

Events Leading to the Passage of the Tribally Controlled Community College Assistance Act of 1978



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This study of the Tribally Controlled Community College Assistance Act was conducted to examine the American Indian constituent influence on the events that effected the development of this policy. Primary source documents and participant interviews revealed the constituent role and perspective of the American Indian Higher Education Consortium (AIHEC), the Executive Branch of the federal government, the United States Congress, and national Indian organizations. This study highlights the remarkable unity of purpose exhibited by the tribal colleges throughout this process, beginning with the initial proposal to Congress in 1974, and including the 1976 debates regarding tribal control, the enactment of Public Law 95-471 in 1978, and the awarding of grants in 1980.

Introduction

This article describes the events leading to the passage of the Tribally Controlled Community College Assistance Act of 1978, beginning with the formation of the American Indian Higher Education Consortium (AIHEC), a consortium of tribal colleges, in 1972, and ending with the passage of the tribal college law in 1978. The line of events has been reconstructed through the chronological frame provided by archival documents of the American Indian Higher Education Consortium and the United States Congress.¹ Special emphasis has been placed on the American Indian first person voice.

Methodology

Records of tribal colleges, AIHEC, the Executive Branch of the federal government, the Congress, tribal nations, and Indian organizations were analyzed

to acquire a legislative chronology, elicit constituent roles and perspectives, and identify policy elements. Second, formal naturalistic interviews were conducted with constituent representatives. The transcribed interviews were analyzed to interpret first person viewpoints and clarify primary source data. From these primary sources, the events of another time can be identified, analyzed, and better understood.

The American Indian Higher Education Consortium

A consortium of tribal colleges was organized in October of 1972 by six of the original tribal colleges: Sinte Gleska College (Rosebud, SD), Oglala Sioux Community College (Pine Ridge, SD), Turtle Mountain Community College (Belcourt, ND), Standing Rock Community College (Fort Yates, ND), Navajo Community College (Tsaile, AZ), and Hehaka Sapa College of D-Q University (Davis, CA). The meeting participants included David Risling (Hupa Tribe) of D-Q University; Gerald One Feather (Oglala Lakota Tribe) of Oglala Sioux Community College; Helen Scheirbeck (Lumbee Tribe) of the U.S. Department of Health, Education and Welfare—Office of Education; and Patricia Locke (Standing Rock Hunkpapa Lakota Tribe) of the Western Interstate Commission on Higher Education in Denver (Stein, 1988). The Consortium identified the need for operational support as an imperative for the continued survival of their institutions. In large part, the Consortium was born out of political necessity. Former Consortium executive director David Gipp termed the tribal college legislation “our central driving force” (D. Gipp, interview, December 1993; J. Shanley, interview, 1993). According to AIHEC leaders Risling and One Feather, the colleges shared five common traits :

- geographic and cultural isolation;
- Indian boards of regents or directors and a majority of Indian administrators and faculty;
- small student bodies ranging from 75 to 800 students;
- chronic underfinancing and funding unpredictability; and
- the student population and the Indian communities surrounding the institutions demonstrably from the lowest income areas in the United States. (Stein, 1998)

The fourth trait, the chronic underfinancing and unpredictability of funding, was the most compelling.

The initial meeting of the colleges resulted in two major decisions: first, the name of the organization, the American Indian Higher Education Consortium, and second, the need to develop an application for federal monies under Title III, Developing and Strengthening Institutions, of the Higher Education Act, administered by the U.S. Office of Education. Gerald One Feather of Oglala Sioux Community College was elected as the first president of the Consortium. Navajo Community College staff member, Gerald Brown (Salish, Kootenai, and

Oglala Lakota tribal member), was selected to assist with the proposal writing process and to serve as acting director of the Consortium. The members designated Navajo Community College (NCC) as the sponsor of the Title III project, for NCC was the eldest tribal college and was the preeminent model for the movement (Stein, 1988).

The American Indian Higher Education Consortium incorporated as a nonprofit corporation in June of 1973 in Denver, Colorado. Shortly thereafter, the Consortium was notified that it had received Title III funding. The assigned program officer was Frances Kelly. Kelly was instrumental in helping the tribal colleges gain status as minority serving institutions. Although none of the tribal colleges had achieved accreditation, Kelly was able to successfully negotiate funding for the tribal colleges. One of the conditions for this funding was that Navajo Community College serve as the host or grantee institution. In addition, two assisting institutions were assigned to the Consortium: The Native American Law Institute of Boulder and the Western Interstate Commission on Higher Education of Denver (WICHE; D. Gipp, interview, December 1993; P. Locke, interview, December 1993). These two institutions were to assist the colleges in structural development (D. Gipp, interview, December 1993; P. Locke, interview, December 1993). However, this funding contingency was unacceptable to the Consortium's board. The WICHE representative, Patricia Locke firmly believed in the importance of the supporting institutions (D. Gipp, interview, December 1993; P. Locke, interview, December 1993). During the ensuing two years, the Consortium and Locke struggled over the Consortium's plan to sever the contract with Locke. This eventually led to a split between the Consortium and Locke (J. Forkenbrock, interview, December 1993; D. Gipp, interview, December 1993; J. Shanley, interview, 1993).

