

4-1-2023

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Recommended Citation

Karen E. Lillie, *Returning Control to the People: The Native American Languages Act, Reclamation, and Native Language Teacher Certification*, 71 Buff. L. Rev. 289 (2023).

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Buffalo Law Review

VOLUME 71

APRIL 2023

NUMBER 2

Returning Control to the People: The Native American Languages Act, Reclamation, and Native Language Teacher Certification

KAREN E. LILLIE†

INTRODUCTION

In 1990, Congress passed the Native Americans Languages Act (NALA), recognizing that “the status of the cultures and languages of Native Americans is unique” and—critically—that the United States “has the responsibility to act *together* with Native Americans” to ensure that the languages and cultures of the Native People will “surviv[e].”¹ This Act articulated that the United States must “preserve, protect, and promote”² Native languages and cultures in recognition of the rights and freedoms

† Associate Professor, State University of New York at Fredonia. J.D., 2022, University at Buffalo School of Law. I thank anyone who has worked tirelessly to ensure Native languages are used and learned, particularly those with whom I have had the pleasure to work. To those who have pushed for the establishment of recognition in New York State, specifically, Trudy Jackson, Jan:os Bowen, and other members of the Seneca Nation Onöndowa'ga:', Charles Rinaldi, as well as, of course, Dr. Kate Mahoney—we are almost there after a decade of work. Appreciation also to Patrick Callahan, Joseph Donaldson, Ron Oakes, and Matthew Mason for their fine attention to detail as we proofed this piece.

1. Native American Languages Act, 25 U.S.C. § 2901(1) (emphasis added).
2. 25 U.S.C. § 2903(1).

Native³ People should have afforded to them in “us[ing], practice[ing] and develop[ing]” their languages,⁴ not just by virtue of their sovereignty status,⁵ but particularly because of the U.S. government’s heinous treatment inflicted upon

3. Often the term *Indigenous* is used when referring to peoples who are the original inhabitants of an area, and *American Indian* is used when speaking specifically of the Native population in the present-day United States who were here when Europeans arrived. See, e.g., *Terminology: Teaching and Learning About Native Americans*, NAT’L MUSEUM OF THE AM. INDIAN, <https://americanindian.si.edu/nk360/faq/did-you-know> (last visited May 28, 2022); *Native American and Indigenous People FAQs: What Is the Proper Terminology: Indigenous, Indigenous Peoples, Native American, or American Indian?*, UCLA EQUITY, DIVERSITY & INCLUSION, <https://equity.ucla.edu/know/resources-on-native-american-and-indigenous-affairs/native-american-and-indigenous-peoples-faqs/#term> (last visited May 28, 2022). In this Comment, the term *Native* will be used throughout to refer to the tribal governments, communities, and Sovereign Native Nations here in the United States. I use this rather than *Native American* or *Indian*, because there is a divide as to which term is preferred. See Elizabeth A. Reese, *The Other American Law*, 73 STAN. L. REV. 555, 558 n.6 (2021). I also use *Native* rather than *Native American* even though the focus of this Comment is focused on states in the U.S. context in recognition of the fact that for some tribes, their “borders” do not align with currently defined borders demarcating countries or states. See, e.g., Joshua Keating, *The Nation That Sits Astride the U.S.-Canada Border*, POLITICO MAG. (July 1, 2018), <https://www.politico.com/magazine/story/2018/07/01/akwesasne-american-indian-community-218936/> (noting how the Akwesasne are situated in what is known as the United States and Canada); see also Alianza Indígena Sin Fronteras & Christina Leza, *Handbook on Indigenous Peoples’ Border Crossing Rights Between the United States and Mexico* 1, 2, <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Call/IndigenousAllianceWithoutBorders.pdf> (last visited May 28, 2022) (articulating there are at least seven groups that are impacted by the Mexico-U.S. border). European colonization created artificial borders on lands with the Jay Treaty of 1794, reiterated in the Treaty of Ghent, maintaining the right of Native tribes to move freely across the new border between Canada and the United States for the purpose of commerce. Rachael Marchbanks, *The Borderline: Indigenous Communities on the International Frontier*, 26 J. AM. INDIAN HIGHER EDUC., Feb. 19, 2015, <https://tribalcollegejournal.org/borderline-indigenous-communities-international-frontier/>. There are approximately 25 tribes and 200 miles of international borderlands. *Id.*

4. 25 U.S.C. § 2903(1).

5. The Constitution acknowledges the sovereignty Tribal groups have in the Commerce Clause. See U.S. CONST. art. I, § 8, cl. 3 (“Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . .”).

them.⁶

One way of ensuring language survival is, obviously, to increase the number of speakers. Language instruction as a means of that goal should be provided in any school setting—meaning both public preK-12 institutions and those on tribal lands—yet many states do not include Native languages as even an option for students in schools.⁷ Furthermore, many states do not provide a way for teachers to become licensed or certified to teach the languages they know, even were the languages to be offered. Since many Native languages have few speakers remaining, or may actively be in the process of reclaiming⁸ their language before it is lost to future generations, it is imperative that states recognize the barriers they put in place that prevent Native groups from being able to fully realize their language’s survival in what is a predominantly English-speaking country.⁹ The sovereignty of Native tribal groups needs to be remembered and respected; the value of Native languages—which are inherently culturally-tied—needs to be recognized as separate and distinct from foreign languages;¹⁰ and Native

6. See *infra* Part I.

7. *Native languages* will be used to refer to the languages of Native communities and is not to be confused with the concept of “native language,” a term used in language acquisition fields to delineate what constitutes a first language (or 1L) for second or multi-language learners. See, e.g., MURIEL SAVILLE-TROIKE & KAREN BARTO, *INTRODUCING SECOND LANGUAGE ACQUISITION 4* (3d ed. 2016).

8. *Language reclamation* is the preferred term used in this Comment, for reasons discussed more thoroughly *infra* Part I.

9. It is important to point out a caveat here that English is not the official language of the United States. In fact, the United States has no official language. Terrence G. Wiley & Wayne E. Wright, *Against the Undertow: Language-Minority Education Policy and Politics in the “Age of Accountability,”* 18 *EDUC. POL’Y* 142, 144 (2004).

10. *Foreign languages*, also referred to as *world languages*, within the United States are any language that is not English. These languages are more commonly taught, such as Spanish and French, or deemed important for the defense of our country on an international scale (e.g., Arabic, Mandarin). While this Comment argues about Native languages in particular, it should be noted that a 2017 report documented that only 20 percent of all students across the United States in K-12

languages must be supported by any means possible. States can assist in this if they embrace NALA and make adjustments so that Native languages and Native language teachers are welcomed and seen as equal.

Across the United States, teacher certification requirements¹¹ are articulated by the State agency that oversees education, rather than by the federal Department of Education. Any teacher, regardless of specialization area, needs to have a certificate of some sort in order to conduct classroom instruction within a public school. For future teachers of foreign languages,¹² like any other certification, there are established pathways in place to become licensed and recognized as teachers. Entire school departments can be devoted to these “world” languages.¹³ These languages typically are valued and seen as a way to increase American children’s competitiveness in the world, and so there are entire organizations devoted to increasing K-12 instruction in these languages.¹⁴ However, the same cannot be said for many prospective Native languages.

The overall lack of Native language instruction in public

are enrolled in a foreign language, and sixteen states do not require any language instruction for graduation. See AM. COUNCILS FOR INT’L EDUC., THE NATIONAL K-12 FOREIGN LANGUAGE ENROLLMENT SURVEY REPORT 6 (2017), <https://www.americancouncils.org/sites/default/files/FLE-report-June17.pdf>.

11. To become a teacher, every state requires a professional license, certificate, or credential that is recognized by that state. The terms are interchangeable and vary depending on where one works in the United States. See, e.g., *2022 Teacher Certification (Complete Guide)*, TEACH, <https://www.teach.org/becoming-teacher/teaching-certification> (last visited May 28, 2022).

12. Again, the more traditionally considered languages of foreign language instruction are French, Spanish, or similar.

13. The languages that are more commonly taught in K-16 environments are often housed in departments called either Foreign or World Language Departments. These departments have their own set of standards to be taught and met by students, just as any other content area like math, English, or science would. The irony is that when labeled as such (“world”) they are all-world-encompassing and not accounting for many of the languages in their own backyard.

14. Like the American Council on the Teaching of Foreign Languages, accessible at <https://www.actfl.org/> (last visited May 28, 2022).

schools¹⁵ is indicative of, perhaps, how most states do not value or recognize the validity or importance of Native languages. This devaluation extends to teacher certification: less than half of states have a pathway for Native language teachers to become state-certified in their Native language.¹⁶ This is a problem because NALA clearly articulates and strongly encourages that states make exceptions regarding teacher certification so as to assist in maintaining and reclaiming Native languages.¹⁷ It is almost as if states, educators, and professionals involved in the teacher certification process do not know NALA exists.

Because many states do not make allowances for incorporating Native languages into their statutes regarding teacher certification, Native language teachers face obstacles that other teacher candidates do not. The barriers in place are a major hindrance on many levels, especially when one considers that many fluent Native language speakers are Elders.¹⁸ The entire state-determined teacher certification process is systemically keeping Native populations from providing Native language instruction in public schools to future generations of potential speakers—in direct opposition to NALA’s purpose and goals.

This Comment argues that to help promote the vitality of Native languages, states need to follow the articulations

15. See U.S. DEP’T OF EDUC., NAT’L INDIAN EDUC. STUDY 2015: A CLOSER LOOK (2015) [hereinafter CLOSER LOOK], <https://nces.ed.gov/nationsreportcard/subject/publications/studies/pdf/2019048.pdf>.

16. See Haley De Korne, *Allocating Authority and Policing Competency: Indigenous Language Teacher Certification in the United States*, 28 WORKING PAPERS IN EDUC. LINGUISTICS, Spring 2013, at 23, 27–29; MELODY L. MCCOY, NATIVE AM. RTS. FUND, INDIAN EDUCATION LEGAL SUPPORT PROJECT 1 (2003).

17. See 25 U.S.C. § 2903(2).

18. The term Elders refers to those in tribal communities who are most often of more advanced age, are treated with immense respect, and who are seen as wisdom keepers. See, e.g., *Elders*, NAT’L CONG. OF AM. INDIANS, <https://www.ncai.org/policy-issues/education-health-human-services/elders> (last visited May 28, 2022); *Elders*, WE R NATIVE, <https://www.wernative.org/articles/elders> (last visited June 26, 2022).

and recommendations outlined in NALA and must either create or refine pathways for Native language teacher certification before these Native languages are lost. This may be done by amending existing statues around certification or creating new ones.

Part I of this Comment discusses the history and present status of Native languages in the United States, and what happens when languages are lost to future generations. Solidifying this background provides a basis for why NALA came to be and why it is critical that there are more teachers certified in their Native languages. Part II explains NALA, the foundation on which the argument for Native language teacher certification will be made.

Part III examines the process of teacher certification, generally, which is similar across the states in regard to typical licensure components. This Part points out any power the Federal government has over teacher certification via the U.S. Department of Education and highlights the control states have in dictating and in being gatekeepers over who is eligible for certification. As a point of focus, the Part talks specifically about Native teachers and their certifications, or lack of, in their Native languages. Next, in Part IV, states' policies regarding teacher certification and Native languages are illuminated and examined as to whether or not they have aligned with NALA. This Part shows how there is a range of governance models in approaching the teacher certification crisis, some of which are more primed to help states meet the goals outlined in NALA. Part V concludes with the argument that, at a minimum, we need a co-governance model in place. Such a model would ensure that Native language teachers have a pathway to state-recognized teacher certification in public schools while simultaneously ensuring tribes have power in establishing that determination. That may mean, in many cases, that statutes must be written or regulatory adjustments made.

I. NATIVE LANGUAGES IN THE UNITED STATES:
LINGUISTIC GENOCIDE

Languages are being lost at a rapid pace in the United States. The reason there is such widespread language loss is because of “federally attempted ethnicide and linguicide,”¹⁹ much of which was via the establishment of Indian Boarding Schools. The use of schools was a means to deculturize Native children and prevent any “future challenges from the vanquished.”²⁰ These schools were places where Native children would be stripped of their language and culture by being, often forcibly, removed from their homes.²¹ It was assumed that stealing children away, by keeping them separate and apart from their support systems and families,

19. Tiffany S. Lee & Teresa L. McCarty, *Upholding Indigenous Education Sovereignty Through Critical Culturally Sustaining/Revitalizing Pedagogy*, in CULTURALLY SUSTAINING PEDAGOGIES: TEACHING AND LEARNING FOR JUSTICE IN A CHANGING WORLD 61, 63 (Django Paris & H. Samy Alim eds., 2017). Linguicide is the extermination of languages, usually caused by an outside force. TOVE SKUTNABB-KANGAS & ROBERT PHILLIPSON, *Linguicide*, THE ENCYCLOPEDIA OF LANGUAGES AND LINGUISTICS 2211 (1994) (“Linguicide, by contrast, implies that there is an agent involved in causing the death of languages.”).

20. JOEL SPRING, DECULTURALIZATION AND THE STRUGGLE FOR EQUALITY 39 (8th ed. 2016) (noting that it was not enough to eradicate the Native population with armed conflict so the shift to education began).

