students another option from which to choose to receive public education, something traditional public schools had not had to do before.

However, in contrast to traditional public schools, charter schools were exempted from “all statutes and rules applicable to a school, a board, or a district” with the exception
of those in MN Statutes 124D.10 The Statute, Charter schools must:

- adhere to compulsory attendance laws; administer statewide standardized assessments; comply with educational data requirements; comply with requirements regarding the length of the school year; comply with special education requirements; comply with the Minnesota Human Rights Act; Comply with the Pupil Fair Dismissal Act regarding how and when to suspend, exclude, and expel students; Conduct financial audits, follow audit procedures, and comply with audit reporting requirements; conform to required academic standards; enforce requirements regarding reciting the Pledge of Allegiance; ensure equal opportunity in athletic programs; ensure that teachers satisfy teacher licensure requirements; follow all relevant state and local health and safety requirements; follow the Minnesota Public School Fee law regarding authorized and prohibited fees.

The first charter school to open in Minnesota, and the nation, was the City Academy High School in St. Paul, Minnesota. The website description of the school is as follows:

“created in 1992, in cooperation with the City of St. Paul and Northern States Power Company under the sponsorship of St. Paul District #625 and the Minnesota Department of Education. City Academy is Minnesota Independent School District #4000 and a Minnesota Non-profit Corporation. As of September, 2000, City Academy is under the sponsorship of St. Catherine University, in St. Paul, Minnesota.”

The description shows the cooperation and relationships City Academy needed to become operational as a charter school after being created by teachers (in this case, in consultation with students) and then having to work with an approved sponsor to get Minnesota Board of Education approval.

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30 Id. at 5.
31 Following the passage of the charter school legislation two other charter schools had been approved prior to City Academy but did not open for some time, making City Academy the third to be approved, but was the first to open its doors.
33 Id.
Since its original passage, charter school legislation has gone through a number of changes, for example, legislation in 2009 clarified the role of the Minnesota Department of Education as having approval authority for authorizers and as the evaluator of authorizers. The changes were made as a result of a 2008 report from the Office of the Legislative Auditor for the State of Minnesota that found charter schools were failing to make Adequate Yearly Progress (AYP) over traditional district schools.\textsuperscript{34} AYP measures achievement as “defined by a State [that] describes the amount of yearly improvement each Title I school and district is expected to make in order to enable low-achieving children to meet high performance levels expected of all children.”\textsuperscript{35} Other changes increased oversight of the administration, operations and finances of Charter Schools.\textsuperscript{36} The report noted that finding an equivalent district school to use for comparative purposes was a challenge.\textsuperscript{37}

Another significant change to Minnesota charter school law involved change to the authorizers, with the types of organizations authorized to sponsor charter schools having been expanded in 2013 legislation that approved the following types of organizations to authorize one or more charter schools:

1) a school board, intermediate school district school board, or educational district organized under Minnesota Statutes, sections 123A.15 to 123A.19;
2) a charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986 ...
3) a Minnesota private college, notwithstanding clause (2) that grants two- or four-year degrees ...; community college, state university, or technical college

\textsuperscript{34} Evaluation, supra note 29, at Preface.
\textsuperscript{37} Evaluation, supra note 29, at X.
governed by the Minnesota State Colleges and Universities, or the University of Minnesota, 
4) a nonprofit corporation subject to chapter 317A, ...
5) single-purpose authorizers that are charitable, nonsectarian organizations 
formed under section 501(c)(3) on the Internal Revenue Code of 1986 ... 38

Authorizers are required to apply to the Commissioner of the Minnesota 
Department of Education for approval to act as an authorizer and, must have that 
permission before the authorizer submits an application (affidavit) for charter school 
approval to the MDE.39

In the original and current legislation the intent was to allow for flexibility in closing 
charter schools. If a charter school was not performing per the terms of its charter, the 
Board of Education could close the school, or revoke the school’s charter. The first two 
closures of charter schools in Minnesota were in 1998, one due to financial difficulties and 
the other due to low-enrollment.40 From 1991-2008, nineteen Minnesota charter schools 
were closed for a variety of reasons.41