The Consortium board members were strong and well educated Indian leaders. Former House Education and Labor staff assistant, John Forkenbrock, described the colleges' grassroots leadership as "non-conformists, academic and not afraid" (J. Forkenbrock, interview, December 1993). The Consortium board and staff were young, energetic, and committed to the development of their colleges (G. Tiger, interview, December 1993). The leadership shared a sense of education as a conduit to freedom, and they were all formally and well educated (J. Shanley, interview, 1993). Despite discouragement from federal agency officials, the Consortium leadership persisted with its legislative request. Gipp recalled, "If we had listened and accepted, we would have been beaten" (D. Gipp, interview, December 1993).

AIHEC gained an excellent reputation among the higher education community and in the United States Congress through the quality of service of professional staff members who represented the Consortium and the work of the board members (J. Forkenbrock, interview, December 1993). The colleges were directly involved in all Consortium aspects, and particularly profited from the programs in human resource and curriculum development. The Consortium organization was a cohesive unit that brought the member

colleges together through many difficult years of struggle (D. Gipp, interview, 1989; Stein 1988).

The Consortium's common denominator was the need to develop operational resources for the colleges. Reliable and predictable funding sources for the tribal colleges were in short supply. The AIHEC agenda was dominated by this constant threat to the general well being of the young AIHEC member institutions. The legislative process virtually overrode other areas of mutual interest and development for the tribal colleges. In 1974, the second board president, Lionel Bordeaux, and the Consortium's executive director, David Gipp, began a significant series of visits to the nation's capital to identify and develop federal support for the tribal colleges (D. Gipp, interview, 1989; Stein 1988).

Tribal College Funding Higher Education Act

As new and not yet accredited community colleges, all of the Consortium colleges had affiliated with well established colleges or universities in their respective regions or states. These affiliations typically involved shared student transcripts and instructional subcontracts for extension on the reservation. To support these fledgling institutions, the cooperating institutions sought operational funding (D. Gipp, interview, December 1993). The most common source of funding was Title III of the Higher Education Act, Developing and Strengthening Institutions. Several campuses also found the Fund for Improvement of Postsecondary Education helpful (D. Gipp, interview, December 1993; P. Locke, interview, December 1993). These multiyear grants were awarded to the cooperating or senior (and accredited) institutions and often entirely supported the tribal colleges' operations. Although Title III funds were integral to the tribal colleges' operations, the grants were short term, seldom extending beyond five years. Worse, the grants were competitive.

In 1973, the Consortium issued a position paper on Title III funding to the tribal colleges in the search for a legislative site for a potential amendment (W. Demmert, interview, December 1993). In this document, the colleges recounted that they had only become eligible for Title III funding under a waiver of the eligibility criteria.² It was becoming apparent that neither Title III nor the Higher Education Act were the appropriate place for the tribal college amendment (D. Gipp, interview, December 1993).

Snyder Act Funds

Four tribal colleges received Bureau of Indian Affairs (BIA) funds through the authority of the Snyder Act of 1923, the federal law that authorized virtually all-Indian programs. These four tribes and their tribal colleges designated categorical BIA higher education funding within the local BIA agency budget (D. Gipp, interview, December 1993). Through proper and timely funds designation, the colleges contracted with the BIA for higher education and adult education services. In January 1973, Sinte Gleska College and Oglala Sioux Community College received notice of Snyder Act fund suspension. Despite their specific and

timely funds designation (often three years prior to the fiscal year), the BIA Central Office in Washington, DC declined to continue funding these colleges. The remaining two colleges, Turtle Mountain Community College (Belcourt, ND) and Navajo Community College (Tsaile, AZ) continued to receive Snyder Act funds. The suspension of funds placed Sinte Gleska College and Oglala Sioux Community College in serious financial jeopardy.

Former Standing Rock Community College president, James Shanley, reflected on the rigid and paternalistic BIA administration of the Snyder Act resources (J. Shanley, interview, 1993):

The Snyder Act monies demonstrated a couple of things: first, that the federal sources could be used for tribal government's priorities; and second, that the BIA had the legislative authority to create or support model organizations like tribal colleges; and finally, that the BIA did not want autonomous organizations and jerked the funds back and forth each year to provide [show] their dislike.

The Snyder Act authorized virtually all the federal services and programs administered by the BIA to American Indians. Because of the apparent broad authority of the Snyder Act in Indian programs, AIHEC requested direct tribal college appropriations in the federal budget from the House Subcommittee on Interior Appropriations. As Dr. David Gipp recalled, "Lionel Bordeaux and I attended that markup session and in just 30 seconds, our numbers in the budget were simply passed over—nothing!" (D. Gipp, interview, December 1993). By 1974, the Consortium had concluded that the Snyder Act was not a feasible place for the tribal colleges amendment.