21. John E. Silverman, Note, *The Miner’s Canary: Tribal Control of American Indian Education and the First Amendment*, 19 FORDHAM URB. L.J. 1019, 1022 (1992). Children schooled at these off-reservation boarding schools were taught in a paternalistic approach, and the schools’ removing the trace of all things Indian showed how Natives were seen as inferior. *See id.* Children were sometimes sent to live there by their parents, but many times children were kidnapped from their homes and taken to schools thousands of miles away. *Id.*; *see also* Lisa L. Atkinson, *Best Interest of the Child: A Tribal Judge’s Perspective*, 58 JUDGES’ J., no. 1, Winter 2019, at 6, 7 (detailing how some parents would resist but government officials would withhold rationing until the children were sent to the schools). At these schools, children were beaten and chastised if they did anything remotely resembling how they lived on their Native lands, and they had elements of their culture and heritage taken from them in horrific ways—such as the cutting of their hair. Cutting hair was a terrible thing, as many Native groups consider hair sacred and an emblem of their identity. *See* Barbie Stensgar, *The Significance of Hair in Native American Culture*, SISTER SKY (Jan. 4, 2019), <https://sistersky.com/blogs/sister-sky/the-significance-of-hair-in-native-american-culture>.

was the best means of breaking Native children of their culture and way of life.²² The boarding institutions were implemented in 1879 and some carry on today, with tribes taking over some of them after the boarding schools fell out of favor in the mid-1900s.²³ At these schools, native children were disciplined in the ways of the White man.²⁴

The boarding schools were one way in which the U.S. government could establish English as the dominant language over Native children, thereby working towards full assimilation to the (in their view, more preferred) American way of life.²⁵ Yet the boarding schools did not serve their

22. Ryan Seelau, *Regaining Control Over the Children: Reversing the Legacy of Assimilative Policies in Education, Child Welfare, and Juvenile Justice That Targeted Native American Youth*, 37 AM. INDIAN L. REV. 63, 84 (2012).

23. Even now, as recently as 2020, there were “seven federally funded boarding schools in the United States. The Bureau of Indian Education operates four of them, and three are tribally controlled.” Sara K. Elliott, *Understanding the Origin of American Indian Boarding Schools*, PBS (Apr. 13, 2020), <https://www.pbs.org/wgbh/roadshow/stories/articles/2020/4/13/early-years-american-indian-boarding-schools>; see also *Remembering Our Indian School Days: The Boarding School Experience*, HEARD MUSEUM, <https://heard.org/exhibits/boardingschool/> (last visited May 28, 2022) (noting it is the Bureau of Indian Affairs, or the BIA, that operate four boarding schools located in Oregon, California, Oklahoma, and South Dakota). However, these schools are not run as they were back in the nineteenth and earlier twentieth centuries. See *Unspoken: America’s Native American Boarding Schools (Part Two)*, PBS UTAH, <https://www.pbsutah.org/whatson/kued-productions/unspoken-americas-native-american-boarding-schools/part-2> (last visited May 28, 2022).

24. Atkinson, *supra* note 21, at 7. In fact, the motto of Colonel Richard Henry Pratt, who ran the Carlisle Boarding School in Pennsylvania, has been documented as “Kill the Indian, save the man.” Sarah Krakoff, *They Were Here First: American Indian Tribes, Race, and the Constitutional Minimum*, 69 STAN. L. REV., 491, 506–07 (2017) (“[T]he . . . mantra might be summarized as ‘Extract the Indian to save the child.’”).

25. Allison M. Dussias, *Waging War with Words: Native Americans’ Continuing Struggle Against the Suppression of Their Languages*, 60 OHIO ST. L.J. 901, 912, 916–17 (1999). It was because of the emphasis from that 1887 Report to “civiliz[e] the Indians,” that the boarding schools mandated English-only schooling at the detriment of native languages generally. OFF. INDIAN AFFS., ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS TO THE SECRETARY OF THE INTERIOR FOR THE YEAR 1887 xxii (1887) [hereinafter 1887 COMM’R REP.], <http://digital.library.wisc.edu/1711.dl/History.AnnRep87> (“It is also believed that teaching an Indian youth in his own barbarous dialect is a positive detriment to

ultimate purpose of assimilation. Rather, they created entire lost generations of children who fit neither with their home communities nor the White world.²⁶

Children were not allowed to speak or use their language. They were forced to learn English and use only English, and were punished for using their Native language in any way.²⁷ The purpose of eradicating the children's Native languages was clear—it was a means to “strip [the children] of [their] tribal lore and mores . . . and prepare [them] in such a way that [they] would never return to [their] people.”²⁸ This led to a seismic, generational loss of language and culture for many Native communities. The use of boarding schools established a multigenerational impact because children did not learn their Native language from their parents, as fear of speaking it had been ingrained in their parents or grandparents while being kept at the boarding schools.²⁹ The languages were simply not passed on

him. The first step to be taken toward civilization . . . is to teach them the English language.”). The United States' focus on English-only was “not related to scholastic achievement but was being viewed as a controlling and coercive device relating to a number of other issues with respect to the Indian's role in American society.” Arnold H. Leibowitz, *Language as a Means of Social Control: The United States Experience 20* (Aug. 1974) (Paper at the Annual Meeting of the World Congress of Sociology), ED093168.

26. See ROXANNE DUNBAR-ORTIZ, *AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES* 151 (2014) (“Although stripped of the languages and skills of their communities, what they learned in boarding school was useless for the purposes of effective assimilation, creating multiple lost generations of traumatized individuals.”).

27. Allison M. Dussias, *Indigenous Languages Under Siege: The Native American Experience*, 3 *INTERCULTURAL HUM. RTS. L. REV.* 5, 15–16 (2008) (“Punishments included spanking and whipping of students, washing students' mouths out with soap, and forcing students to stand still in a schoolroom or march around while other students played.”).

28. Leibowitz, *supra* note 25, at 17.

29. Lee & McCarty, *supra* note 19, at 63. Abuse was rampant and even Congressional hearings documented the peril of languages resulting from the legacy of the boarding schools. 138 *CONG. REC.* 30,633 (1992) (statement of Rep. Martinez regarding the Native American Languages Act of 1992) (“Children were often separated from their families and sent great distances to schools where speaking their native languages meant abuse and humiliation. So successful was

to the next generations. In short, “[e]arly U.S. government education for Native Americans was a method for cultural and linguistic genocide.”³⁰

After boarding schools fell out of favor in the mid-1900s, adoption was a means to keep Native children from living with their parents and Native communities.³¹ Social workers, unfamiliar with the collective society approach to living and raising children to which Native people often ascribe, frequently thought children were being neglected by their parents and therefore sought their removal.³² This continued intergenerational language loss.

It was not until the 1978 passage of the Indian Child Welfare Act (ICWA)³³ that Native parents had the *right* to keep their children out of Boarding and other off-territory³⁴ schools.³⁵ Specifically, section 2(4) of the ICWA noted “that

the United States anti-native language policy that many native languages may not survive the next century. Even today many of these attitudes persist.”)

30. SPRING, *supra* note 20, at 39.

31. Brief for the United States as Amicus Curiae Supporting Affirmance at 2, *Adoptive Couple v. Baby Girl*, 570 U.S. 637 (2013) (No. 12-399).

32. *Id.* at 2–3, 5; Krakoff, *supra* note 24, at 506.

33. Indian Child Welfare Act of 1978, Pub. L. 95-608, 92 Stat. 3069 (codified as amended at 25 U.S.C. § 1901–1963).

34. Often, the term used for lands maintained by Native groups is *reservation*. See *What Is a Federal Indian Reservation?*, U.S. DEP’T OF INTERIOR, BUREAU OF INDIAN AFFAIRS, bia.gov/faqs/what-federal-indian-reservation (last visited May 28, 2022) (“A federal Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribe.”). Rather than use *reservation*, a term loaded with the historical colonization and negative treatment of Native lands, and out of respect for those lands and People who live on them, this Comment prefers the terms *territory* or *Nation* instead, as applicable. See DUNBAR-ORTIZ, *supra* note 26, at 10–11.

35. See *History and Culture: Boarding Schools*, N. PLAINS RSRV. AID, http://www.nativepartnership.org/site/PageServer?pagename=airc_hist_boarding_schools (last visited May 28, 2022). To stop the destruction of Native culture, which includes language, ICWA grants rights to both tribes and parents. See Brief for the United States as Amicus Curiae Supporting Affirmance at 4, *Adoptive Couple*, 570 U.S. 637 (No. 12-399).

an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children” from parents “by nontribal public and private agencies” to be placed in boarding schools and other institutions, foster homes, and non-Native adoption proceedings.³⁶ Thus one major emphasis of the IWCA was keeping Native communities, including their language and culture, intact.

Ultimately, as a result of this historical linguisticide, there are only about 170 Native languages left in the United States today,³⁷ compared to the 300 or more that once existed when American lands were first colonized.³⁸ For people aged sixty-five and older, one-in-five still speak their Native language, however, only about one-in-ten Native children aged five to seventeen do so.³⁹ There are 574 federally recognized tribal governments in the United States today,⁴⁰ which comprise about three million people.⁴¹ Most Natives live away from

36. 25 U.S.C. § 1901(4). The Act’s main purpose was “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture” *See id.* § 1902. Even though the main purpose of ICWA is related to the removal of children from a family law perspective, the relationship between removal to adoptive homes and boarding schools, language loss, and the Act’s purpose cannot be ignored. *See* Dussias, *supra* note 25, at 976–77 (“Years of efforts to destroy Native American languages have clearly taken their toll. . . . [O]ther past government conduct, namely, the widespread removal of Indian children from their homes for adoption . . . or other placements in non-Indian homes or institutions . . . [prior to ICWA] undoubtedly contributed to the endangered status of many languages today.” (footnotes omitted)).

37. Lee & McCarty, *supra* note 19, at 63. Others report 169, but this is because they exclude Hawai’ian. *See* JULIE SIEBENS & TIFFANY JULIAN, U.S. CENSUS BUREAU, NATIVE NORTH AMERICAN LANGUAGES SPOKEN AT HOME IN THE UNITED STATES AND PUERTO RICO: 2006–2010: AMERICAN COMMUNITY SURVEY BRIEFS 1, 3 n.2 (2011).

38. Jon Reyhner & Edward Tennant, *Maintaining and Renewing Native Languages*, 19 BILINGUAL RSCH. J., 279, 279 (1995).

39. SIEBENS & JULIAN, *supra* note 37, at 3.

40. Reese, *supra* note 3, at 557.

41. DUNBAR-ORTIZ, *supra* note 26, at 10. However, as Reese notes, “[w]e are sorely lacking updated data on Indian people, tribal members, and reservation

rural areas and tribal territories, instead living in more suburban and urban areas.⁴² Yet there is still a great deal of migration back and forth to the designated tribal lands.⁴³

The Native People living in the United States are still here, they are not a historical myth, and for some, their languages are still used. The issue is how to work with and support tribal groups in reclaiming their languages to full vitality, and how to do so on a national scale. NALA was one of the first times the U.S. federal government recognized the part it played in destroying these languages and cultures and made a public attempt to fix the past wrongs.⁴⁴

II. NATIVE AMERICAN LANGUAGES ACT: RECOGNIZING THE IMPORTANCE OF NATIVE LANGUAGES

The United States' long history of removing Native languages from tribal groups, all deemed less desirable than English, was done not just through the massacring of tribes in the conquering of the American West; the government also used the insidious promise of education to wipe out Native language and culture.⁴⁵ Education was a way to assimilate

residents." Reese, *supra* note 3, at 558.

42. TERESA L. MCCARTY, LANGUAGE PLANNING AND POLICY IN NATIVE AMERICA: HISTORY, THEORY, PRAXIS 7 (2013).

43. *Id.*

44. See Dussias, *supra* note 25, at 902.

45. I say it was insidious because the promise of education, of schooling, is often now and was then, viewed as a positive—a way to better one's life or situation. Education was seen as a way of social control and means to improve society amongst the White European settlers. SPRING, *supra* note 20, at 24. This "extreme belief" in schooling's power to change society for the better was seen in school reform movements and the "rise of public schools" generally. *Id.* at 25. Of course, this belief was from a very White, Westernized way of thinking around traditional schooling, since many Native groups had their own means of educating and indoctrinating their children in the ways of their life and culture that were not dependent on the White man's way of life or expectations. This is true even today. See Noam Schimmel, *Indigenous Education and Human Rights*, 14 INT'L J. ON MINORITY & GRP. RTS. 425, 428 (2007) ("Indigenous education may not be restricted to a specific school site; may involve a combination of intellectual and experiential learning; and is often rooted in ethical and spiritual

children away from their way of life.⁴⁶ As John E. Silverman noted, “[e]ducation has been a critical weapon in the forced assimilation of American Indians since the founding of the colonies.”⁴⁷ The irony is that the focus on education was not coming from a place of genuine altruism. Rather, it was because it was more costly to wage war against the tribes than it was to educate the children.⁴⁸ Again, this forced assimilation into a Westernized world, evidenced through use of the boarding schools and other means, meant a loss of who the child was in regard to their culture and way of life, which included the complete stripping of the child from their language.

This treatment was indicative of how little the government (and people of the United States more generally) thought of Natives, and, of their languages. The belief was that if children became educated and knew only English then they could more effectively abandon their “barbarous dialect” and become one with the White, majoritarian society.⁴⁹

development in a communal context and in skills development needed to maintain a hunter-gatherer, pastoralist or nomadic/semi-nomadic way of life. Often these elements are missing in the educational programmes of schools that are established by governments as part of national development schemes for indigenous peoples.”).

46. Jon Allan Reyhner, *The Self-Determined Curriculum: Indian Teachers as Cultural Translators*, 21 J. AM. INDIAN EDUC., no. 1, Nov. 1981, at 19, 19 (“Normally the purpose of education is to communicate the knowledge people have accumulated through the ages from one generation to the next. It is a process for socializing the young into their parents’ culture which begins at home and continues in school. However, since the initial founding of the mission and government schools, Indian education has been an attempt to convey the knowledge of the dominant culture, usually by members of that culture, to Indian youth.”).

47. Silverman, *supra* note 21, at 1021; see Schimmel, *supra* note 45, at 431.

48. See DAVID WALLACE ADAMS, EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE, 1875–1928, at 23 (2d ed. 2020) (documenting it was “less expensive to educate Indians than to kill them”); 1887 COMM’R REP., *supra* note 25, at xvii (“The cost of [educating] is immeasurably less than that of the wars which they supplant, to say nothing of the sacrifice of lives of both soldiers and Indians.”). See also text accompanying note 20, *infra*.