Since 1991, following Minnesota’s lead, forty-one additional states and the District 
of Columbia have passed Charter School legislation.42 Charter School enrollment across the 
nation today accounts for approximately two million students.43 In Minnesota, during the 
2013-2014 school year, 150 Charter Schools were operating, serving over 43,000 pupils.44

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38 Minnesota Statutes, 124D.10, subdiv. 3, MINN. OFFICE OF THE REVISOR OF STATUTES, (2013), 
39 Id.
41 Id.
42 FAQ, PUBLICCHARTERS.ORG, http://www.publiccharters.org/get-the-facts/public-charter-
schools/faqs/ (last visited Aug. 7, 2014).
43 Id.
44 Charter Schools, MINN. DEPT. OF ED.,
http://education.state.mn.us/MDE/StuSuc/EnrollChoice/CharterSch/ (last visited Aug. 7 
2014).
According to the National Alliance for Public Charter Schools (NAPCS), Minnesota is ranked number one as having a state law governing charter schools that more closely aligns with the model law developed by the NAPCS.\textsuperscript{45} In 2000, the Harvard University Kennedy School Innovations Awards Program awarded the State of Minnesota the “2000 Innovations in American Government Award” for its Charter School law.\textsuperscript{46}

\textbf{Part II Public schools failing Native Americans}

\textit{“Our failure to provide an effective education for the American Indian has condemned him to a life of poverty and despair.”}\textsuperscript{47}

Despite Minnesota being a leader in several educational reform areas and having received accolades for innovative approaches to education, the changes have not been of appreciable benefit to the state’s Native American population, which continues to experience poor graduation rates. According to the U.S. Department of Education 2012 statistics, the Minnesota American Indian/Alaska Native graduation rate was the lowest in the nation – graduating only 42% of the students.\textsuperscript{48} Minnesota American Indian graduation rates have been on a downward trend since 2008.\textsuperscript{49} Native Americans continue today to

\textsuperscript{45} Measuring Up to the Model, PUBLICCHARTERS.ORG, http://www.publiccharters.org/get-the-facts/law-database/ (last visited July 28, 2014). The website lists the model state law developed by the NAPCS against which each state is ranked yearly, with the results posted by state.
\textsuperscript{49} Improving Education for Native American Students, MINNESOTA PUBLIC RADIO (Dec. 16, 2013) (linked through http://www.mprnews.org/story/2013/12/16/daily-circuit-native-education) [hereinafter Improving].
have the lowest graduation and academic achievement rates in the country; and the state of Minnesota has the lowest on-time high-school graduation rate at 45.5%, in the country.\textsuperscript{50}

The historically poor educational outcomes for Native American/Alaska Natives has been written about in several high level reports, for example, the 1928 Meriam Report, the 1969 Kennedy Report, and the 1991 Indian Nations at Risk Report.\textsuperscript{51} The Meriam Report was commissioned by Secretary of the Interior Herbert Work, funded by the Rockefeller Foundation and conducted by the privately financed Institute for Government Research (IGR).\textsuperscript{52} Informally named for Lewis Meriam, who was appointed as technical director of the survey team, researchers collected data on several aspects of Indian life, including education. Boarding school operations where highly criticized in the report due to problems such as overcrowding and lack of resources.\textsuperscript{53} The report stated in its recommendations “[t]hat under the Constitution of the United States and in accordance with the historical development of the country, the function of providing for the Indians is the responsibility of the national government.”\textsuperscript{54}