Indian Self-Determination

The Indian Self-Determination Bill and Act dominated the federal Indian legislative environment of the 1970s (D. Gipp, interview, December 1993). The National Congress of American Indians (NCAI), the oldest and most effective coalition of tribes, had dedicated many years to the formation of an acceptable concept of Indian self-determination that could translate into tribal contracting and control of programs. Many tribal governments had requested greater latitude of choice and control in general Indian affairs programming. South Dakota Senator James Abourezk campaigned and won his Senate seat in Indian country with the promise to transform the federal Indian relationship. Abourezk dedicated his one term in office to the Indian Self-Determination Act (J. Shanley, interview, 1993).

President Nixon moved forward with bipartisan allies in Congress to draft the Indian Self-Determination Act of 1975. For American Indian tribes, the issues of tribal independence and sovereignty were preeminent in all meetings in the 1970s (D. Gipp, interview, December 1993; J. Forkenbrock, interview, December 1993; J. Shanley, interview, 1993). The draft legislation contained language authorizing tribal contracting of BIA schools on or near reservations.

Tribal Colleges Propose Title II Amendment

The tribal colleges determined that the Indian Self-Determination Act, Title II, was an appropriate place for an amendment to fund tribally controlled colleges (D. Gipp, interview, December 1993). Lionel Bordeaux, president of the Consortium and Sinte Gleska College, testified before the Senate committee hearing in May of 1974. Bordeaux's testimony detailed the chronic underfinancing of tribal colleges and discussed the important mission of the tribal colleges in their tribal communities. In addition to the submission of prepared testimony, the Consortium obtained the professional assistance of Helen Sheirbeck, a Lumbee educator who had worked for Senator Sam Irvin of North Carolina.³ The "Prospectus on Tribal College Funding," authored by Scheirbeck, examined the federal educational authorities for potential legislative locations for the funding of tribal colleges.⁴

Tribal Colleges Gain Congressional Support

In South Dakota, during 1974, Senator Young supported a tribal college amendment to the Indian Self-Determination and Education Assistance Act. Senators Kennedy of Massachusetts and Jackson of Washington State recognized the needs of the tribal colleges, but concluded that there was not sufficient time for an amendment to the Act to provide substantive funding to the tribal colleges. Instead, Senator Jackson afforded the colleges a study provision and assigned the responsibility for this study to the Secretary of the Interior, Bureau of Indian Affairs.⁵ The Indian Self-Determination Act was enacted in January 1975, with the tribal college study provision in Title II.

Study Provision Contracted to Consortium

The Bureau of Indian Affairs awarded a contract to the Consortium for the study of the tribal colleges (D. Gipp, interview, December 1993). Even before the contract award, AIHEC instituted a data collection system in anticipation of the information and data collection required. Consortium staff members Perry Horse and Twila Martin implemented the design through consultation with tribal college officials and extensive cooperation with member colleges (D. Gipp, interview, December 1993). A complete study was submitted to the Bureau of Indian Affairs in May 1975. However, the BIA did not officially accept the study.⁶ The Senate Select Committee on Indian Affairs conducted oversight hearings on the Indian Self-Determination Act in September 1975, and the Consortium submitted a six-volume study with its testimony. The study established an extensive record of the tribal colleges that significantly affected the Consortium's legislative efforts (D. Gipp, interview, December 1993). Although the BIA would not officially submit the contracted study to Congress, the BIA acknowledged the existence of the study in testimony before the Senate Select Committee for Indian Affairs in 1975.⁷

Colleges Offer Technical Amendments

In March of 1976, the Senate Select Committee on Indian Affairs called oversight hearings for technical amendments to the Indian Self-Determination Act of 1975.⁸ Just 12 days before the Senate hearing, Patricia Locke of the Western Interstate Commission on Higher Education distributed a position paper on American Indian higher education and the Indian colleges bill. The paper was distributed to numerous federal executive and legislative branch offices as well as to Indian tribes and national Indian organizations. Locke charged that the tribal colleges bill undermined tribal sovereignty and self-determination. Locke further questioned the federal role in tribal institutional support, Indian colleges' potential proliferation, the naming of the specific colleges in the legislation, and the exclusivity of the tribal college concept approach.