49. 1887 COMM’R REP., *supra* note 25, at xx, xxi (making repeated references to the importance of the English language over all Native languages, in order to

Eradicating Native languages was necessary to civilize Natives from their “alleged barbarity and inferiority.”⁵⁰ Consequently, a series of historical provisions related to education—not just those in boarding schools—existed in Native-U.S. treaties between the period of 1794–1889, as the means to “civilize the Indian.”⁵¹

The tide began to turn in 1928 with the publication of what is known as the *Meriam Report*.⁵² This *Report* documented the poor schooling present in the boarding schools. It documented how even though there were more Native children at public schools, boarding institutions were the predominant means of educating them.⁵³ The *Report* cut no corners in remarking that, “frankly and unequivocally,” the conditions under which these children were living was “grossly inadequate.”⁵⁴ Over time, states took over control of the schooling of Native children, mostly in the form of the public K-12 system, yet aspects of Native language or culture remained absent from the curriculum.⁵⁵ Native languages were still seen as problematic. Various later reports continued to highlight the problems with the education of Native children.⁵⁶ It was only through NALA that the federal

unify the Native population with the United States, particularly noting that it is “[o]nly through the medium of the English tongue” that the Natives would “acquire a knowledge of the Constitution of the country and their rights and duties thereunder”); see Dussias, *supra* note 25, at 905, 912, 914 (noting that language was seen as a way of establishing national unity and meeting the desire for complete assimilation, and thus the eradication of Native languages was a means to this end).

50. Dussias, *supra* note 25, at 918. Dussias’s work provides a detailed analysis of the ways in which the United States and European settlers decimated Natives and caused vast linguistic genocide.

51. See Silverman, *supra* note 21, at 1021.

52. See LEWIS MERIAM ET AL., INST. FOR GOV’T RSCH., THE PROBLEM OF INDIAN ADMINISTRATION (1928); Silverman, *supra* note 21, at 1022.

53. MERIAM ET AL., *supra* note 52, at 11.

54. *Id.*

55. See Silverman, *supra* note 21, at 1023.

56. One such report is the “Kennedy Report” from 1969. See COMM. ON LAB. & PUB. WELFARE, SENATE SPECIAL SUBCOMM. ON INDIAN EDUC., INDIAN EDUCATION:

government began to show “some respect” for Native languages.⁵⁷ NALA, and the subsequent Native American Languages Act of 1992, was enacted in order to “assure[] the survival and continuing vitality” of Native languages in the United States.⁵⁸ NALA’s legislative history also “suggests the official cognizance of the value of increased Native American involvement in Indian education.”⁵⁹ NALA was codified into federal statute.⁶⁰

NALA puts forth many policies which show an understanding of the importance of including Native people in the education of Native children, as well as the importance of Native languages and cultures. NALA recognizes that “the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure [their] survival.”⁶¹ Congress itself, as evidenced in the Senate Reports surrounding NALA, acknowledged the fact that one’s language and culture cannot be separated, especially when talking about Native languages.⁶² NALA includes specific

A NATIONAL TRAGEDY—A NATIONAL CHALLENGE, S. REP. NO. 91-501, at xi (1969) [hereinafter KENNEDY REPORT]. For a detailed analysis of the Meriam Report through to the Kennedy Report, see Allison M. Dussias, *Let No Native American Child Be Left Behind: Re-Envisioning Native American Education for the Twenty-First Century*, 43 ARIZ. L. REV., 819, 833–60 (2001).

57. Dussias, *supra* note 25, at 928, 939. NALA ultimately was a departure from past governmental treatment of Natives. No longer was there a cry for destroying any remnant of a Native’s culture or language; instead, NALA affirmed the connection and recognition of the distinctness of Natives, the fact that Natives have their own political sovereignty and cultural rights. *Id.* at 944. The U.S., however, did not fully take blame for how Natives were treated in the past, particularly for their role in how they eradicated the Native languages. *See id.* at 941.

58. 42 U.S.C. § 2991b-3(a). The 1992 Act was enacted to amend the Native American Programs Act of 1974 by providing funding to support language programs or projects. *Id.*

59. Silverman, *supra* note 21, at 1032 (referring to S. REP. NO. 101-250 (1990)).

60. *See* 25 U.S.C. §§ 2901–2906.

61. *Id.* § 2901(1).

62. Dussias, *supra* note 25, at 940.

policy statements related to education.⁶³ Part of this was to reverse the historical enforcement of English-only education on Native children, with NALA explicitly documenting that it is U.S. policy to support and encourage Native languages, even as a medium of instruction. NALA also, and finally, specifically allows Natives the right to speak their languages in public—a far cry from the decimation tactics used by the government in prior years.⁶⁴ In sum, this Act documents how governments must recognize the critical need for supporting and encouraging Native languages, including how languages can be—and should be—used in schools. This is especially true in light of how many of these languages are at risk of being lost because these communities have fewer Elders and fluent speakers through which this language can be transmitted to younger generations.

For example, NALA encourages collaboration between Native parents, tribal groups, and schools.⁶⁵ It articulates there should be absolutely no restrictions when it comes to how Natives are allowed to express themselves, in any locale, including in schools.⁶⁶ This means, then, that with the passage of NALA, there was explicit federal recognition of the importance of Native languages and their use in schools, and that there could be no discrimination or restriction in using them within those settings. NALA also argues for the recognition of Native languages to be on the same par as other languages more commonly taught in schools.⁶⁷ The recognition NALA seeks mentioned here is related to

63. *Id.* at 942.

64. 25 U.S.C. § 2904.

65. *Id.* § 2903.

66. *Id.* § 2904 (“The right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs.”).

67. *See id.* § 2903(7)–(8). These other languages are often seen as “foreign” languages, which will be discussed further *infra* Part III. As Dussias notes, these languages were seen by NALA as “comparable” to foreign languages—but they are not the same, nor should they be considered as such. *See Dussias, supra* note 25, at 943.

diploma-earning credits, so that Native language instruction and courses would count just as French or Spanish courses traditionally do.

Perhaps one of the most important assertions NALA makes is the specific requirement of government entities to be flexible in how teachers of these endangered languages are certified.⁶⁸ Outlined in 25 U.S.C. § 2903(2), NALA states that there be “exceptions to teacher certification requirements for . . . programs funded in whole or in part by the Federal Government, for instruction in Native American languages when such teacher certification requirements hinder the employment of qualified teachers who teach in Native American languages.”⁶⁹ It goes on to articulate that the federal policy is also to “encourage” states to make “similar exceptions.”⁷⁰ In other words, NALA mandates that federal programs make exceptions for teacher certification, particularly in instances where Native language teachers would otherwise be prevented from teaching.⁷¹ It unfortunately, however, does not mandate the same for the states.

While NALA represented a sort of about-face regarding how the federal government treated Native languages in the past, the Act fell short in a few ways. NALA did not purport to explain how to sustain or help Native communities reclaim their languages.⁷² It also did not provide any funding. Really, NALA made “some lofty statements with symbolic importance . . . without requiring that any costly or potentially controversial action be taken in support of those statements.”⁷³

68. 25 U.S.C. § 2903(2).

69. *Id.*

70. *Id.*

71. *See* Silverman, *supra* note 21, at 1033.

72. *See* Dussias, *supra* note 25, at 944.

73. *Id.* at 945. NALA was amended in 1992 to add funding through grants as a way to secure the Act’s original intent and promise. Native American

Most of NALA's shortcomings are related to the actual text of the statute, which reads that it is policy only—unfortunately an unmandated one for states at that. For example, NALA's articulation about teacher certification is only federal policy for federally-run schools and as such it is only a *recommendation* that states follow suit—there is no “must” or “shall” language included in the provision.⁷⁴ The

Languages Act of 1992, Pub. L. No. 102-524, 106 Stat. 3434 (codified at 42 U.S.C.A. § 2991b-3). This is because the original text of NALA did not articulate how to fund many of the directives outlined. See Kelsey Klug, *Native American Languages Act: Twenty Years Later, Has It Made a Difference?*, CULTURAL SURVIVAL (July 18, 2012), <https://www.culturalsurvival.org/news/native-american-languages-act-twenty-years-later-has-it-made-difference>. Arguments made in the House and Senate for NALA of 1992 reiterated the detrimental policies enacted by the government throughout history which led to the fragile state of Native languages in the U.S., and how while NALA was a change in policy regarding the status of Native languages, there was no real effort to preserve them or assist groups in doing so. Dussias, *supra* note 25 at 946–47. Some arguments involved how the loss of languages and cultures would mean a loss of native identity, which would be detrimental to the United States as a whole. Particularly, for Native communities, issues with substance abuse and suicide were related to the loss of a native identity, so there was hope that with NALA, this sense of self could be restored and thus eliminate some of these problems faced by so many Native communities. See 138 CONG. REC. 30,633 (1992) (statement of Rep. Martinez regarding the Native American Languages Act of 1992). NALA 1992 established funding for Native organizations and tribal governments to create programs that would assist with the transmission of the language between generations, language teaching materials, and for teacher training. Dussias, *supra* note 25, at 948. Yet this funding—although initially set at \$5 million—dwindled to \$2 million in the second year. *Id.* at 949–50. NALA allocations average about \$2–3 million a year, which, when distributed to all of the federally-recognized tribes, amounts to a range of \$3,500–5,300 per tribe annually. MCCARTY, *supra* note 42, at 61. Unfortunately, again, NALA sounded good on paper and did show an acknowledgment of the horrible treatment Natives faced at the hands of the U.S. government, but there was no serious, sustained commitment on behalf of the government to even attempt to fix the problems that they themselves created. Dussias, *supra* note 25, at 950, 982. The funding concern was further addressed much later, in part, in 2006 with the Esther Martinez Native American Language Preservation Act, Pub. L. No. 116-101, 133 Stat. 3261 (2006) (codified at 42 U.S.C. §§ 2991, 2991b-3, 2992d). This act was done to provide more financing to NALA. There was an additional \$12 million provided in 2009. See Klug, *supra*.

74. See 25 U.S.C. § 2903(2); Dussias, *supra* note 25, at 942–43. What's more, NALA does not have a means to enforce the policy provisions outlined. Larisa Warhol, *Native American Language Policy in the United States*, CTR. FOR APPLIED LINGUISTICS (Oct. 2011), <https://www.cal.org/wp-content/uploads/2022/05/Heri>

problem with state-controlled teacher certification is that the states are not beholden to adopting the federal government's stance or position (in relation to tribal power/sovereignty) as reflected in NALA. Rather, since certification for public schools is a state concern, there is no requirement for states to cede any form of control to tribal groups, all while not overstepping sovereignty markers and boundaries.⁷⁵ States are largely ignoring NALA and are not making exceptions to teacher certification thereby compounding the problem of the lack of Native language instruction in public schools.

There has been only one case interpreting NALA and its provisions since its 1990 enactment. In *Office of Hawai'ian Affairs v. Department of Education*,⁷⁶ the plaintiffs contended many concerns, including that the defendants failed to “encourage ‘community expertise’ to develop Hawaiian-language programs and teachers” and that the defendants had thus “violate[d] federal law” under NALA.⁷⁷ The plaintiffs sought injunctive relief to require that the defendants provide “sufficient resources,” which included teachers, to the Hawai'ian immersion programs in their public schools, as well as “develop a pool of teachers” for the language education programs.⁷⁸ In short, the plaintiffs wanted to have the defendants help them create more language programs in the public school system with the appropriate language teachers.⁷⁹ The district court felt that the plaintiffs' claims regarding NALA fell under an exception to the state of Hawai'i's claim to Eleventh Amendment

tageBriefNativeAmericanLanguagePolicyintheUnitedStates.pdf.

75. This is especially true when talking about areas of the country where tribal lands intersect with urban areas, such as the Gila River and Papago Reservations in Tucson, Arizona. See Silverman, *supra* note 21, at 1029–30 (“[U]rban reservations, and pockets of urban Indians residing outside of Indian country, raise the most difficult sovereignty dilemmas due to conflicting interest groups and governmental authorities.” (footnotes omitted)).

76. 951 F. Supp. 1484 (D. Haw. 1996).

77. *Id.* at 1487.

78. *Id.* at 1488.

79. *Id.* at 1493.

immunity since the plaintiffs were seeking injunctive relief from the state officials in order to remedy an alleged violation of NALA.⁸⁰

Critical to this Comment, one of the plaintiffs' experts argued that the state's education department was restricting the use of the Hawaiian language in schools for many reasons, one of which included "valuing teachers with [Hawai'i department of education] certification over those with Hawaiian language skills."⁸¹ The court felt that this was not a case of restricting language since the plaintiffs were arguing that there were programs in place, and that the plaintiffs simply wanted more of them.⁸² The Court considered instead whether or not NALA provides for a private right of action to sue, and concluded that Congress "did not intend NALA to create a private cause of action against states."⁸³ The Court based this conclusion on the legislative history and text of the statute, determining that NALA was "necessary only to articulate a 'policy' of the United States."⁸⁴ To this Court, the language of NALA was merely of "encourage[ment]" to states.⁸⁵ The Court felt that

80. *Id.*

81. *Id.* at 1494.

82. *Id.* at 1493 ("Plaintiffs all but concede that the State of Hawaii currently does not restrict the use of Hawaiian language in schools and instead argue that the State should take further efforts to *promote* the Hawaiian language.").

83. *Id.* at 1494.

84. *Id.* ("[T]he Congressional legislative history is silent as to whether Congress intended to create a private remedy . . . [, and] . . . the Act itself merely speaks in terms of general policy goals and does not create a new set of regulations which might lend itself to enforcement through suits by private citizens.").

85. *Id.* at 1495. ("For example § 2903 declares that it is the policy of the United States to allow exceptions to teacher certification programs for federal education programs and 'to *encourage* State and territorial governments to make similar exceptions.' The Act also 'encourage[s] State and local education programs to work with Native American parents, educators, Indian tribes, and other Native American governing bodies in the implementation of programs to put this policy into effect' . . . [and] . . . states a general policy to 'encourage all . . . to include Native American languages in the curriculum in the same manner

the only affirmative language wherein states might have to act under NALA was in § 2904,⁸⁶ noting that “[i]t is unclear whether this provision extends to state public education, rather than federally funded education programs” and that even if it did, that would not apply in the case presented by the plaintiffs.⁸⁷ The court also noted that provision would only be the case if the state specifically restricted Native language use in schools in some way.⁸⁸ However, if states are not allowing Native language teachers to get a state-recognized certification in their language area, thereby creating a situation where schools are not able (or willing) to provide Native language instruction, is that not the same as restricting the language in schools—albeit in an indirect manner? This Comment posits that it is.