The Kennedy Report, officially titled \textit{Indian Education – A National Tragedy, A National Challenge}, explicitly spelled out the failures of the federal government in its responsibility to educate the Native American students, stating, “Our failure to provide an effective education for the American Indian has condemned him to a life of poverty and

\begin{thebibliography}{99}
\bibitem{50} \textit{Id.}
\bibitem{52} IGR became the Brookings Institution in 1927.
\bibitem{53} Survey Report (Meriam Report), The Problem of Indian Administration, Institute for Government Research, (Feb. 21, 1928), \textit{available at} \url{www.narf.org/nill/merriam/b_meriam_letter.pdf}.
\bibitem{54} Survey Report (Meriam Report), The Problem of Indian Administration, Institute for Government Research, 98 (Feb. 21, 1928) \textit{available at} \url{www.narf.org/nill/merriam/g_meriam_chapter4_general_policy.pdf}.
\end{thebibliography}
despair.” The Indian Nations at Risk Task Force published a report in 1991, titled *Indian Nations at Risk: An Educational Strategy for Action*. This report identified the number one reason Indian nations remain at risk is due to the existing educational system, declaring that the “schools have failed to educate large numbers of Indian students and adults.”

Addressing this issue in 1928, Lewis Meriam proposed solutions that can be viewed as similar to the charter concept in his urging of the development of new approaches to educational issues:

> The most fundamental need in Indian education is a change in point of view. Whatever may have been the official government attitude, education for the Indian in the past has proceeded largely on the theory that it is necessary to remove the Indian child as far as possible from his home environment; whereas the modern point of view in education ... lays stress on upbringing in the natural setting of home and family life. The Indian educational enterprise is peculiarly in need of the kind of approach that recognizes this principle; that is, less concerned with a conventional school system ... It is true ... especially in the education of ... the American Indians, that the methods must be adapted to individual abilities, interests and needs. A standard course of study, routine classroom methods, traditional types of schools ... would not solve the problem.”

Nearly seventy-five years after the Meriam report was published, academic papers continue to advocate for a change in viewpoint for educating Native students. One example, in Chapter 11 of the Jon Reyhner, et al. book *Learn in Beauty: Indigenous Education for a New Century*, Brian Bielenberg argues in his paper entitled *Charter Schools For American Indians*, that the distinguishing aspects of charter schools – “autonomy, choice,

55 Kennedy, *supra* note 47, at X.
accountability and high degrees of local involvement”\(^5^8\) are what make the charter school system more compatible with a Native approach to education. He further argues when Native students are part of an educational system that can “reinforce their cultural identity and values, their self-esteem rises ... This leads not only to increased attendance and lower dropout rates, but to greater academic achievement as well, opening the doors to higher education...” Thus, charter schools can provide the opportunity for Indian communities to reassert self-determination rights and gain control over the education system that works for their community. Charter schools offer the flexibility to tailor instructional needs to the student population, thereby allowing Native pedagogy to be more readily incorporated into the curriculum than is possible in traditional public schools.

In their 2012 Master thesis, Eve Ewing and Meaghan Ferrick wrote about three successful charter schools serving Native youth.\(^5^9\) The paper offers insight on attributes that make for successful charter schools serving Native students, such as each had small schools and small classrooms; had strong, visionary leaders; were a cultural match [to their community]; had political access to state, local and tribal governments; had alliances and relationship beyond the school; and, had a culture of being professional learning communities.”\(^6^0\) The authors posed the question: “what are the qualities and practices of charter schools that have a demonstrated track record of successfully educating Native

\(^{58}\) Bielenberg, *supra* note 51.

\(^{59}\) Eve L. Ewing and Meaghan E. Ferrick, *For This Place, for These People: An Exploration of Best Practices Among Charter Schools Serving Native Students*, HARV. UNIV. GRADUATE SCH. ED., 72 (June 2012), www.niea.org/data/files/research/ewing.ferrick.2012-charter%20schls%20%5Bfinal%5D.pdf. The National Indian Education Association proposed the idea for research support from the Harvard University Native American Program (HUNAP) and the Native American Nation Building course.