In the oversight hearing, testimony opposing the tribal college legislation was delivered by the Secretary of Health, Education and Welfare, the U.S. Office of Education, the U.S. Office of Indian Education, the Secretary of the Interior, the Assistant Secretary of the Interior for Indian Affairs, and the Western Interstate Commission on Higher Education.⁹ The tribal colleges bill was an opposition target for almost every organization and office in Washington, DC, including some tribes and national Indian organizations. Those who supported the bill included the National Congress of American Indians, the American Association of Community and Junior Colleges, and the American Indian Higher Education Consortium.¹⁰

1976: A Year of Unresolved Issues

During 1976, progress toward a legislative authority for tribal college operational support slowed nearly to a halt. The context of the Indian Self-Determination policy was complicated and presented formidable obstacles for the tribal colleges. The Indian tribes had a full year of contention with the BIA over the new contracting authority leading up to the oversight hearings. The contentious atmosphere placed the tribal colleges on deeply contested ground (D. Gipp, interview, December 1993). Former consortium executive director David Gipp recalled the environment: "Due to constituent competition, we found our early strategy to amend [Public Law 93-638] 638 politically unfeasible" (D. Gipp, interview, December 1993). The oversight hearings in the Senate were a volatile and unfriendly environment for the tribal colleges. Former House Education and Labor Committee staff member John Forkenbrock reflected, "The timing was just too fast after 638, another phase, just too fast" (J. Forkenbrock, interview, December 1993).

In response, the Consortium explored another legislative option, an amendment to the U.S. Omnibus Education Act. Senator Kennedy's staff supported this strategy, along with Consortium member D-Q University.¹¹

However, the tribal colleges were a policy paradox. On the one hand, the tribal colleges were an exercise of Indian self-determination under federal Indian law. On the other hand, the tribal colleges were institutions of higher education

as defined by federal higher education law. The policy context of Indian law and higher education law were divergent. In 1976, the tribal colleges reached a stalemate over which federal executive department would be their policy and administrative home. Among Consortium members, the policy environments of Education and Interior were equally supported. Finally, in July of 1976, the issue came to closure when the primary congressional proponent for the Department of Education, Senator Edward Kennedy, declined to lend his support. As a result, the Department of the Interior became the administrative home.¹²

The National Congress of American Indians (NCAI) met in the fall of 1976. At this meeting, Locke submitted a resolution to the NCAI. The NCAI resolution generally supported the tribal colleges concept, but complained that the Indian Colleges Bill seriously undermined tribal sovereignty.¹³

In the fall of 1976, Jimmy Carter was elected to the White House. By December, the Consortium had submitted a position paper to the White House transition teams with regard to the needs of Indian colleges and the Indian Colleges Bill.¹⁴

Important Progress in the 95th Congress

The events of the 95th Congress were crucial to the life of the tribal colleges. The Senate passed the tribal colleges bill in November 1977 and the House of Representatives passed the bill in September of 1978. The 1977 version of the tribal colleges bill offered by Senator Abourezk included eligibility criteria, which replaced the names of specific tribal colleges. These criteria addressed the tribal control and sovereignty protection provisions brought forward by the NCAI and the National Tribal Chairmen's Association (NTCA). These criteria required a tribal charter, an all-Indian governing board, a majority Indian student body and accreditation standards.¹⁵ In the House of Representatives, new leadership in the House Advisory Group on Indian Education sought field-based solutions in Indian higher education and provided an important base for support of the tribal colleges (J. Forkenbrock, interview, December 1993).

The Tribal Colleges Bill in the Senate

The United States Senate Select Committee on Indian Affairs assigned a legislative analyst to verify the tribal colleges' needs and funding issues. Newly appointed Interior Secretary, Cecil Andrus, testified that "the Office of Management and Budget has no objections." The Carter transition team designated a joint acting appointment for Indian Education within the Office of Education, Department of Health, Education and Welfare, and the Department of the Interior, the Bureau of Indian Affairs. William Demmert, a Tlingit/Oglala Lakota and Harvard graduate, was appointed to this position. Demmert presented executive branch testimony in July 1977 with regard to "deferment on the tribal colleges bill, until the study provision in 93-638 could be completed."¹⁶

The Senate hearing included witnesses from Indian country. The president of the National Congress of American Indians, president Chuck Trimble of South

Dakota (Oglala Sioux tribal member), expressed support for the bill. The National Tribal Chairmen's Association (NTCA) cautioned against tribal contravention. By this time, the national Indian organizations had narrowed their objections to very specific language provisions (e.g., the potential proliferation of tribal colleges; the undermining of tribal sovereignty, etc.).¹⁷

Consortium legislative initiatives had started in the Senate Select Committee on Indian Affairs, due to the rapport the colleges had with committee members like Abourezk, and to the oversight jurisdiction of the committee. Support from Senators Abourezk, Young, and Jackson had netted the colleges a crucial study provision in the 1975 Indian Self-Determination Act (J. Shanley, interview, 1993). But following the study provision, progress in the Senate was slow. In 1977, the Chairman of the Advisory Study Group on Indian Education (ASGIE), Michae Blouin, wrote directly to Senator Abourezk about the slow up on the tribal colleges bill. After several weeks of silence, Blouin personally met with Abourezk and they learned that Senate committee staff had delayed the Blouin letter from getting to Abourezk. Abourezk expedited the process following this discovery (J. Forkenbrock, interview, December 1993).