III. TEACHER CERTIFICATION IN THE UNITED STATES

Teacher licensure is a process done entirely through State Departments of Education. Yet this departmental oversight was not always present and was instead more localized, with minimal requirements.⁸⁹ Teacher certification standards did not become ubiquitous until the mid-nineteenth century, and even more standardized in the twentieth.⁹⁰ Today, overall, certification processes are

as foreign languages and to grant proficiency in Native American languages the same full academic credit as proficiency in foreign languages.’ This creates no affirmative duties by states and hence cannot support a private cause of action against states for noncompliance with the Act.” (citations omitted).

86. That part of the Act only reads that “[t]he right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs.” 25 U.S.C. § 2904.

87. *Office of Hawai‘ian Affairs*, 951 F. Supp. at 1495.

88. *Id.*

89. See Diane Ravitch, *A Brief History of Teacher Professionalism: White House Conference on Preparing Tomorrow’s Teachers*, U.S. DEPT OF EDUC., <https://web.archive.org/web/20201112003820/https://www2.ed.gov/admins/tchrqual/learn/preparingteachersconference/ravitch.html> (Aug. 23, 2003).

90. The first state to require a test for future teachers was Pennsylvania in

generally similar across the country thanks to the establishment of teacher candidate education programs and more standardized requirements either at the state or federal level.⁹¹ Even so, every state requires their own benchmarks and outcomes that teacher candidates must meet in order to receive a recognized license.⁹² There is no one-size-fits-all certification that works across the United States. Teachers get certification in the state(s) in which they want to teach.⁹³ Even though certification is a state-run process, there is some federal oversight in how education is run in the United States. Much of this is because of federal legislation around how schools perform and is tied (naturally) to money.

A. *The U.S. Department of Education*

The United States Department of Education (USDOE) is relatively new in terms of federal agencies.⁹⁴ The USDOE

1834. *Id.* Prior to this, if someone wanted to be a teacher, they simply were hired or had to “persuade a local school board of their moral character” and, sometimes, pass a test of “general knowledge.” *Id.* It was not until after the Civil War, in 1867, that most states even required a test in order for teachers to get a certificate. *Id.*

91. *See id.* The twentieth century ushered in the “teaching profession,” primarily via state and private universities which had colleges of education, and the process of a more standardized way of creating teachers began thanks to pedagogical schools of thought and methodologies. *Id.*

92. *Id.*

93. Should a teacher later want to be certified in another state, they must meet that state’s requirements. There is a process known as reciprocity, however, which allows teachers who hold one state certification to skip some—but not all—of another state’s certification requirements because of a reciprocal agreement between the states. *See, e.g., Teacher License Reciprocity: State Profiles*, EDUC. COMM’N OF THE STATES (June 24, 2020), <https://www.ecs.org/teacher-license-reciprocity-state-profiles/>.

94. *See An Overview of the U.S. Department of Education*, U.S. DEP’T OF EDUC. (Sept. 2010) [hereinafter *USDOE Overview*], <https://www2.ed.gov/about/overview/focus/what.html>. The first known—yet short lived—Education Department was created in 1867 by President Andrew Johnson, its main purpose to “collect information on schools and teaching that would help the States establish effective school systems.” *Id.* The Department was demoted only a year later to an Office of Education. *Id.* It was not until October 17, 1979 that the U.S. Department of

creates policies and provides support for educational programs, agencies, and schools across the country.⁹⁵ Irrespective of any federal agency oversight,⁹⁶ most control is located at the state and local level, particularly when it comes to setting curricula or outlining the requirements students must meet to graduate.⁹⁷ Education is seen as a state or locally-controlled issue because of the Tenth Amendment.⁹⁸ Yet with the establishment of Department of Education,⁹⁹ federal involvement in schooling has grown.¹⁰⁰ One way this growth is evidenced is through the funding provided to schools in every state. If a state uses federal

Education as we know it today was established through the passage of the Department of Education Organization Act, Pub. L. No. 96-88, 93 Stat. 669 (1979) (codified at 20 U.S.C. §§ 3401–3510). As stated in 20 U.S.C. § 3402, the purpose of the new Education Department was not only to strengthen and increase the federal commitment to education and further the reach of the federal government in areas of education that were federally run, but also to “supplement and complement the efforts of States . . . to improve the quality of education.” See 20 U.S.C. § 3402(1)–(7).

95. See *USDOE Overview*, *supra* note 94.

96. I use the term *oversight* because of the link between federal funding and program requirements. States may opt to receive federal funding but in so doing they must abide by the laws, rules, or guidelines stipulated in the federal program. The funding is not a gift to a State or local educational agency. The term *oversight* gives that sense regarding funding that comes with some strings attached. No longer can a school do as they see best, following only state laws as required; they now must follow federal mandates or regulations and laws in order to be able to use that funding—or risk the funding being pulled from their budget.

97. See *The Federal Role in Education*, U.S. DEP’T OF EDUC., <https://www2.ed.gov/about/overview/fed/role.html> (June 15, 2021) (stating that “[e]ducation is primarily a State and local responsibility in the United States”).

98. U.S. CONST. amend X. Specifically, the power to govern education is not stipulated in the Constitution as a federal power. Therefore, per the 10th Amendment, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,” the States control education. *Id.*

99. See *supra* note 94.

100. The beginning of federal support (or oversight, depending on one’s perspective)—albeit prior to the USDOE—was with the Elementary and Secondary Education Act (ESEA) of 1965. *10 Facts About K-12 Education Funding*, U.S. DEP’T OF EDUC., <https://web.archive.org/web/20220128221746/https://www2.ed.gov/about/overview/fed/10facts/index.html> (Sept. 19, 2014).

funding in any way, they must follow federal law.¹⁰¹

One of the biggest and more influential congressional acts on schooling was the No Child Left Behind Act of 2001 (NCLB).¹⁰² A key aspect of NCLB was to mandate that schools hold high standards for teacher qualifications. NCLB outlined that schools receiving any kind of federal funding¹⁰³ must employ “highly qualified teachers,”¹⁰⁴ which meant anyone wanting to become a teacher needed to meet state certification requirements, even if those requirements were alternative in nature.¹⁰⁵ This mandate regarding highly

101. WAYNE E. WRIGHT, FOUNDATIONS FOR TEACHING ENGLISH LANGUAGE LEARNERS: RESEARCH, THEORY, POLICY, AND PRACTICE 72 (2d ed. 2015).

102. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.). The No Child Left Behind Act of 2001 (NCLB) was established only twenty-three years after the USDOE was created. See Kenneth A. Dodge, Martha Putallaz & David Malone, *Coming of Age: The Department of Education*, 83 PHI DELTA KAPPAN 674, 674–75 (2002). NCLB was one of the more recent reauthorizations of the ESEA. Kate Menken, *No Child Left Behind and Its Effects on Language Policy*, 29 ANN. REV. OF APPLIED LINGUISTICS 103, 104 (2009). Menken points out that the recent reauthorizations of the ESEA have gotten progressively more focused on accountability so as to show that the federal funding provided to schools has resulted in more measurable outcomes such as school achievement. *Id.*

103. Specifically, NCLB stated “each local educational agency receiving assistance under this part shall ensure that all teachers hired after such day and teaching in a program supported with funds under this part are highly qualified.” § 1119(a)(1), 115 Stat. at 1505. NCLB represented an historical shift as now the federal link to state-run schools was more established and controlling. See Elaine Chin & Pia Wong, *Preparing Teachers: Highly Qualified To Do What? Editors’ Introduction*, 21 EDUC. POL’Y ANALYSIS ARCHIVES, no. 54, July 1, 2013, at 1, 2, <http://epaa.asu.edu/ojs/article/view/1406> (“Through the use of large sums of money tied to test performance, the federal government exerted enormous influence on the conduct of K-12 schools.”).

104. See Rolf K. Blank et al., *Meeting NCLB Goals for Highly Qualified Teachers: Estimates by State from Survey Data*, 12 EDUC. POL’Y ANALYSIS ARCHIVES, no. 70, Dec. 20, 2004, at 1, 2, <http://epaa.asu.edu/epaa/v12n70/> (“To meet the highly qualified standard under NCLB, all teachers must [h]ave completed a bachelor’s degree; [h]old full state certification; and [p]ass rigorous subject content and pedagogy tests to demonstrate competence in assigned subject . . .”).

105. See § 9101(23)(A)(i), 115 Stat. at 1959 (stating highly qualified is a teacher who “has obtained full State certification as a teacher (including certification obtained through alternative routes to certification)”).

qualified teachers was a goal to be met by the 2005–2006 school year.¹⁰⁶ So important was this goal that NCLB included grants to assist in the searching, securing, and training of highly qualified teachers.¹⁰⁷ Schools were also required to provide information annually in both a State Report Card¹⁰⁸ and a report to the Secretary of Education¹⁰⁹ on how they were meeting the mandates of NCLB.¹¹⁰

NCLB was very controversial, and because of the ‘highly qualified’ teacher language, very limiting—particularly to Native language teachers who might not have the required teaching credentials that were deemed needed. The stipulations for what would make someone ‘highly qualified’ automatically precluded many of the Native language speakers who could otherwise have been teachers: for example, many of the people who can speak Native languages are Elders and these Elders are likely not either previously certified nor able to go back to school to get certification, for a myriad of reasons.¹¹¹ Moreover, the strict language in NCLB was in direct conflict with NALA,¹¹² which encouraged exceptions around teacher certification. Thankfully, in 2015, the Every Student Succeeds Act (ESSA) (the most recent reauthorization of the ESEA), replaced

106. Blank et al., *supra* note 104.

107. *See, e.g.*, § 2113, 115 Stat. at 1625.

108. The State Report Card requires that states disclose their schoolteachers’ professional qualifications, credentials, and the percentage of classes that were not taught by highly qualified teachers. § 1111(h)(1)(C)(viii), 115 Stat. at 1458.

109. *See* § 1111(h)(4)(G), 115 Stat. at 1461.

110. Additionally, school districts are required to tell parents about any “unqualified” teacher who has been instructing their child for four or more weeks, as well as any other information about the teacher. *See* § 1111(h)(6)(B)(ii), 115 Stat. at 1461. This included information about their certifications, the degrees held by the teacher. *See* § 1111(h)(6), 115 Stat. at 1461.

111. *See infra* Part III.

112. Dussias, *supra* note 25, at 942. NCLB also ignores the federal recognition of and commitment towards assisting the reclamation and survival of Native languages outlined and expressed in NALA 1990 and 1992. Dussias, *supra* note 56, at 893.

NCLB and eliminated the ‘highly qualified’ teacher language.¹¹³ The ESSA also returned more power to schools,¹¹⁴ effectively reducing the role of the federal government and its oversight.

B. *State Departments of Education: Gatekeepers to Certification*

States govern how teachers are certified. Most require completion of a college degree in teacher education to be eligible for certification. These college degrees often are direct pathways to state teacher certification because the course requirements within each degree map out the state elements to be met by building them into the degree program. Most of the time this includes pre-requisite coursework, but also can involve a myriad of tests taken either during or outside of the university program. These degrees are typically at the undergraduate level.¹¹⁵ The required tests for teacher candidates are tests of proficiency, as related to a mastery of teacher education content knowledge, pedagogy, and methods.¹¹⁶ Teachers who go through the traditional pathway of obtaining certification by

113. Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 129 Stat. 1802 (2015); cf. Elementary and Secondary Education Act (ESEA) of 1965, Pub. L. No. 81-874, 64 Stat. 1100.

114. See Dustin Hornbeck, *Federal Role in Education Has a Long History*, THE CONVERSATION (Apr. 26, 2017, 9:51 P.M.), <https://theconversation.com/federal-role-in-education-has-a-long-history-74807>.

115. This means that most of the entering teacher workforce is predominantly younger, in their twenties, with the exception of any “non-traditional” or “mature” students who leave a career and go back to college.

116. One common example is the Praxis test, administered through the Educational Testing Service (ETS). See, e.g., EDUCATIONAL TESTING SERVICE, <http://www.ets.org> (last visited May 28, 2022). Another is the Pearson-run National Evaluation Series (NES). See *Tests*, NATIONAL EVALUATION SERIES, http://www.nestest.com/PageView.aspx?f=GEN_Tests.html (last visited May 28, 2022). However, every state is different. New York has their own testing administration entirely. See N.Y. STATE TCHR. CERTIFICATION EXAMINATIONS, <http://www.nystce.nesinc.com/> (last visited May 28, 2022).

the means of a college degree spend thousands¹¹⁷ in the education aspect and then hundreds more on the tests that are required afterwards.

When speaking specifically of language teachers, there are language fluency or proficiency tests required, tests which are in addition to the tests related to teacher content knowledge and methodological competence and understanding. These exams are comprised of both written and oral portions.¹¹⁸ These tests act as benchmarks for whether or not a teacher can become certified to teach in that language. For Native language teachers, these can be an additional hurdle. Much of the problem is because these language proficiency tests are geared towards foreign or world languages, and not for Native languages which are fundamentally different in their own way.¹¹⁹

C. *Educating Native American Children: The Status and Classification of Native Language Teachers and Native Languages*

The education of Native children is “unique” because “it implicates not only issues of language, ‘race’/ethnicity, social class, and other forms of social difference, but also tribal sovereignty,” the last of which includes the right to self-government and self-education.¹²⁰ However, about 90 percent of Native children across the United States attend

117. As an example, in New York, a teacher must take at least three tests. See *What Tests Do I Need to Take?*, N.Y. STATE TCHR. CERTIFICATION EXAMINATIONS, http://www.nystce.nesinc.com/PageView.aspx?f=GEN_WhatTestsDoINeedToTake.html (last visited May 28, 2022). This can total over \$500.

118. The tests in most states require not only that students perform well on a written language exam, but they must then have a separate oral interview with a fluent speaker who will determine if that candidate is proficient enough.

119. Reyhner, *supra* note 46, at 19 (“[T]he special problem with Indian education lies in the fact that it is fundamentally different from education as it is usually defined.”). This difference is in the ways of learning central to Native communities and in that the languages themselves are not identical to other more commonly taught foreign languages.