\(^{60}\) *Id.* at 63-67.
students?” The three schools studied had exemplary success in educating Native students through “local control over the mission, design and influence of education of their communities.” The schools chosen were: the Waadookadading Ojibwe Language Immersion School in Hayward, Wisconsin; the Klamath River Early College of the Redwoods in Klamath, California; and the Pemayetv Emahakv Charter School in Okeechobee, Florida. The schools were successful by, “indigenizing school design, mission, pedagogy, and curriculum to match the culture, values, and aspirations of the contemporary community” and for that, “schools as institutions have been transformed...” Charter schools give tribes the flexibility to have control of and input into the education of the tribal community’s members, a goal long sought after by tribal communities. The authors note, that the very idea of charters, however, reinforces the notion of approval by an outside entity over tribal education given that the State by law is required to give approval to operate a charter school. Creating a construct where the state oversees Tribal operations over their education runs counter to Tribal sovereignty and self-determination.

Greater Tribal involvement in the education of Native youth is needed. Educators describe a diminished relationship between Native Americans and the traditional public education system, in part due to the traumatic history of the boarding schools that degraded the Native culture and instilled a deep-seated distrust of the educational

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61 Id.
62 Id. at 69.
63 Id. at 10.
64 Id. at 63.
65 Id. at 70.
66 Id.
Yet, charter schools originated by Tribal governments are equally required to gain Minnesota Department of Education approval to begin operating as a public charter school. Minnesota charter school legislation as currently written creates a process of approval that diminishes the ability of tribes to act in a sovereign manner over their children’s education.

**Part III Sovereignty and Tribal Rights**

“It is evident that the existing educational system, whether they be public or federal, have not effectively met the educational, cultural, economic, and social needs of Native communities.”

The unique status of tribal governments, particularly in relation to state governments, raises the issue of sovereignty. Legally, the principal relationship is between the tribal governments and the federal government. As established in treaties, legislation and case law, the legal relationship is one of Nation to Nation that is, between Tribal government and Federal government. Tribal sovereignty is based on the concept that native tribes were independent nations prior to contact with foreign entities, and that sovereignty is not granted by federal or state action. From 1778-1871, Congress ratified 371 treaties. The U.S. Supreme Court recognized these treaties as “not being a grant of rights to the American Indians, but instead being a grant of rights from them, which reserve to the tribes the rights that they did not grant under the treaties.”

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67 Improving, supra note 49.
68 Indian Nations, supra note 56, at 12.
69 American Indian Communities in Minnesota: Sovereignty, MINN. S. COUNSEL & RESEARCH, available at www.senate.leg.state.mn.us/departments/scr/report/bands/SOVEREIGN.HTM.
70 Id.
71 Id.
foreign nations on a sovereign-to-sovereign basis. Individual states have no power to limit the tribe’s sovereign powers, and State civil regulatory laws do not apply to American Indians on reservations, except to the extent that Congress explicitly authorizes it to act, for example, as is the case with “State Jurisdiction over Offenses Committed By or Against Indians in the Indian Country, Public Law 83-280” (commonly referred to as PL-280), where federal jurisdiction on specific reservations was transferred to state jurisdiction.

Since 1924, Minnesota has assumed responsibility for the education of Native American children residing in the state, whether on or off reservations. Historically, mission schools and government boarding schools were the educational option for Native Americans. In 1988, the state passed the Minnesota American Indian Educational Act that required the state to provide for the “unique services” to meet the needs of Native students. Title 9 grants provide for the funding per pupil, where the state pays only that amount not covered by the Federal BIA Educational Aid. Impact aid applies to school districts that pull children from non-taxable lands such as an Indian reservation: the federal government under Title VIII provides assistance to schools that have Indian students from nearby reservations.