The Consortium wrote to both sides of Congress and requested the tribal control and charters changes to be consistent throughout the bill. The fall conferences of the National Indian Education Association (NIEA) and NCAI highlighted the tribal colleges and identical resolutions were drafted and approved: "tribal prerogatives for postsecondary education delivery mechanisms" and "tribal control through charters." The resultant NCAI and NIEA joint testimony demanded direct funding to tribes and tribal charters to determine tribal control. The Senate passed the bill on November 4, 1977, on a unanimous consent vote.¹⁸

The House Subcommittee on Indian Education

Indian education was assigned to the House Committee on Education and Labor, which established a subcommittee on Indian Education in 1976. Committee Chairman, Kentucky Congressman Carl Perkins, appointed Congressman Lloyd Meeds of Washington State as chair of the new subcommittee. Subcommittee members included: Congressman Al Quie of Minnesota and Michael Blouin of Iowa (J. Forkenbrock, interview, December 1993). The subcommittee was delegated the expansive task of reviewing all federal Indian Education laws. The tribal colleges and their bill were among the subjects under review.

Shortly after his appointment to the subcommittee chairmanship, Congressman Meeds became embroiled in disputes over Indian fishing rights in his congressional district (in western Washington State; U.S. Civil Rights Commission, 1981). Meeds had been supportive of Indian issues and even informally agreed to sponsor the tribal colleges bill. Backlash from his constituents rose to a crescendo just as Meeds was up for reelection. Meeds barely won, and attributed his near loss to the Indian fishing rights controversy and nonvoting Indian constituents (D. Gipp, interview, December 1993; G. Tiger,

interview, December 1993). As a result, Meeds resigned from all committee assignments related to Indian affairs, including the House Subcommittee on Indian Education. Less the Meeds membership, the subcommittee was reduced to the status of an advisory study group.

The ASGIE went to Indian reservations and visited tribal schools, adult education projects, and Head Start projects. ASGIE Chairman Blouin was deeply committed to grassroots knowledge and expertise, and as a rule of operation held field-based information in the highest regard (J. Forkenbrock, interview, December 1993). The ASGIE co-chairman, Quie, was morally committed to the concept of tribal sovereignty and had been involved with Indian constituent concerns for many years (J. Forkenbrock, interview, December 1993).

At the suggestion of the Consortium, the ASGIE convened a hearing on the "Federal Role in Indian Postsecondary Education."¹⁹ The forum drew testimony from every major Indian organization, as well as the tribal colleges.²⁰ The hearing record built during this testimony was substantial, and of significant and positive value to the cause of tribal colleges.

The House held a hearing on the Tribally Controlled Community Colleges Assistance Act of 1977, on October 13, 1977. The Consortium presented a panel of hearing witnesses led by the Consortium's president, Phyllis Howard (Hidatsa tribal member and president of Fort Berthold Community College in North Dakota). The NIEA, NTCA and NCAI joint testimony was presented by Lucille Echohawk, Pawnee Indian from Denver and secretary of the National Indian Education Association. Echohawk requested direct funding to tribes for the tribal colleges and funding equity among the tribal colleges. The organizations emphasized the requirement for tribal choice in delivery mechanisms for higher education.²¹

The tribal colleges bill drew strenuous opposition from Michigan Congressman William Ford, a Democrat. Congressman Ford was the chairman of the House Subcommittee on Postsecondary Education. In January 1977, Ford presented a letter of opposition to the Subcommittee.²² House committee staff member John Forkenbrock recalled that Ford referred to the tribal colleges legislation as "the worst piece of legislation he had ever seen" (J. Forkenbrock, interview, December 1993). Ford was a liberal Democrat whose concept of American civil rights and American minorities was in the context of integration. The tribal colleges served only one racial group, when Ford's higher education legislative interests were to bring American people together.²³ Ford also criticized the potential proliferation of tribal colleges and their incumbent high costs. Fortunately, the political strength of Perkins, Blouin, and Quie effectively reduced the Ford opposition. Although reluctantly, Ford eventually voted for the bill (J. Forkenbrock, interview, December 1993).

In February of 1978, Congressman Blouin reintroduced the tribal college bill H.R. 11104. Hearings were conducted in May, and Leroy Clifford, the new AIHEC executive director and an Oglala Lakota from Pine Ridge, South Dakota, led a panel of tribal college witnesses.²⁴ During the House Committee hearings,

Interior Secretary James Joseph opposed enactment of this bill. The Secretary of the Department of Health, Education and Welfare, Joseph Califano, expressed opposition, while the BIA Director of Indian Education, Dr. William Demmert, deferred taking a position on the bill pending the completion of the study provision from the 1975 amendment to P.L. 93-638.²⁵

White House and Executive Branch Responds

Encouraged by legislative progress in Congress, the Consortium secured a meeting with the White House staff person assigned to Indian issues. Sinte Gleska College president, Lionel Bordeaux, and Standing Rock Community College president, James Shanley, recalled their visit to the White House in February 1978. President Shanley asked the White House staff member how she came to be in charge of Indian Affairs. Her reply was, "I was assigned domestic issues starting with H, I and J; I handle homosexuals, Indian and Jewish affairs." Although the American Association of Community and Junior Colleges had commended the tribal colleges bill to the White House²⁶ and the Consortium did have a knowledgeable White House supporter in Vice President Mondale (Stein, 1988), the task of educating the White House staff seemed difficult at best.