120. Lee & McCarty, *supra* note 19, at 61.

public schools, most of which are unlikely to have Native teachers available to them who can effectively teach Native language and culture.¹²¹

The lack of Native language teachers may account for data reported from the National Indian Education Study of 2015 that said about half of the United States' Native students have never been exposed to their Native language.¹²² The data revealed that students who were in schools with a higher population of Native students may be exposed to the language more, but that does not ensure that proficiency and fluency will be the end result. Furthermore, the data showed almost half of all Native students in fourth grade and almost two-thirds of eighth graders were not offered instruction in their language at school, even where there was a higher density of students who identify as Native.¹²³ Were there more Native teachers instructing students in their Native languages, then these numbers would decrease because the children would be learning their languages.

Because of the strict requirements for who can become a teacher, Native language speakers who want to become educators in a preK-12 system can face significant barriers. For those who already have a teacher certification in a certain non-Native-language area (i.e., math or science) and are teaching in a school, if there is no currently recognized Native language certification for them to secure, they will likely be precluded from teaching the language in the school. Alternatively, if the Native language speaker does not have any certification, they may have to go back to school for an education degree (i.e., at the undergraduate level)—even if they already hold a degree—in order to gain teaching credentials, or they may have to seek alternative means to

121. *Id.* at 63.

122. *See* CLOSER LOOK, *supra* note 15, at 18.

123. *See id.* at 18.

teach the Native language in the K-12 school.¹²⁴ In short, because of strict rules around certification, Native language speakers may find themselves in need of securing a full education degree (if they do not already have one) or an additional degree specifically in their language (if that is even possible). Yet going back for those types of degrees are only meaningful if there is an actual, recognized Native language certification obtainable at the state level afterwards.

Another concern is that there may be issues of reciprocity involved.¹²⁵ If a Native language instructor is certified in a state which recognizes their language, and they desire to move to another area of the country, they may not be able to transfer that certification with them because of state boundaries—not language or territorial boundaries.¹²⁶ For example, it may be that there are no state certification benchmark equivalents for these languages in the new state—effectively nullifying the language teacher’s certification to something different or nothing at all if they move. It is hard to become state-certified in a recognized area if the process to do so does not exist or, particularly when considering most fluent speakers are Elders, is too timely or costly to achieve.

Another problem more generally is the proficiency tests that states require to certify language teachers. These tests only work well for those languages more traditionally considered true “foreign” languages—which Native languages are not. As early as the 1800s, there is documentation that Native languages were perceived and

124. For example, in some states like New York, school districts have “contract schools” wherein the district works with the Native community in securing Native language teachers to use in the preK-12 classroom. *See, e.g., Budget Coordination: Education of Native Americans*, NYSED, <https://www.oms.nysed.gov/budget/pro2010/emsc2.html> (last visited May 28, 2022).

125. *See supra* note 93 (discussing reciprocity).

126. *See supra* note 3 (discussing non-existent borders).

misabeled as “foreign” languages.¹²⁷ Additionally, many states still categorize Native languages as a *language other than English*, or LOTE.¹²⁸ This stems from the historical perception that many Native children were first language speakers of their Native language, who then attended English-speaking schools and had to learn English as a second language.¹²⁹

Foreign language teaching can allow for isolated, textbook style teaching, and lends itself to the more traditional formats of instruction and testing required in language proficiency tests. However, Native languages are very unique to the context in which the people using them live and survive, inherently tied to the Native culture.¹³⁰ For those Native languages still in the infancy of revitalization and reclamation, a written form may not yet exist. All of these considerations are not accounted for in the traditional, “foreign” language proficiency tests that states require for teacher certification. For a state to require a proficiency test in those Native languages, one that is administered by the state itself or via testing monopolies, it would mean actually creating a test because often they do not already exist.¹³¹

127. See 1887 COMM’R REP., *supra* note 25, at ix (stating that Native languages, a “foreign language,” should be supplanted for English); Dussias, *supra* note 25, at 915.

128. LOTE is a traditional designation that states often use to grant certification to teachers of languages other than English, however, LOTE and the languages associated with it is often classified as a “foreign” or “world” language.

129. For a more robust discussion of Native language speakers and the relation to language learning as an additional language, see generally MCCARTY, *supra* note 42.

130. Larisa Warhol, *Legacies of NALA: The Esther Martinez Native American Languages Preservation Act and Implications for Language Revitalization Policy and Practice*, 51 J. AM. INDIAN EDUC., no. 3, 2012, Special Issue: The Native American Languages Act of 1990/1992, at 70, 73 (highlighting that there is a uniqueness of Native languages and “highly contextualized circumstances of each community and/or tribe” that must be considered when teaching Native languages).

131. This creates an entire new set of concerns because scholars have shown the problems of more traditional assessments in regard to languages. See, e.g., KATE MAHONEY, THE ASSESSMENT OF EMERGENT BILINGUALS: SUPPORTING

NALA clearly acknowledges that Native language and culture cannot be separated, and yet traditional tests often do just that.¹³² Lumping Native languages into strict traditional classifications such as “LOTE” or “foreign” is limiting and counter-productive to the critical need of producing more Native language speakers and users, and is in direct opposition to what we know about how these languages are spoken and used in the Native communities.¹³³

In fact, studies and scholars document the need for more cultural and linguistic infusion in traditionally marginalized communities. This can be done through culturally relevant education or use of culturally sustaining pedagogy in schools.¹³⁴ When language reclamation happens within

ENGLISH LANGUAGE LEARNERS 40–55 (2017) (discussing language and culture as validity concerns).

132. *Id.*

133. Tiffany S. Lee, *The Significance of Self-Determination in Socially, Culturally, and Linguistically Responsive (SCLR) Education in Indigenous Contexts*, 54 J. AM. INDIAN EDUC., no. 1, Spring 2015, at 10, 11 (“Western education is disconnected from Indigenous knowledge, values, and epistemologies of education.”). Furthermore, “many educational theories have not aligned well with Indigenous social, cultural, and linguistic realities and contexts and thus, have failed to inform Indigenous educational goals.” *Id.* at 12.

134. *Culturally relevant education* is a term used in educational fields to denote when a student’s language and culture are recognized in schools and school curricula. Culturally relevant pedagogy has been encouraged in education for years because of the benefits such connections between home and family life to academic settings can have on the overall academic achievement of students, particularly students of color. For a larger discussion on this topic, see GLORIA LADSON-BILLINGS, *THE DREAMKEEPERS: SUCCESSFUL TEACHERS OF AFRICAN AMERICAN CHILDREN* 19 (2d ed. 2009) (“[C]ulturally relevant teaching uses student culture in order to maintain it and to transcend the negative effects of the dominant culture. The negative effects are brought about, for example, by not seeing one’s history, culture, or background represented in the textbook or curriculum or by seeing that history, culture, or background distorted.”). Culturally relevant pedagogy and teaching are thus used to “empower[] students intellectually, socially, emotionally, and politically by using cultural referents to impart knowledge, skills, and attitudes.” *Id.* at 20. This type of schooling has also “long been tied to tribal sovereignty.” Lee & McCarty, *supra* note 19, at 61; see also David Beaulieu, *A Survey and Assessment of Culturally Based Education Programs for Native American Students in the United States*, 45 J. AM. INDIAN EDUC., no. 2, Special Issue, 2006, at 50; Angelina E. Castagno & Bryan McKinley

tribal communities and schools, such as through language nests as seen in Hawai'i or other Native immersion programs,¹³⁵ there can be great success.¹³⁶ Unfortunately, because there are many Native children for whom public K-12 schooling is their only option, those children may not have the opportunity to participate in such a program. Therefore, having Native language teachers is even more critical to assist in ensuring that the languages are taught and the cultural transmission that occurs with Native language learning happens.¹³⁷ As noted by John E. Silverman, “[i]n

Jones Brayboy, *Culturally Responsive Schooling for Indigenous Youth: A Review of the Literature*, 78 REV. EDUC. RSCH. 941 (2008). Since culturally relevant pedagogy took off in the 1990s, scholars have shifted more recently to an expansion of the concept into that of culturally *sustaining* pedagogy. The latter means of educating children is the recognition that it is not enough to bring language or culture into a curriculum that may only last as far as the school year does, but rather must become so embedded that it continues on and is sustained into a way of education and learning experienced over one's lifetime. See H. Samy Alim & Django Paris, *What Is Culturally Sustaining Pedagogy and Why Does it Matter?*, in CULTURALLY SUSTAINING PEDAGOGIES: TEACHING AND LEARNING FOR JUSTICE IN A CHANGING WORLD, *supra* note 19, at 1, 1. In Native contexts, there is also a push for culturally sustaining pedagogy to include culturally *revitalizing* pedagogy. See Lee & McCarty, *supra* note 19, at 62.

135. It is important to note the type of immersion used by Native communities is very different from the detrimental “English only immersion” seen in U.S. schools for language minority students. Warhol, *supra* note 130, at 74. Rather than the sink or swim mentality of the former, Native language immersion programs are “often modeled on other conventional bilingual language programs, [and] are inherently different because of the unique status of Indigenous languages and the goals of the programs.” *Id.* Rather than focusing, as other typical language programs do, on seeing the learned language as additional or auxiliary to a person, Native language immersion programs recognize that the reclaimed language is the first language of the community and central to Native identity. See *id.*

136. See, e.g., *id.* at 77. In fact, “strong Native language and culture programs are highly associated with ameliorating persistent educational inequities between Native students and their non-Native peers by enhancing education relevancy, family and community involvement, and cultural identity.” Lee, *supra* note 133, at 14.

137. Lee, *supra* note 133, at 14 (“Indigenous languages are inseparable from cultural knowledge, transmission, and cultural identity. Language is vital to cultural continuity and community sustainability because it embodies sacred knowledge and ceremonial purposes. It is also significant for maintaining Indigenous knowledge systems, cultural identity, spirituality, and connections to

light of the benefits to Indian children [who receive] culturally relevant education, it is especially important that exceptions be made for teachers who are qualified to instruct in native languages but lack federal or state teacher certification.”¹³⁸

IV. POLICIES AND LAWS: ADDRESSING NATIVE LANGUAGE CERTIFICATION

Over half of the United States has no regulations regarding Native language education.¹³⁹ At the time NALA was enacted, only four states had constitutional and/or statutory provisions regarding Native language curricula and/or teacher certification in specific Native languages.¹⁴⁰ Again, NALA does not require—just expressly encourages—states to enact such laws. NALA does not have a tangible impact on teacher certification regulations within states, largely because states control education, but also because of how NALA’s provisions were worded.¹⁴¹ The teacher certification process is instead left up to varying state influence, control, and politics. As De Korne notes,

The politics of Indigenous language teaching are characterized by numerous potentially contentious questions: Who can, or should, say what “quality” language and “quality” teaching are, for a certain language? How should the decision-making process occur? How

land.”); Jon Reyhner, *Rationale and Needs for Stabilizing Indigenous Languages*, in *STABILIZING INDIGENOUS LANGUAGES* 3, 4 (Gina Cantoni ed., 1996) (“Our languages are joint creative productions that each generation adds to. Languages contain generations of wisdom, going back into antiquity. Our languages contain a significant part of the world’s knowledge and wisdom. When language is lost, much of the knowledge that language represents is also gone.”).

138. Silverman, *supra* note 21, at 1033. Silverman notes that tribal Elders are in a prime position to provide such instruction, which is “desirable since many native cultures hold their Elders in high esteem.” *Id.*

139. De Korne, *supra* note 16. As of 2013, only nineteen of the fifty states address native language in school curricula or in relation to the certification of teachers. *Id.* at 28. *See generally*, MCCOY, *supra* note 16. Today, that number has increased by one. *See* Appendix.

140. De Korne, *supra* note 16, at 27.

141. *See supra* text accompanying note 74 (discussing NALA’s phrasing).

should quality language competency be taught and measured? The teacher certification process is especially dependent upon relationships of power and notions of standards, competence, and measurement. Once a potential teacher is considered (by some authority) to have met a recognized standard, they are endowed with new authority as a valid transmitter of linguistic knowledge.¹⁴²

States vary in how they certify any teacher but for those states that do make provisions for Native languages teacher certification, there are some commonalities between them. Any differences are in the amount of control, in who has authority: those that have more state-level power versus those that place control primarily or solely within the hands of the tribal government. It is like a continuum, with some states relinquishing power and others keeping it all. This Comment will now share example statutes from states¹⁴³ that have a formal process, which could be used as a guide for states seeking to enact similar legislation where there is none. It will highlight differences in regards to ways of approaching teacher certification status (e.g., whether the certification is fully for Native languages or must be enjoined with another certificate); how the state considers proficiency (e.g., must a candidate take a state-mandated test or does the tribe determine the abilities of the teacher); how the state views language and culture; and how the power is divided up—or not.

Montana is one example where the power is shared while acknowledging the interconnection of language and culture. The beauty of Montana's certification for Native language teachers is evident in its title: American Indian Language

142. De Korne, *supra* note 16, at 26.

143. So as to not take up too much space, this Comment will highlight just a few key states within each categorization. For a complete list of all of the fifty states and their positionality, see the Appendix. This Comment is a complement to Haley De Korne's work, which looks at the ideological and implementational spaces for Native language teacher certification within a language policy and interactional sociolinguistics framework, wherein she tallies nineteen states into a continuum of participation (from local to centralized control). De Korne, *supra* note 16 at 32.

and Culture Specialist.¹⁴⁴ In Montana, a certificate is issued to any teacher candidate that a tribal government deems as having the requisite proficiency in *both* the Native language and culture.¹⁴⁵ Furthermore, the tribal government gets to determine and develop what the criteria will be for proving candidates' competency in teaching.¹⁴⁶ The State does not intrude on that criteria, it simply accepts what the tribe provides. The tribes have control.

Montana does not require the Native language teacher to hold any other teacher certification, endorsement, or license, which shows the importance and full recognition given to this certification area by Montana—it is just like any other teacher certification—and is set up to provide for flexibility in how the requirements might be met.¹⁴⁷ In short,

144. The original statute for this certificate was effective with all the other types of teacher certifications as of November of 2002. MONT. ADMIN. R. 10.57.407 (2002), <http://www.mtrules.org/gateway/RuleNo.asp?RN=10%2E57%2E407> (last visited May 28, 2022). It was transferred to Rule 10.57.436 as of July 31, 2015. See *Transfer and Repeal Table*, <http://www.mtrules.org/gateway/xfrRep.asp> (last visited May 28, 2022); MONT. ADMIN. R. 10.57.436 (2015).