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72 Id.
73 Id.
75 Id.
76 Id.
The federal government, through the Bureau of Indian Education (BIE), within the Office of the Assistant Secretary – Indian Affairs, Department of the Interior, operate schools on various Indian reservations through the execution of contracts or grants with Tribal governments. The BIE manages “183 elementary, secondary, residential and peripheral dormitories across [twenty three] states ... [where] 126 schools are tribally controlled under P.L. 93-638 Indian Self Determination Contracts or P.L. 100-297 Tribally Controlled Grant Schools Act ... [fifty-seven] schools are operated by” the BIE. In Minnesota, four reservations have BIE schools, for which the BIE contracts with the Tribal government to operate the school. These schools are the Circle of Life on the White Earth Reservation; Bug-O-Nay-Ge-Shig on the Leech Lake Reservation; Fond du Lac Ojibwe School on the Fond du Lac Reservation; and, Nay-Ah-Shing on the Mille Lacs Reservation.

The BIE schools are not allowed to expand, nor are new schools allowed to open. Since 1995, Congress has imposed a moratorium on new educational programs funded through the Bureau of Indian Education that halted expansion of existing BIE-operated schools and prohibited opening new BIE schools, leaving reservations with few options to expand schools or create new schools. The moratorium preventing tribes from expanding BIE schools has resulted in tribal communities having limited options for meeting the needs of expanding student populations. Reservation charter schools may provide students

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79 Id.
with a greater likelihood of graduating, particularly since less than sixty percent of students attending a BIE school actually graduate.83 These abysmal graduation rates within BIE schools must be addressed and reversed.

On a national level, in October 2011, U.S. Senator Daniel Akaka (HI) proposed legislation – that passed unanimously in the Senate Committee on Indian Affairs – to strengthen tribal control over education in the Native Culture, Language and Access for Success in Schools Act (Native CLASS Act; S. 1262).84 The proposed legislation called on the federal government to fulfill its trust obligations while recognizing Native “self-sufficiency and self-determination” over Native education.85 The legislation emphasized the importance of tribal sovereignty over the education of Native students, and called for an increase in tribal control over tribal members, a grant program for language immersion schools, and a needed full service support system for Native youth.86 After S. 1262 was introduced in the U.S. Senate, similar bills were introduced in the U.S. House of Representatives (H.R. 3568 and H.R. 3569) but no action was taken on them.87

Part IV Charter Schools - offering solutions

“The charter movements first five years have been a time of remarkable growth, fierce political struggle, and intense media interest. Yet it is impossible to know for sure what lies ahead.”88

83 Id.
87 NALU, supra note 84.
88 NATHAN, supra note 1, at 180.
Parents, teachers and community members have been the driving force behind charter schools. Since 1992, Minnesota has opened charter schools that ranged from having a specific educational focus such as a German language; or were specific to a type of learning, such as a Montessori program; or were specific to a certain demographic such as low-income students. Some schools have been created to meet the specific needs of a student population such as Hmong, Native American or African American. As a result of the charter school legislation, school choice has expanded educational opportunities for Minnesota students.

Across the nation charter schools are proliferating on Tribal lands, with (between 2005 and 2010) on-reservation public charter schools increasing from nineteen to thirty-one. Nationwide and in Minnesota, the BIE moratorium has resulted in creative solutions to meet the growing need for on-reservation schools, or schools that operate within the reservation boundaries.

One such solution was created by establishing a charter school within the BIE school in Arizona, on the Gila River Indian Reservation to the southeast of Phoenix. The shared location is the Akimel O’Otham Pee Posh Charter School co-located with the Blackwater Community School. The charter school is located on federal trust land operated under the Bureau of Indian Education (BIE). The reservation school was established in 1939 with the Congressional establishment of the Gila River Indian Reservation.