In August 1977, executive branch representatives from the Bureau of Indian Affairs; the Department of Health, Education and Welfare; and the Office of Management and Budget met with the Consortium and congressional staff members. The executive branch representatives proposed a substitute bill with several provisions that departed substantially from both the Senate and Hill versions of the bill. The new elements proposed included short-term funding authority, capitation (per capita) funding, BIA right of refusal to fund, elimination of construction funds, elimination of the Navajo Community College Act, competitive grant awards, and a required tribal funding match. The Consortium, allied with House staff Alan Lovesee, successfully resisted most of the proposed changes. However, some of the proposed concepts were included: capitation funding, elimination of construction, and short-term authorization. Although, these exceptions were sacrifices for the tribal colleges and the house staff members, this helped to ensure that the Executive Branch would change its position on this bill to a position of "no objections." This was crucial to the success of the bill.²⁷

The House Report and Congressional Intent

The House Committee on Education and Labor, chaired by Congressman Perkins, reported the tribal college bill out of Committee in August 1978, with the capitation funding concept, an FTE (full-time equivalent) formula for funding, no construction support, eligibility criteria that included tribal charter provisions, institutional accreditation, tribal members in majority on the tribal college governing board and in the tribal college student body, and short-term authorization (three years). The report was clear about the policy context in which this legislation was developed, that of Indian law (House Report, September 1978):²⁸

Under special trust relationship to Indian tribes as a source of funding, as States or local governments stand with regard to their own schools; . . . this is an intensification of existing federal commitment, . . . there should be no doubt in the eyes of the Higher Education Community that H.R. 9158 is a program built around the special legal responsibility that exists between the federal government and Indian nations. (pp. 16-17)

Congress had expanded the Indian policy boundaries, intensifying the federal commitment, based on the precedents from the past. The tribal college legislation was not a part of the greater federal policy in higher education, in the context of the Higher Education Act (HEA). The Committee analyzed the existing federal higher education programs.²⁹

Existing legislative programs, even with modification, cannot meet the needs perceived. Existing titles under the Higher Education Act which could provide assistance to tribally controlled community colleges include Title III (Strengthening Developing Institutions), Title I (Community Colleges), Title IV, Subpart 6 (Assistance to Institutions of Higher Education) and Title VII (Construction, Reconstruction and Renovation of Academic Facilities). . . . Title III is a discretionary program which provides assistance for development but not for basic expenses. . . . Even if more funds from Title III were to go to tribally controlled institutions, it would still not meet the need for basic operational money or provide continued annual support. (p. 10)

The report described the two most important definitions in the bill; the first was “institution of higher education” (Section 2(5)). The HEA definition was adopted; however, clause two of the definition, dealing with State requirement, was excluded. The Committee made clear that

. . . tribal governments are to be allowed to structure the governing boards and chartering instruments of their school to fit their needs and wishes, provided that: 1) there is an element of true control vested in the tribal council; 2) all requirements of this Act are fulfilled; 3) the action establishing a college or giving a tribal sanction to an institution is a formal action agreed to by a majority of the governing body of said tribe. (p. 19)³⁰

The U.S. House passed the bill on September 26, 1978, and the Senate concurred on October 3, 1978. President Jimmy Carter signed the bill into law on October 17, 1978.

Rules and Regulations and Appropriations

With authorization accomplished, the Consortium began to tackle rulemaking and appropriations. The rulemaking was delegated to the Secretary of the Interior and entailed the convening of tribal consultations, publication of drafts, acceptance of public comments, and final publication of rules.³¹ Appropriations for the new tribal college act was a congressional responsibility, one that started in the Subcommittee for Interior Appropriations on both sides of Congress, and, in this specific Indian-related legislation, the Senate Select Committee on Indian Affairs. Both rules and regulations and appropriations needed completion prior to the first check delivery.

In anticipation of the rulemaking process, the Consortium drafted rules and regulations and made them available to the Interior's organized consultation task force that began meeting in January 1979.³² Known as Task Force #12, the tribal college act rulemaking committee deliberated for six months. The Bureau of Indian Affairs determined the task force membership, through a nomination process.³³ Half of the members were tribal college representatives; other members were Indian people from tribes and organizations. The sessions were public, and Locke of WICHE continued to visit the task force meetings, questioning and issuing cautions about the funding mechanisms, the eligibility criteria and the college charter format. Finally, however, the tribal colleges rules and regulations were promulgated on October 28, 1979, a full year after President Carter signed the bill into law.³⁴