145. MONT. ADMIN. R. 10.57.436(2) (2015) (“[T]he applicant has met tribal standards for competency and fluency as a requisite for teaching that language and culture.”). In Montana, there is a memorandum of understanding between the Superintendent of Public Instruction and the tribal governments. *Id.*

146. MONT. ADMIN. R. 10.57.436(3) (2015) (“The Board of Public Education will accept and place on file the criteria developed by each tribe for qualifying an individual as competent to be a specialist in its language and culture.”).

147. MONT. ADMIN. R. 10.57.436(6) (2015) (“No other teaching license or endorsement is required for duties within this prescribed field.”). It is, however, a specialist certificate, rather than a professional certification. MONT. CODE ANN. § 20-4-106(2) (West 2021) (“The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.”). This specialist cert, unlike the professional or standard certificates, means that there is not a requirement of an undergraduate degree in a teacher education program with an additional year of study beyond that. See MONT. CODE ANN. § 20-4-106(1)(a)–(b) (West 2021). This is highly beneficial when one considers that the candidates seeking this degree may be Elders or those making a career change.

the tribal government has complete control over the final determination of a person's ability and readiness, and the State maintains 'control' in the sense that the State is still the one to sign off on the approval, thus making it official.

Washington has an established "first peoples' language, culture, and oral tribal traditions teacher certification program."¹⁴⁸ The Washington legislature found that it was a "critical factor" to teach the Native languages, cultures, and "oral tribal traditions" to "foster[] successful educational experiences" for all children so as to help raise the children's academic achievement.¹⁴⁹ Although it appears as if the main purpose is to raise school achievement scores, the legislature noted that "[t]he sole expertise of sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington in the transmission of their indigenous languages, heritage, cultural knowledge, histories, customs, and traditions should be honored."¹⁵⁰ In fact, the legislature specifically cited NALA in its law, highlighting NALA's purpose and noting that exceptions should be made for Native language teacher certifications.¹⁵¹ Again, this shows that it is possible for states to recognize that the uniqueness of Native languages is something that the state should not try to force into a traditional, foreign language box, but rather allow the flexibility for a tribe to determine whether or not someone is proficient.

The Washington State and tribal governments are to have a "government-to-government collaboration."¹⁵² Here,

148. WASH. REV. CODE § 28A.410.045 (2022).

149. First Peoples' Language and Culture Teacher Certification Program, S.B. 5269, 60th Leg., Reg. Sess. § 1(1) (Wash. 2007).

150. Wash. S.B. 5269 § 1(3).

151. Wash. S.B. 5269 § 1(6)(a)–(e).

152. Wash. S.B. 5269 § 1(4). The statute outlines this collaboration, articulating that the collaboration is a "cogovernance" with the "professional educator standards board, the office of the superintendent of public instruction, and the sovereign tribal governments." WASH. REV. CODE § 28A.410.045(1)

the sovereign tribal government determines if the teacher is ready, providing its own tribal certificate first, before the state issues a teacher certificate.¹⁵³ Another promising feature of Washington's certification process, like Montana's, is that the Native language certificate can stand on its own; it does not need to be linked to another and is fully recognized.¹⁵⁴ It is this type of cooperation towards which all states minimally should aspire.

In Oklahoma, a state where there are university programs offered in Native languages, the Native language teacher certification process ignores more standardized formats of assessing proficiency (e.g., the language proficiency tests for foreign language teachers). Instead, Oklahoma's statute requires applicants to obtain a certificate of proficiency in their language and submit a portfolio documenting their language expertise, as certified by their tribal government.¹⁵⁵ Oklahoma recognizes a tribal government's determination¹⁵⁶ rather than relying on a

(2022).

153. WASH. REV. CODE § 28A.410.045(3)(a) (2022) (“The office of the superintendent of public instruction shall not authorize or accept a certificate or endorsement in Washington state first peoples’ language, culture, and oral tribal traditions without certification from a participating sovereign tribal government . . .”).

154. WASH. REV. CODE § 28A.410.045(3)(c) (2022) (“The holder of a Washington state first peoples’ language, culture, and oral tribal traditions teacher certificate who does not also hold an initial, residency, continuing, or professional teaching certificate authorized by the professional educator standards board may be assigned to teach only the languages, cultures, and oral tribal traditions designated on the certificate and no other subject.”). This simply means that they are still allowed teach the Native language, and only that language, rather than needing to hold both their Native language certification and an additional certification, such as elementary education.

155. OKLA. ADMIN. CODE § 210:20-9-98(d)(1)(A)–(C) (2022). It is also important to note that the code cites the Native American Languages Act, 25 U.S.C. § 2901(1)–(2), when defining who is a Native American. OKLA. ADMIN. CODE § 210:20-9-98(d) (2022). This is significant, because that portion of NALA is not a textbook definition of a *person* or group of people, but rather the language which incorporates a recognition of the distinctness of Natives to that of the U.S. (i.e., sovereignty) and the uniqueness and importance of Native languages.

156. OKLA. ADMIN. CODE § 210:20-9-104(b) (2022).

formal assessment by the state. Proficiency can be shown either via a tribe-issued Native language certificate, *or* with a university degree that the tribe designates as a prerequisite for achieving proficiency.¹⁵⁷ In an effort to maintain some control as part of this shared governance, the state requires the tribal government to submit a statement identifying the following: (1) the language in which the tribe is certifying an individual as proficient; (2) an explanation of the standards used to certify the Native language teacher; (3) a description of the requirements needed for the tribe to issue a certificate; and (4) an account of the levels of proficiency or language course that the tribe will use in order to determine someone is proficient in the Native language.¹⁵⁸ This seems to mimic the type of state oversight given to other teacher certificate competency standards, yet even with all this, the tribe is still maintaining control over the determination itself.

Teachers with this Native language certificate are allowed to teach their language classes, but no other topic, in schools.¹⁵⁹ The certificate is good for a provisional year, and it then can be renewed on a year-to-year basis, if the teacher does not also hold a traditional or alternative teaching credential.¹⁶⁰ The catch here is that the school district must request the renewal and the teacher must show they have completed a minimum sixty hours of professional

157. OKLA. ADMIN. CODE § 210:20-9-104(b)(1)–(2) (2022).

158. OKLA. ADMIN. CODE § 210:20-9-104(c) (2022).

159. OKLA. ADMIN. CODE § 210:20-9-104(d) (2022). The statute provides that a teacher may either qualify for an alternative certificate or co-teach with another certified teacher if they want their Native language class to count as a core “world” language requirement credit, rather than an elective. OKLA. ADMIN. CODE § 210:20-9-104(d)(2) (2022). This is not unusual as many teachers only hold certificates in their own specialty area, however, many may have both an elementary or secondary certificate with their specialty (e.g., a French teacher may be certified in adolescent grades with French as their specialization area, meaning they can teach middle or high school French classes).

160. OKLA. ADMIN. CODE § 210:20-9-98(d)(2) (2022).

development for the first two renewal periods.¹⁶¹ If, however, the teacher does hold another teaching certificate, then the Native language certification can be renewed in five-year increments.¹⁶²

California's legislature also called on NALA's language in recognizing the essentiality of teaching Native languages to Native children, and the legislature affirmed that "preserving American Indian languages is an important part of our national heritage and can be of value to all Americans."¹⁶³ Similar to other states, California allows for a Native language teaching credential in grades preK-12, but goes beyond to be inclusive of adult education settings.¹⁶⁴ The certificate is eligible for a professional, "clear teaching credential" after a "specified period of time."¹⁶⁵

Here, too, the tribal government is seen as the expert in deciding whether or not someone is proficient enough in their Native language. However, California's legislature "encourage[d]" tribes to develop a written and oral assessment,¹⁶⁶ and the resulting statute reflects that.¹⁶⁷ This

161. OKLA. ADMIN. CODE § 210:20-9-98(d)(2)(A)(ii) 2022. This is, again, state-controlled in terms of being a mandate. Yet, this type of mandate—requiring professional development and having provisional certificates that are renewable prior to eventually becoming permanent—is not unusual and is seen in other types of certifications, in many states. *See, e.g., Office of Teaching Initiatives, Initial Certificate*, N.Y. STATE EDUC. DEPT, <http://www.highered.nysed.gov/tcert/certificate/typesofcerts/in.html> (last visited May 28, 2022) (showing an example of an initial certificate which is required before a teacher receives their permanent certification after the provisional period is over).

162. OKLA. ADMIN. CODE § 210:20-9-98(d)(2)(B) (2022).

163. Teaching Credential: American Indian Languages, Assemb. B. No. 544 § 1(a)–(b) (Cal. 2009).

164. CAL. EDUC. CODE § 44262.5(b) (West 2016).

165. CAL. EDUC. CODE § 44262.5(d) (West 2016).

166. Assemb. B. No. 544 § 1(a)–(b) (Cal. 2009).

167. CAL. EDUC. CODE § 44262.5(d) (West 2016). What is interesting is that the statute clearly states that "the commission shall issue an American Indian language-culture credential to a candidate who has met the following requirements: . . . demonstrated fluency in that tribe's language based on an assessment developed and administered by that federally recognized Indian tribe

is different from other states' openness to allowing the tribe to determine what is best for that language and certifying as such. California's approach is likely an attempt to have the Native language certification requirements align more closely with what a foreign language teacher must do—an oral and written proficiency test to be completed prior to issuing a certificate. A confusing aspect about California's bill is that while the credential is hyphenated as a language-culture credential,¹⁶⁸ which would indicate a connection between the two, the certificate “authorize[s]” the candidate to “teach the . . . language, *or* culture, *or* both.”¹⁶⁹ So while the State seems to draw from NALA, the understanding seen in NALA—that the language and culture are *not* separate from one another—is non-existent here, which could explain why the State encourages the tribes to create a written and oral assessment.¹⁷⁰

Another slight difference from other states like Montana and Washington, is that California will provide a credential upon “recommendation” of the tribal government.¹⁷¹ This

pursuant to subdivision (e),” but then later in said subdivision, it uses the language of the legislature in that an assessment is “encouraged.” CAL. EDUC. CODE § 44262.5(a)(1)(A), (e)(1) (West 2016).

168. CAL. EDUC. CODE § 44262.5(a) (West 2016).

169. CAL. EDUC. CODE § 44262.5(b) (West 2016) (emphasis added). The statute also goes on to articulate that the teacher may only teach either the language, or culture, or both, depending on the type of credential they hold. CAL. EDUC. CODE § 44262.5(c) (West 2016).

170. In other words, as discussed earlier, traditional written and oral assessments may not correctly encompass the intersectionality of language and culture. *See* MAHONEY, *supra* note 131 at 40–55. California's Code also states that when considering the assessment, tribes should account for dialects, whether the language is standardized in written form, and the kinds of effective teaching methods of that language. CAL. EDUC. CODE § 44262.5(e)(2)(A)-(B), (D) (West 2016). This is also not a clear indication of understanding how language and culture are inseparable, but it is showing some awareness at least of the differences between languages and considerations that should be given.

171. CAL. EDUC. CODE at § 44262.5(a) (West 2016). This is different from how Montana issues a certificate “upon verification” from a tribe, MONT. ADMIN. R. 10.57.407 (2022), or Washington's tribal governments “may certify,” WASH. REV. CODE § 28A.410.045 (2022).

specificity of the language suggests that there is less of an emphasis on the tribe having control over a candidate's eligibility. With a "recommendation" process only, a state could, feasibly, deny the applicant. California's statutory language continues by making the shift to more obligatory language, stating that the State "shall issue" the credential after getting this recommendation. So, although California is an example of a good Native language certification statute, it is also a caution, a reminder, to any other state considering drafting legislation, *that wording matters*. If a state is going to rightly cede control over whether or not a candidate is eligible—particularly in matters relating to an overall ability in the language that only a tribe should determine—then the wording should mirror that of other states¹⁷² and not use terms like "recommendation."

A shift to more state control can be seen in places like Michigan, Nebraska, and South Dakota, where the state has control with input from the tribal governments,¹⁷³ to those with almost complete state control as in Alaska, Colorado, and Hawai'i.¹⁷⁴ For example, in Colorado, a Native language teacher must seek a K-12 "authorization."¹⁷⁵ This authorization lasts for five years and may be renewed as such, when a school district requests it and the teacher

172. For example, Washington states that "[o]nly a participating sovereign tribal government may certify individuals." WASH. REV. CODE § 28A.410.045(3)(a) (2022). Or, Montana's stipulation that "the applicant has met tribal standards." MONT. ADMIN. R. 10.57.436(2) (2022).

173. For example, in Michigan, the state and federally-recognized tribe will enter into a memorandum of understanding which authorizes the superintendent of public instruction to issue a three-year letter of approval (or continuing approval) of a Native language speaker so that the speaker may instruct a Native language class, if they do not hold a Michigan state teacher certification. See MICH. COMP. LAWS § 380.1531f(1) (2010).

174. Hawai'i is unique, however, in that Hawai'i's Constitution provides that both Hawai'ian and English are the official languages of the state. HAW. CONST. art. XV, § 4. Therefore, having full state control is not as "controlled" because of the official status of the language as already recognized by the state itself.

175. COLO. CODE REGS. § 301-37.4.18 (2022).

applies.¹⁷⁶ However, Colorado requires there be documented “evidence of continuing need.”¹⁷⁷ Colorado will issue this credential to a teacher who can show they have “demonstrated expertise” in their Native language, but it is “verified by the employing school district.”¹⁷⁸ The school district looks to see not only the teacher’s language skill ability, but also whether the teacher has “knowledg[e]” of the language and “related culture.”¹⁷⁹ This is a marked shift from other states who rely on the tribal governments to determine proficiency.