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90 Id. at 9.
91 Public, supra note 82.
moratorium on BIE schools prevented expansion of the K-2 school despite a community desire to do so and a growing population. The Board and Administration submitted a request to the Bureau of Indian Education to allow for a charter school for grades 3-5, which was granted, and in 2000 the State Board of Charters gave approval for the charter making this the first time this type of shared governance occurred on federal trust land, where federal, state, local and tribal entities worked together to provide for the school.93

Of the four BIE schools in Minnesota none have opened a charter school. Three Minnesota tribal communities have charter schools that operate on tribal lands (reservations). First, the Naytauwaush Community School in Naytauwaush is a charter school with an Ojibwe language focus. The website states,

“The Naytahwaush Community School will be a place where children are respected as individuals, as community members and as ancestors of a rich cultural heritage. ... will appreciate the wide resources available by using them to enhance curriculum through experiential and service learning activities. ...will promote the whole child through challenging academics, community involvement, and fostering healthy life choices.”94

The school’s charter is through the Volunteers of America–Minnesota organization. Terry Tibbetts, former school board member said, “We want to be in charge of our own

93 Id.
kids’ education here. We want to say this is our education system.”\footnote{Dan Gunderson, \textit{Growing Charter School teaches with culture, language, ANISHINAABEG TODAY} (Feb. 3, 2010), \url{http://www.whiteearth.com/data/upfiles/files/Feb32010.pdf}.} The school has made Adequate Yearly Progress under the No Child Left Behind Legislation.\footnote{\textit{Id.}}

Secondly, the Oshki Ogimaag Community School in Grand Portage began operating as a K-6 Minnesota Public Charter School in September 2009, having been developed from a “grassroots initiative” that gained the support of the Grand Portage Tribal government and community members.\footnote{\textit{Id.}} The school is authorized by the Audobon Center of the North Woods and located on the Grand Portage Reservation.\footnote{\textit{Oshki Ogimaag Community School}, \url{http://oshkiogimaag.org/about_us} (last visited Aug. 8, 2014).} The school building is also non-traditional, using a technology-rich facility for classrooms while expanding the campus to include the Grand Portage Reservation with an emphasis on Anishinaabe culture.\footnote{\textit{Id.}} The Grand Portage school creates a system by which students can learn through the resources of the community and the natural environment.

Thirdly, the Minisinaakwaang Leadership Academy, a K-12 Charter School, is located on the Mille Lacs reservation in the middle west of Minnesota. The school has small class sizes and incorporates traditional teachings, such as beading and language on a year round basis.\footnote{Ambar Espinoza, \textit{Two charter schools work to preserve Ojibwe traditions}, MPR\textsc{news} (May 22, 2009), \url{www.mprnews.org/story/2009/05/22/ojibwe_culture}.} The original authorizer for the school was the College of St. Scholastica of Duluth, Minnesota, however the University of Minnesota-Duluth is the current authorizer, with the school chartered until the end of the 2014-2015 school year. Originally, Mille Lacs had two charter schools, the other being the Pine Grove Leadership Academy that opened

\begin{flushright}
96 \textit{Id.}
97 \textit{Oshki Ogimaag Community School}, \url{http://oshkiogimaag.org/about_us} (last visited Aug. 8, 2014).
98 \textit{Id.}
99 \textit{Id.}
100 Ambar Espinoza, \textit{Two charter schools work to preserve Ojibwe traditions}, MPR\textsc{news} (May 22, 2009), \url{www.mprnews.org/story/2009/05/22/ojibwe_culture}.
\end{flushright}
in August 2007 and closed May 25, 2012 when the school was unable to find an approved authorizer.101

Of note is a new school with a Dakota/Ojibwe language focus that will begin operating in the fall of 2014.102 The school is the Bdote Learning Center, named for “bdote,” which signifies the birth or place of origin of the Dakota people where the Mississippi and Minnesota Rivers meet.103 The K-8 school received the Minnesota Department of Education’s approval, and the sponsor is the Innovative Quality Schools (IQS), a non-profit, single-purpose authorizer based in Minnesota.104 The focus of the school is to “develop culturally aware, successful, high performing students by providing them with an academically rigorous education that is place-based and rooted in the language and cultures of indigenous people.”105