A serious part of the tribal colleges' destiny was held in the Interior appropriations committees. As early as March of 1979, the Consortium filed funding requests, an add-on request for the tribal colleges for fiscal year 1980.³⁵ The Consortium testified in the Senate in June 1979 and asked for \$7.8 million for college operations and technical assistance. To achieve the appropriations for the tribal colleges, the Consortium met and corresponded extensively with the staff members of the appropriations committees and respective members of Congress.³⁶

Colleges Meet the Feasibility Test

The new law provided for an Indian organization to perform the feasibility studies and review on each tribal college campus. The BIA retained the Consortium to perform these studies. Teams of tribal college professionals commenced feasibility reviews beginning with the first application for feasibility submitted by Sinte Gleska College on March 18, 1979. The feasibility design had been generated by Interior Task Force #12 during the development of the rules and regulations and was a 50-page evaluative instrument.³⁷ Despite the complications, the first grant awards were made on May 23, 1980, to three colleges: Nebraska Indian Community College, Standing Rock Community College, and Turtle Mountain College. Eleven awards were made during fiscal year 1981 (Olivas, 1984).

Conclusion

The tribal colleges began a difficult journey when they sought federal legislation to support their new and developing tribal community colleges. The federal executive branch, the Department of Interior, and the Department of Health, Education and Welfare were consistent in their opposition to the proposed legislation, finally softening to a position of deferment during the 95th Congress. The Office of Education, Department of Health, Education and Welfare, and the chairman of the House Subcommittee on Postsecondary Education held fast to the established federal higher education quality assurance process, that of accreditation. The congressional review and approval of the bill placed the legislation in the policy field of Indian law, as described in the House Report of September 1978. The August 1978 meeting of executive branch representatives with the House staff and the consortium colleges cast several conditions on the

act that included funding by capitation at a maximum of \$4,000, a facilities survey, and short-term authorization.

The national Indian organizations were generally supportive of the tribal colleges bill, but were preoccupied with provisions that would meet the test of tribal sovereignty and control in the context of the Indian Self-Determination Act. The coalition of the National Congress of American Indians, the National Tribal Chairmen's Association, and the National Indian Education Association determined to define the issues of tribal control. The pivotal leadership of WICHE's Patricia Locke influenced the congressional deliberations, and the participation of the national Indian leadership in the hearing process. Although the concepts of tribal control were thoroughly defined through this deliberative period, the deliberation lasted nearly a year, at the expense of the tribal colleges and their much needed operational resources.

The American Indian Higher Education Consortium began the process of building federal resources for its member institutions with a two-paragraph amendment to the Indian Self-Determination bill in 1974. The Tribally Controlled Community Colleges Assistance Act of 1978 was signed by President Carter in October 1978. The Department of Interior commenced rulemaking consultations with the tribal colleges and tribal representatives. The Subcommittees for Interior Appropriations deliberated and returned appropriations for funding of the tribal colleges. The Interior issued a contract to the Consortium to perform all the feasibility studies in the local tribal college campuses. The first checks were issued in May of 1980 and marked the successful achievement of federal operational resources for the nation's tribal colleges. The American Indian Higher Education Consortium in effective partnership with the Congress had forged federal Indian higher education policy within federal Indian policy; a policy that would provide the lifeline for the tribal colleges.

Janine Pease-Pretty On Top (Crow/Hidatsa) resides on the Crow Reservation. As Little Big Horn College founding president, she lent leadership to accreditation, established a Crow culture-centered curriculum, and built a quality educational facility (1982-2001). As American Indian Higher Education Consortium president (3 years) and treasurer (8 years), she testified before Congress on TCU development, and helped charter the American Indian College Fund. She holds higher education master's and doctorate degrees from Montana State University and is a 1994 MacArthur Fellow. Pease-Pretty On Top is a full-time consultant with the nation's tribal colleges.

Endnotes

¹Many of the documents cited by the references in this article are housed in the archives of Oglala Lakota College, located in Kyle, South Dakota, as well as in the Congressional Record. For additional information regarding Oglala Lakota College, please visit <http://www.olec.edu/>

²Information contained in AIHEC Prospectus entitled *Legislative Options for Indian Colleges*, December 1974.