Then, of course, there is a myriad of states which have no recognition or pathway for Native language teachers. These states either have nothing at all, or, they have a language certificate listed,¹⁸⁰ but when one goes to register

176. COLO. CODE REGS. § 301-37.4.18(1) (2022).

177. *Id.*

178. COLO. CODE REGS. § 301-37.4.18(1)(b)(i) (2022). The employing school district will use “objective standards” in verifying that the teacher can “listen, speak, read and write the Native American language identified at a proficient level for the purposes of interpersonal, interpretive and presentational communication.” COLO. CODE REGS. § 301-37.4.18(1)(b)(iii)(A) (2022).

179. COLO. CODE REGS. § 301-37.4.18(1)(b)(iii)(B) (2022).

180. For example, New York currently has Seneca and Mohawk listed under the dropdown menu selection for “Classroom Teacher Extensions-Foreign Languages” when searching for an initial teaching certification. *See Search Certification Requirements*, NYS DEP’T OF EDUC., OFF. OF TEACHING INITIATIVES, <https://eservices.nysed.gov/teach/certhelp/CertRequirementHelp.do> (last visited March 16, 2023) (select *Classroom Teacher Extensions-Foreign Language for Select an Area of Interest*; then select either *Seneca* or *Mohawk* for the *Select a Subject Area*; and any remaining drop-down choices will populate based on the available options from that point forward). However, Seneca and Mohawk are not listed within the chart of classroom teaching certificate titles through New York State. *Chart of Classroom Teaching Certificate Titles*, NYSED, OFF. TEACHING INITIATIVES, <http://www.highered.nysed.gov/tcert/certificate/classroomtitles.html> (last visited March 16, 2023). Author-led calls to various state agencies that work with individuals on an individualized-pathway to certification plan (e.g., not through a university) received responses that varied from knowing that the Native languages are listed this way (or not listed) to claims of never hearing of these options at all. For the past decade, a small team, which included the author and members of the Seneca Nation Onöndowa’ga’, argued and proposed a recognized teacher certification in any Native language within the state, for all grade levels. After much work and collaboration with others across New York,

for the credential, the certifying board does not know what to do or, worse, realize it exists.

V. FIXING THE BARRIERS:
MAKING EXCEPTIONS FOR TEACHER CERTIFICATION

Since NALA, there have been hearings, amendments, reauthorizations, and calls for new or additional legislation regarding Native languages.¹⁸¹ It is unlikely that the USDOE will figure out a way to overstep state agencies and require deference to NALA for teacher certification. Perhaps the only way to do so would be to tie federal funding to teacher certification related to Native languages, or to somehow fund Native language teacher salaries. Without federal oversight the gatekeeping power for who gets to be a teacher remains with the states.

Because state legislatures codify teacher requirements, there is not much room for change unless individual state statutes are amended (or are written in the first place) to account for Native language certification areas. For those that do have some pathway for Native language teachers, it may be arduous or too stringent, the pathway being based on more common, more traditional certifications. As such, those states need to make accommodations in their codes and statutes regarding Native languages and realize NALA's provisions¹⁸² and the importance of doing so.

Most of the states that do have some sort of certification process in place for Native language teachers to become certified are those states where there is a higher concentration of tribal groups living.¹⁸³ Yet because there is

this may finally come to fruition. *See* Appendix.

181. *See, e.g., Native American Languages Act: Hearing on S. 575 Before the S. Comm. on Indian Affairs*, 108th Cong. (2003) ("To Amend the Native American Languages Act to Provide for the Support of Native American Language Survival Schools").

182. 25 U.S.C. § 2903(2).

183. Most Native speakers in the United States are "concentrated in Alaska,

no standardized process across states, Native teachers must choose where to become certified. This might mean wherever they live, but the demarcation of certification based on state borders—when many tribal lands cross state governmental boundaries—could be problematic for many. When some states provide more stringent control over the certification process versus other states where there is less state control, such as over a language fluency standard, it may mean that some Native languages have more of a chance of reclamation than do others because teacher candidates may choose where to go based on the ease in which it would be to get certified. Ideally, every state would amend their statutes for Native language teacher credentials to be the most accessible and possible for people to become certified, as well as examine their reciprocity rules to make choices like these obsolete.

The biggest problem, of course, is the states that have no teaching certification for Native languages in place.¹⁸⁴ If these states also contain a lower concentration of Native Peoples or speakers, then that conflates the problem of children learning the language. Considering that most of the states in the U.S. do not have any state statutes in place nor a process for Native language teachers to become certified, this is highly concerning. These states need to draft up a process or—better yet—reach out to tribal groups in their respective states to see if this is something that would be welcomed.

Ultimately, most state statutes around teacher certification effectively bar Native communities and preK-12 schools from producing teachers recognized for their language abilities. Perhaps the statutes are making it too difficult for Native speakers (i.e., Elders) to meet the

Arizona and New Mexico, with just nine counties from these three states containing half of the nation's speakers. . . . Other states with significant numbers include South Dakota, California, Oklahoma, and Washington." *Census Shows Native Languages Count*, LANGUAGE MAG., <https://www.language magazine.com/census-shows-native-languages-count/> (last visited May 28, 2022).

184. See Appendix.

requirements, or the statutes leave too little room for tribal governments to assist or have a voice, thereby keeping the control at the state level (e.g., with mandated tests that are not applicable to the Native language). Or, worse, because of non-existent statutes for Native language teachers, the states have nothing in place at all for potential teachers to even become certified. These states are implicitly (or explicitly¹⁸⁵) ignoring tribal sovereignty, the abilities these teachers bring to the table, and the detrimental effects these processes (or lack of) incur on many levels.

States without statutes in place to secure or assist with Native language certification are either inadvertently (or, again, explicitly) ignoring NALA's strong recommendation to work with tribal groups and governments¹⁸⁶ and to make exceptions for teacher certification.¹⁸⁷ For those states where there is mostly state control, rather than making exceptions to allow for tribal nations alone to determine who is fluent (and thus eligible for state teacher certification), the prioritization is on their own teacher certification policies and practices. And for states that may have the means to provide Native language certification pathways, regardless of the level of control between groups, there can be problems around requiring standardized tests and college coursework that separates the language, culture, and content.¹⁸⁸

Compounding all of this is the time element: the longer it takes to help future generations learn these languages, the more likely there will be a decline in the overall number of

185. I cannot say that states are purposely ignoring, because there is no direct documentation on the part of state educational agencies to say that they are not going to address Native language instruction or teacher certification.

186. 25 U.S.C. § 2903(4).

187. 25 U.S.C. § 2903(2).

188. For example, many courses in college university certification programs involve those which teach specific teaching methods. These teaching methods do not correspond with how Native languages are best taught or learned, largely because of the deeply entwined connection between language and culture. See SPRING, *supra* note 20 (talking about the differences of Indian education and Westernized education, the link between culture and language).

speakers, thereby limiting the likelihood of language transmission.¹⁸⁹ Any strict adherence to traditional state certification policies may lead to having no Native language teachers at all for some groups (e.g., in the situation where there is just no process at all, even if there are readily available language teachers); or to having a proficient teacher using a state-recognized teacher certification in another subject area;¹⁹⁰ or to having proficient Native speakers that could be teachers but choose not to because the process to get through the mandated requirements to access and hold the teacher certification is too long, too costly, or too arduous.¹⁹¹

As more Native children are schooled in non-territory tribal schools for their preK-12 experience,¹⁹² without sufficient Native language teachers, these children may never be exposed to learning their language. The younger

189. See *supra* Part I (discussion on language loss).

190. This would be problematic because either the teacher could teach the language, but not well, or would be limited to only teaching in their actual certified area.

191. This latter possibility, of course, is the crux of the problem in a myriad of ways. For example, if there are fluent Elders who could teach, they may not have the lifespan ahead of them or the desire at that point in their lives to do the requisite undergraduate college degree to become certified in teaching a language. Or, the time and cost of securing both an undergrad and master's degree in teaching, as some states require, means there is at least a minimum six-year period that could elapse before that person is certified, time which is costly when looking at how languages are being lost so quickly, particularly if it is an elder who may be the one needing to take that time to get certified. On creating a "stop gap" model for promoting Native language teaching and preservation, Littlebear noted that too many Native language programs "fail because they are usually staffed with paraprofessionals," that "state certification processes may not include certification for people who have special skills, such as fluency in Native American language" and culture, and that there is a problem with getting teachers in the first place. Richard E. Littlebear, *A Model for Promoting Native American Language Preservation and Teaching*, in STABILIZING LANGUAGES 234, 234-35 (Alicia Martinez ed., 1996). This problem he also attributes to what I argue here—that "some of these teachers are older, have had less schooling, are more traditional, may not have access to teacher preparation programs, or may simply not have the academic or economic resources to return to school for additional training." *Id.* at 235.

192. McCARTY, *supra* note 42, at 7.

generations may be able to attend immersion camps, but second language acquisition research shows that longitudinal, developmental, or two-way bilingual programs often work best for the acquiring a new language, particularly when the speaker is surrounded by a more dominantly used language.¹⁹³ That would require more consistent schooling—with teachers.

Yet without clear pathways for future Native language teachers to get their certification, in their content area (the Native language), any potential teaching positions that might or could exist within the K-12 system would not be filled at all. Modifications to certification requirements in states with no clear pathway must be granted to account for the fact that often the most fluent speakers, those best able to transmit the language and culture to a new generation of speakers, are the Elders—and in that instance, again, time is of the essence.

Tiffany S. Lee and Teresa L. McCarty correctly argue that no matter whether a school is on or off of tribal lands, schools should be “accountable to the Native American nations whose children they serve,” just as they are to state and federal governments.¹⁹⁴ This accountability by schools must include teachers who are qualified and capable of providing consistent, accurate, culturally sustainable instruction—especially language instruction—to assist the work of reclaiming languages before they are lost to future generations. The only way to get qualified, certified teachers, recognized as such by the states themselves, is to somehow require states to follow NALA’s stipulation that states make exceptions for teacher certification¹⁹⁵ in Native languages or get those states without any process at all to write one. At minimum, when a certification is codified and in practice, a

193. WRIGHT, *supra* note 101, at 100; SARAH C.K. MOORE, A HISTORY OF BILINGUAL EDUCATION IN THE US 118–21 (2021).

194. Lee & McCarty, *supra* note 19, at 61.

195. See 25 U.S.C. § 2903.

shared co-governance model would suffice. It must be one that provides a space for Native nations to have a say in how teachers can be recognized as properly certified while meeting some of the state's requirements, and one that simultaneously requires the state to modify and adapt aspects of the certification process that do not fit with the way in which these languages are taught or learned.

A. *States Must Amend or Create Statutory Pathways for Native Language Teacher Certification*

States are the ones that control all the power here, especially where certifications or pathways to such do not already exist. They have the ability to choose to adhere to NALA's recommendations and examine their own policies around how teachers are certified. The state legislatures alone can re-write, amend, or create statutes that can attend to the concerns addressed in this Comment. In most states, it could be as easy as adding a statement that once proficiency is acknowledged by the tribal group, the candidate is eligible for certification. State education departments can minimize the likelihood of fewer candidates attempting to seek certification if they recognize that Native languages are not foreign languages, meaning they should not be assessed as such. Removing barriers like the proficiency written tests—especially when some Native languages are not or are no longer written—can aid in getting the languages most at risk taught in classrooms so that the language carries on. If removing a test is a hurdle, it would be simple enough to allow for oral examinations, yet the state would have to cede some control over this as there are likely not enough speakers for them to all be employed by the state testing agencies. Again, it would have to be up to those who know the language already: the tribes. It is perhaps this loss of control that is most terrifying for state governmental agencies, and yet their controlling the statute by amending or creating it, means that, ironically, the power still rests wholly in them.

B. *In the Alternative: Give the Power Back to the Tribes*

Why not give more power and control to those who actually know the languages and cultures to be reclaimed? This should not be a problem, as “[a]ll three branches of the federal government have recognized the crucial role that increased control by Indian communities must play in the advancement of Indian education.”¹⁹⁶ There has been a historical recognition in more recent years, even prior to NALA, which shows the federal government supports the idea of less control over Native matters. For example, with the Indian Self-Determination and Education Assistance Act of 1975, there was a relinquishing of federal control over education to tribal governments; the legislative history of that Act shows that there was a concern over “promot[ing] maximum Indian participation in the government and education of the Indian people.”¹⁹⁷ When NALA was enacted, there was an understanding that parents and tribal communities were key to the education of Native children.¹⁹⁸ This shows that there has been a long-standing recognition of the importance of having some sort of co-governance, or at the very least, should be. It is time to have all of the states mimic what the federal government has realized and implement certification, even if the state thinks that there is no need to do so at present.

CONCLUSION

Since many Native tribes have so few speakers, and/or are in the process of reclaiming their language before they are lost to future generations, it is imperative that we recognize the sovereignty of these Native people even within state public schools, particularly over their right to the

196. Silverman, *supra* note 21, at 1020 (speaking about education generally to increase the overall education, culture, and living conditions of Indians).

197. *Id.* at 1025 (quoting H.R. REP. NO. 193-1600, at 1 (1974)).

198. *See* 25 U.S.C. § 2903(4).

learning and use of their languages, and see their language and culture as separate and apart from foreign or world languages. This means acknowledging that foreign language proficiency assessments implemented and designed by testing companies are not necessarily the best way to evaluate whether a person has enough fluency and capabilities in a Native language. It means amending or creating statutes to allow for potential Native language teachers the ability to gain state-recognized teaching credentials. It means ceding some state control.

States should defer to tribal governments. Since tribal groups have sovereignty and are recognized as separate entities who are best situated to meet the needs of their community, how is it that language instruction is seen as outside of that boundary between state and tribe? It is important that, at the very least, states do not misconstrue Native languages as foreign, that they do not require proficiency tests that are created and written for foreign language teachers, and instead turn to the tribal groups who can more properly determine whether or not a teacher is ready to read, write, speak, and listen in their Native language. Let the tribes have control over who is or is not a speaker of their language, about who is best qualified to impart their knowledge of their language and culture to their people. Tribes do know best.

States need to acknowledge NALA and either create or amend their existing teacher statutes so that they are aligned with the encouragement that NALA provides regarding allowing for teacher certification exceptions.¹⁹⁹ States could mirror their statutes after those found in Montana,²⁰⁰ Oklahoma,²⁰¹ or Washington²⁰² to start, or look to California and others where there might not be as strong

199. 25 U.S.C.A. § 2903(2).