The chair of the Bdote School Board, Ms. Elaine Salinas helped establish the charter school. When asked what the challenges were to establishing the charter school with an Ojibwe/Dakota language focus, she specified a significant hurdle was working through the approval process.106 Due to Minnesota charter school law, Bdote had to work from the list of MDE approved sponsors to find a match thought suitable for the originators, the school and the sponsor. Through Innovative Quality Schools (IQS), a match was made. Initially,

102 Telephone Interview with Elaine Salinas, Chair, Interim Board Members (Jul. 14, 2014).
104 Id.
106 Salinas, supra note 102.
MDE denied the charter application, requesting more information on how the school would not market to a race-specific population given that public schools had to be open to all students. Through further discussions and clarification of enrollment, MDE gave approval to begin operations. The charter was authorized in 2012 and the school will be open for students in the fall of 2014.¹⁰⁷

Nationally, several charter schools stand out as examples of creating alternative educational opportunities. In Texas, in the Spring Branch school district, the KIPP Courage Charter School and the Landrum Middle school are in the same building.¹⁰⁸ The Washington Post’s annual high school rankings named the American Indian Charter School in Oakland, CA as the number one high school in the nation with a 100% graduation rate and a 100% advancement to college rate in 2014.¹⁰⁹ In Florida, the Seminole Tribe opened a Charter School on the Brighton Indian Reservation with Tribal approval, Glades County School Board approval of the Charter, and the Not-for-Profit Corporation, the Pemayetv Emahakv, Inc., managing the overall operations of the school.¹¹⁰

Recognizing a way to meet tribal educational needs, the Cherokee Nation has the distinct honor of becoming the first Native American tribe to authorize a charter school

according to the National Alliance for Public Charter Schools website. The school is the Tsunadeloquasdi Immersion School that serves pre-kindergarten through eighth grade. The school was originally established in 2008 but approved to operate as a charter school by the Oklahoma Department of Education for the 2011-2012 school year, and is required to follow curriculum and testing requirements established by the state.

As a legislative example, Arizona’s 1999 charter school law, had no cap on the number of schools allowed, had three public agencies that could authorize charter schools, and was open to allowing any person or group to start a charter school. Legislation must allow for flexibility in designing charters while balancing centralized versus decentralized control over the schools, a balance proving to be worthwhile since charter schools provide “the best opportunities” for reforming the education system.

The above highlighted schools and the legislative example are presented as options to consider in expanding Minnesota charter opportunities for Native American students. The model of each school offers insight on making changes within the charter legislation to allow Tribal communities to authorize their own schools. These charter schools offer a glimpse into the possibilities for Minnesota charter school changes.

111 Public, supra note 82.
112 Id.
113 E-mail from Neil Morton, Cherokee Language Immersion School staff, to author (June 25, 2014, 10:19 CDT) (on file with author).
114 Bielenberg, supra note 51.
115 Id.
Part IV Conclusion and recommendations

“Much of the harm inflicted upon Native peoples is being undone by Natives themselves - and yet the legal and financial resources needed to complete this task can only be found with the originator of the harm – the Federal government, which has a trust responsibility to Native peoples rooted in the Constitution, treaties, statutes, case law and other commitments.”116

Charter schools provide an option for Tribal communities to meet the demands for expanding tribal schooling opportunities within the BIE moratorium. A charter school also allows the Tribes to create pedagogy and curriculum that reflects the values and customs of that community, with research indicating that some public charter schools are showing success in raising Native student achievement.117 Changing legislation in Minnesota would be an important step in meeting the expressed desire of Tribes to have “tribal control over charter law.”118 As research indicates, not only changing what is taught but changing how it is taught is important in Native American education.119

Current Minnesota charter law does not adequately account for the unique relationship of Tribes to the state within the context of Tribal sovereignty. Thus, in order to make the equation more reflective of sovereign rights, the State of Minnesota would need to remove itself as the approval authority of charter contracts. The current legislation creates a higher government (Tribal) to lesser government (State) construct where the higher is asking the lesser for permission. Instead the approval of charter needs to be government to government – i.e., Tribal to Federal. The state should not be the final approver for Tribal governments in determining tribal education. Minnesota is home to

116 Agenda, supra note 85.
117 Public, supra note 82.
118 Ewing, supra note 59, at 72.
119 Bielenberg, supra note 51.
seven Chippewa (Ojibwe) Bands and four Sioux (Dakota/Lakota) Communities where, according to the 2010 census, Native Americans comprise about 1.3% of the state’s population of approximately 5.4 million. The current youth and future generations deserve opportunities that lead to better educational outcomes than the current outcomes.