- ³Information obtained from AIHEC Prospectus, December 1974 and interview with D. Gipp, 1993.
- ⁴Information obtained from testimony by L. Bordeaux to House Committee, 20 May 1974.
- ⁵Letter from Senator H. M. Jackson to AIHEC, 4 April 1974.
- ⁶Information contained in AIHEC Report to Congress as requested by P.L. 93-638, Section 3302 (4): A Specific Program to Assist the Development and Administration of Indian Controlled Colleges, 30 January 1976.
- ⁷T. Atcity testimony, on behalf of AIHEC, to the House Subcommittee on Postsecondary Education, September 1975.
- ⁸Senator J. Abourezk sponsored the tribal colleges amendment (L. Clifford letter to W. Ford, 28 February 1978). The ten-page "Indian Postsecondary Educational Assistance Act of 1975" included a three-year authorization, a facilities survey, installment payments, equitable distribution of funds, and listed eligibility criteria for tribal college participation (AIHEC Summary Letter, March 1976).
- ⁹Information obtained from M. Thompson, U.S. Department of the Interior, letter to Senator H. M. Jackson, Senate Committee Chair, 12 March 1976; D. J. Mattheis, Executive Deputy Commissioner of Education, U.S. Department of Health, Education and Welfare, testimony on S. 2634 to Subcommittee on Indian Affairs, and the Committee on Interior and Insular Affairs, 15 March 1976; and P. Locke testimony, "Indian Postsecondary Colleges," submitted to the Senate Interior and Insular Affairs Committee, March 1976.
- ¹⁰Information obtained from the following: D. Gipp, interview, December 1993; P. Locke testimony, March 1976; Interior testimony, March 1976; AIHEC testimony to the Senate Select Committee on Indian Affairs, 15 March 1976; and summary letter from R. Nichols to AIHEC, 18 March 1976.
- ¹¹Information obtained from notes taken during a telephone conversation between AIHEC staff and Senator Kennedy's office, 26 July 1976.
- ¹²Information obtained from minutes of AIHEC conference call, 26 July 1976; and D. Gipp interview, December 1993.
- ¹³Information obtained from interview with D. Gipp, December 1993, and 1976 Resolution by the Education Concerns Committee of NCAI.
- ¹⁴Information contained in AIHEC position paper (1976) and unpublished document entitled *Information on the Indian College Bill* (1976).
- ¹⁵Information obtained from E. Horse memorandum to AIHEC, 15 June 1977, and letter from Senator J. Abourezk to colleagues, 8 March 1977.
- ¹⁶Information obtained from the following: Report conducted by J. Stedman for the Department of Health, Education and Welfare entitled *The Indian Controlled Postsecondary Educational Institutions Assistance Act (S, 1215)- An analysis of Selected Issues*, 14 June 1977; letter from C. Andrus, U.S. Department of Interior, to Senator J. Abourezk, 27 July 1977; W. Demmert, interview, 1993; and W. Demmert, U.S. Department of Interior, Bureau of Indian Affairs, testimony to the Senate Select Committee on Indian Affairs, 28 July 1977.
- ¹⁷Information obtained from NCAI testimony, July 1977 and testimony by R. Snake on behalf of the National Tribal Chairmen's Association to the House Subcommittee on Elementary, Secondary and Vocational Education, 19 May 1977.
- ¹⁸Information obtained from the following: NCAI testimony, July 1977; P. Horse memo on behalf of AIHEC to ASGIE staff, 6 September 1977; National Indian Education Association, Policy Resolution No. 8, 20 September 1977; National Indian Education Association, Resolution 15-77, "Support for Tribally Controlled Higher Education Programs," 10 November 1977; and National Congress of American Indians, Statement to House Advisory Study Group on Indian Education, House Education and Labor Committee, 30 September 1977.
- ¹⁹AIHEC testimony to the House Subcommittee on Elementary, Secondary and Vocational Education, and the House Advisory Study Group on Indian Education, 19 May 1977.

- ²⁰Information obtained from testimony by P. Locke on behalf of the National Indian Education Association to the House Advisory Study Group on Indian Education, House Education and Labor Committee, 19 May 1977; and R. Snake's testimony on behalf of the National Tribal Chairmen's Association to House Subcommittee on Elementary, Secondary and Vocational Education, 19 May 1977.
- ²¹Information obtained from National Congress of American Indians, testimony with the National Indian Education Association on H.R. 9158 to the House Education and Labor Committee, 13 October 1977.
- ²²Letter from Congressman W. Ford to House Subcommittee on Postsecondary Education, January 1977.
- ²³Letter from Congressman Williams to House Subcommittee on Postsecondary Education, January 1977.
- ²⁴Letter from L. Clifford to W. Ford, 28 February 1978.
- ²⁵Information contained in letters from J. Joseph (letter dated May 26, 1978), Interior Secretary, and Joseph Califano (letter dated June 7, 1978); U.S. Department of Health, Education and Welfare, to Congressman C. Perkins. Letters were in response to a request for a "position" on the Tribal College Act from the House Education and Labor Committee. The Califano letter was later submitted as testimony. Information also contained in William Demmert's (U.S. Department of Health, Education and Welfare, Office of Indian Education) testimony to House Committee on Education and Labor, June 14, 1978.
- ²⁶Letter from J. Tirrell of the American Association of Community and Junior Colleges (AACJC) to W. Cable, White House Staff, 26 July 1978.
- ²⁷Information contained in AIHEC discussion notes, *Reaction to OMB/BIA Alternative to H.R. 9158*, 1, 2 August 1978.
- ²⁸House Educational and Labor Committee. *House Report on the Tribally Controlled Community Colleges Assistance Act of 1978*, September 1978.
- ²⁹House Report, 1978.
- ³⁰House Report, 1978.
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- ³²Bureau of Indian Affairs. Task Force Implementation Plan, 21 February 1979.
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