The Ewing and Ferrick thesis included the following recommendations: “creating a forum for schools” to network; “conducting more research into effective practices;” “providing access to research resources;” and, “advocating for tribal control over charter law.” They rightly point out that Tribes in states that do not yet have charter school legislation but that have a significant Native population (e.g., Montana, Washington, South Dakota, and North Dakota) are in a position to advocate for control over the authorization of charter law in “recognition of a tribe’s legitimacy as an operative government,” without having to go through the state government.

As Ewing and Ferrick point out, more research is needed to determine if a national association or forum of Native American charter schools would be beneficial to the current charter community and the future charter school participants. A Native charter school network would be beneficial to both Tribes that have charter schools and those who desire to create such schools. Many states do have a state Indian Education Association, the

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122 Id. at 70-72.
123 Id. at 68.
124 Ewing, supra note 59, at 69.
125 Id. at 68-69.
information for which can be found on the Internet.\textsuperscript{126} Starting a charter network among Native charter schools utilizing this site could be a possible solution.

In addition to the Ewing and Ferrick recommendations, further research into the forty-two states and the District of Columbia that maintain charter school laws is needed to determine if, in those states, the Tribal governments are required to gain State authorization to operate a charter school. Further research is also necessary to determine how individual states that have charter legislation account for the authorization of charter schools on reservation lands.

Finally, research is needed to determine whether a federal or national organization would be a more appropriate authorizer (or sponsor depending upon State terminology) for Tribal charter schools. For example, having either the Bureau of Indian Education, or a national organization such as the National Indian Education Association, acting as the authorizer, would elevate the relationship to a federal or national agency level. Both of these organizations are familiar with Native educational issues, and understand the complexity of Tribal sovereignty.

School choice is consistent with this country’s democratic system and values. Today, advocating for an amendment to Minnesota’s charter school legislation provides a means by which marginalized populations can possibly benefit from twenty-first century educational opportunities. Including Tribal communities as authorizers can provide an opportunity for Native American education to be controlled by Tribal governments with the expectation that doing so will provide increased academic achievement for Native students. Understanding the origins of the Charter school legislation in Minnesota, \cite{National Indian Education Association, http://www.niea.org/Research/State-Native-Education-Associations.aspx (last visited on July 12, 2014).}
becoming familiar with Tribal sovereignty, and examining charter school examples can facilitate improvements in the current Minnesota charter school legislation.

Leadership will be required to enact this change. Senator Reichgott’s leadership style could be described as that of a visionary, or one who is able to “create and articulate a realistic, credible, and attractive vision of the future that improves upon the present situation.”

Her ability to continue working to affect the outcome of charter legislation embodies the visionary leader’s ability to “energize” people about the intended outcome of the goal. Her vision for the future of schools was introduced twice before its 1991 passage: once in 1989 and again in 1990, passing both years in the State Senate, but failed to attain support in the State of House of Representatives. During that time, the house introduced charter legislation, but mostly as an "aside" to the main education bill. The charter idea was "ready for prime time," when, in 1991, both the Minnesota house and Senate introduced outcome-based school legislation. Over twenty years later, charter schools continue to offer educational choice. As one of the leading visionaries, Ted Kolderie, noted, “[c]hange does come.” In the case of Native American communities, changes that improve student academic achievement outcomes can’t come fast enough.

128 Id.
129 JUNGE, supra note 4, at 90.
130 Id. at 91.
131 Id. at 88.
132 Id. at 287.