200. MONT. ADMIN. R. 10.57.407 (2015).

201. OKLA. ADMIN. CODE § 210:20-9-98(d)(1)(A)–(C) (2022).

202. WASH. REV. CODE § 28A.410.045(1) (2022).

of a release of power and control but still reflect a recognition of the issue.²⁰³ However, ultimately, the best response is to have full power rest with the tribes. At the very least, returning power and control to the tribes themselves would ensure confirmation of whether or not someone knows the language (and inherent culture) of the Native language under consideration. At best, ceding power would return the control back from where it never should have been taken, and matching the purpose of NALA in the first place: to publicly recognize both the harms the United States did to Native communities, and the work required to support Native communities in ensuring that the languages and cultures of the Native People will survive, even if that means getting out of the way.

203. *See supra* Part IV.

APPENDIX

Most Tribal Control

State	Applicable Law	Commentary
Montana	MONT. ADMIN. R. 10.57.436 (2022).	“The Board of Public Education will accept and place on file the criteria developed by each tribe for qualifying an individual as competent to be a specialist in its language and culture.” R. 10.57.436(3). For further discussion, see <i>supra</i> Part IV.
New Mexico	N.M. STAT. ANN. § 22-10A-13 (LexisNexis 2022).	Although this could be seen as more co-governance, the fact that tribes have a say in <i>any</i> agreement with the department of education through a memorandum for the Native American Language and Culture K–12 certificate—and that any procedures for renewing must be in accordance with that memo—suggests the tribe has more control than other tribes who only sign off on proficiency and leave the rest of the determinations up to the state itself. Here, a baccalaureate is not required and the salary for this position is equivalent to any other teacher.
North Carolina	EASTERN BAND OF CHEROKEE INDIANS TRIBES & TRIBAL NATIONS, N.C. CODE OF ORDINANCES §§ 115-13 to -16 (2021).	Listed as a “special subject” certificate for K–12, North Carolina provides a Cherokee certificate. <i>Areas of Licensure</i> , N.C. DEPT OF PUB. INSTRUCTION, https://www.dpi.nc.gov/educators/educators-licensure/areas-licensure#special-subjects-k-12 (last visited June 13, 2022). North Carolina recognizes NALA by referencing it in the ordinance, and makes exceptions for Cherokee language instruction and teacher certification. § 115-16.

Here, the Cherokee have complete control. The ordinance states the tribe “shall have entire control of assessing and certifying all applicants for Cherokee language instructors and it shall prescribe any laws, rules, regulations, policies and procedures for the initial assessment renewal and extension of all certifications.” § 115-13. Specifically, the Eastern Band of Cherokee Indians may enter into a memorandum with the Department of Public Instruction so as “to issue a three-year letter of approval or continuing approval to allow Cherokee area to use instructors who do not possess a

valid North Carolina teaching certificate (‘noncertified teacher’) to teach a Cherokee language and culture class.” *Id.* at (d). There is a standardized Cherokee language assessment to meet, created by the Cherokee. § 115-15(a).

Wyoming	019-0001-6 WYO. CODE R. § 2 (LexisNexis 2022)	Although there is not a Native language license for teachers, there is a renewable two-year Native language permit for anyone to have, allowing the person to teach either the “Arapahoe and/or the Shoshone language(s).” <i>Educator Permits</i> , WYO. PRO. TEACHING STANDARDS BD., http://wyomingptsb.com/licensure/educator-permit-information/ (last visited June 12, 2022). These permits only require that the person get written approval from the tribe, and written verification from the school district in which they would like to work. § 2(i); <i>see also Native Language Permit</i> , WYO. PRO. TEACHING STANDARDS BD., http://wyomingptsb.com/licensure/educator-permit-information/native-language-permit/ (last visited June 12, 2022).
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Shared (Co-)Governance

State	Applicable Law	Commentary
Arizona	ARIZ. REV. STAT. § 15-501.01 (LexisNexis 2022).	Note that here the preK-12 Native American language certificate is like any other certification per the statute, although a baccalaureate degree is not required. § 15-501.01(F)(2)(a). The renewable certificate is valid for twelve years and the state only requires proficiency as verified from a tribal government. <i>Requirements for the Native American Language, PreK-12 Certificate</i> , ARIZ. DEPT OF EDUC. CERTIFICATION UNIT, https://www.azed.gov/sites/default/files/2017/04/Requirements%20for%20Certificate%20-%20Native%20American%20Language.pdf (last visited June 13, 2022) (“Verification letter: Verification of Native American Language proficiency verified on official letterhead by a person(s) or entity designation by the appropriate tribe.”).
California	CAL. EDUC. CODE § 44262.5 (WEST 2016).	“Upon recommendation of the tribal government of a federally recognized Indian tribe in California, the commission shall issue an American Indian language-culture credential to a candidate who has met the following requirements:” § 44262.5(a). For further discussion, see <i>supra</i> Part IV.

Idaho	Idaho Code § 33-1280 (2022).	Tribes get to establish a designation system for who is eligible for certification, albeit the statute requires some documented assessment and evaluation. § 33-1280(4). But, “[u]pon receiving the names of American Indian languages teachers designated by an Indian tribe, the state board of education shall authorize those individuals as American Indian languages teachers in accordance with rules of the board.” <i>Id.</i> at (5). Nor is an undergraduate degree required. <i>Id.</i> at (6).
Michigan	MICH. COMP. LAWS § 380.1531f(1) (2010).	The state authorizes the state superintendent to issue a three-year letter of approval to districts or public school academies so as to hire a non-certified (aka Michigan recognized) teacher to teach a Native language and culture class. § 380.1531f(1). A memorandum is issued between the state and the tribe, dictating what each case will look like. <i>Id.</i> (“A memorandum of understanding entered into under this section shall require that a noncertificated teacher has demonstrated mastery of the tribal language either through a credential issued by a federally recognized Native American tribe or another means considered suitable by the department.”).
Minnesota	MINN. STAT. § 124D.75 (2021).	Exemptions are made for American Indian Language and Culture Education teachers, particularly if following the requirements outlined for getting this license would “create a hardship” in securing teachers. § 124D.75(6). Licenses in this area are equal to that of any other and the Board must provide either an initial or continuing one that are of the same duration as any other license. § 124D.75. Candidates must either show competency or have a baccalaureate degree, and prove this competency via “affidavits, tribal resolutions, or by such other methods as the board may prescribe.” <i>Id.</i> at (1)(1)–(2). Individuals may apply on their own or “the superintendent or other authorized official of a school district, participating school, or an American Indian school” may submit the application for the license. <i>Id.</i> at (2). A letter of support from a tribal government must be submitted or be on file for the applicant. <i>Id.</i> at (3).
Oklahoma	OKLA. ADMIN. CODE § 210:20-9-98(d) (2020).	“A Native American language certification may be issued to applicants who meet the qualifications set forth in 210:20-9-104(b) and provide documentation that the applicant has met the following criteria” § 210:20-9-98(d)(1). For further discussion, see <i>supra</i> Part IV.

Oregon	OR. REV. STAT. ANN. § 342.144 (West 2022).	Oregon recognizes the essentiality of teaching Native languages, by saying it is the “proper” way to teach Native children (and note the wording mirrors that of Nebraska’s). § 342.144(2). What is interesting here is the language of the statute itself. It reads that a tribe “may” create a written and oral test to determine a candidate’s proficiency, but also that the test “must” be completed to see if a person is ready. <i>Id.</i> at (4). The state does allow this test to be done wherever it will not “create hardship” for the tribe to administer it. <i>Id.</i> at (5). Additionally, the state cannot require that a Native language educator get specific university degree training in order to get this license. <i>Id.</i> at (6).
Washington	WASH. REV. CODE § 28A.410.045 (2020).	“The collaboration required under this section shall be defined by a protocol for cogovernance in first peoples’ language, culture, and oral tribal traditions education developed by the professional educator standards board, the office of the superintendent of public instruction, and the sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington.” § 28A.410.045(1), (3)(a). For further discussion, see <i>supra</i> Part IV.

More State Control

State	Applicable Law	Commentary
Alaska	ALASKA ADMIN. CODE tit. 4 § 12.370 (2022).	A five-year limited certificate exists for Alaskan language or culture if there is no undergraduate program available to be trained in that specialty area, but must be requested by the school district. § 12.370(a). Two letters of recommendation “verifying the applicant’s length of experience and competency in the specialty field” is required. <i>Id.</i> at (b). Additionally, either a résumé—in the Alaska Native language—must show evidence of language and culture competency, or a school district must affirm a minimum of 4 years’ <i>culture</i> experience. <i>Id.</i> at (b)(1)(A). The applicant must also submit any other information as requested by the education department. <i>Id.</i> at (b)(1)(B); <i>See Type M Limited Certificate</i> , ALASKA DEP’T OF EDUC. & EARLY DEV., https://education.alaska.gov/teachercertification/certification/typem (last visited June 13, 2022).
Colorado	COLO. REV. STAT. § 22-	Colorado has a Native American language and culture instruction authorization but it is

60.5-111 (15) (2022).	prescribed in the state statute as more state-led. For example, the state does not mention specific ways to show proficiency, other than the candidate “demonstrate expertise.” C.R.S. § 22-60.5-111 (15). The state lists requirements that must be met to receive this authorization, many of which are articulated by the state board and, in a way, diminish the independence and importance of these teachers by having such a strong state board determination in areas like expertise. <i>See</i> § 22-60.5-111 (15)(a)(II)(A)–(E). An example of this is how the Native language teacher, if not already an adjunct, “shall work in partnership with a licensed teacher who currently teaches world languages for the employing school district.” <i>Id.</i> at (15)(a)(II).
Hawai'i Various. <i>See</i> <i>e.g.</i> , HAW. REV. STAT. §§ 302A-802, 805 (2022).	This state is somewhat of an outlier in comparison to others. Technically more state control here, but, as mentioned earlier, the entire state has Hawai'ian as an official language and Hawai'i's constitution requires the promotion of the study of the language itself. HAW. CONST. art. X, § 4. State-system universities have language educator programs leading to certification and are statutorily required to do so. HAW. REV. STAT. § 304A-1302 (2022). The certification areas in Hawai'ian languages cover K-12 and include foci on just the language, Hawai'ian knowledge, and immersion as possible licenses. The state also allows for a Hawai'ian permit, one which is used when no licensed teacher is available. <i>See License and Permit Information</i> , HAW. TCHR. STANDARDS Bd., https://hawaiiteacherstandardsboard.org/content/permits-and-license-types/ (last visited June 13, 2022) (listing the Hawai'ian Permit in the chart of possible licenses and permits); <i>see also Requirements for a Hawaiian Permit</i> , https://hawaiiteacherstandardsboard.org/content/wp-content/uploads/REQ-HAWAIIAN-PERMIT-rev7-13-20.pdf (last visited June 23, 2022). A full list of the licenses available can be found through the Hawai'i Teacher Standards Board at https://hawaiiteacherstandardsboard.org/content/wp-content/uploads/License-Fields-5-5-21-1.pdf .
Nebraska NEB. REV. STAT. ANN. § 79-802.01 (2022).	The statute recognizes the importance of Native language instruction, saying it is “essential to the proper education of American Indian children.” § 79-802.01(1). An additional teaching certificate is not required, and the tribe determines proficiency. <i>Id.</i> at (2)–(3). That being said, the state requires

that the tribe conform the way they make that determination by having a written and oral test given at a post-secondary institution. *Id.* at (3).

According to Nebraska's World Language department, as of 2019, there are four Native languages taught in the state, thereby classifying the Native languages as such based on the state's definition of a world language. *See World Language in Nebraska: Enrollment Demographics*, NEB. DEPT OF EDUC., <https://www.education.ne.gov/wp-content/uploads/2019/03/Languages-Learned-in-Nebraska-2019.pdf> (last visited June 13, 2022) (noting the following languages are taught: Dakota, Omaha/Umohon, Lakota, and Winnebago/Ho-Chunk). Yet elsewhere, the statute around actual certification requirements, and World Languages, lists other languages—none of which are Native languages. 92 NEB. ADMIN. CODE, § 24-006.72 (2022). For an initial certificate, Nebraska requires a Praxis content test for any endorsement as of 2015. *Teaching Initial Certificate*, NEB. DEPT OF EDUC., <https://www.education.ne.gov/tcert/teaching-certificates/teaching-initial-certificate/> (last visited June 13, 2022). A specific Praxis exam is not listed for any the Native languages taught in Nebraska, nor does the World Language Department include any other information about those languages other than in the previously cited demographics page.

Nevada	NEV. ADMIN. CODE § 391.233 (2021).	In the 1980s, a committee established the Great Basin Native American Language endorsement. <i>Great Basin Am. Language</i> , STATE OF NEV. DEPT OF EDUC., https://doe.nv.gov/Indian_Education/Great_Basin_Native_American_Language/ (last visited June 8, 2022). This gave space for the instruction of four languages in the K-12 public schools: Northern Paiute, Southern Paiute, Washoe and Western Shoshone. <i>Id.</i> The endorsement also lets fluent speakers to be certified and teach. <i>Id.</i> The certification is like any other certification required in the state, but the tribe only provides input as to whether the candidate has fluency. This is also only an option; a candidate can show proficiency via a university program. NEV. ADMIN. CODE § 391.233 (2021). Yet, promisingly, if a candidate does not have the requisite items to receive the endorsement, they may still teach the language if
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		they are in a classroom with another certified teacher. <i>See id.</i> at (4).
North Dakota	N.D. CENT. CODE § 15.1-13-22 (2021).	North Dakota does have a Native language certification statute, but the state controls. This is because although the tribe gets to verify eligibility by recommendation to the state board, the candidate must still show they have met one of two state requirements: (1) that they have competency in the language and have taken a 3 credit course in classroom instruction at a college, or (2) they have an undergraduate degree and have “knowledge of or experience in” the tribal language and culture. § 15.1-13-22.
South Dakota	S.D. ADMIN. R. 24:28:09:04 (2020).	South Dakota does recognize an “official indigenous language” for the state in their Code. S. D. CODIFIED LAWS § 1-27-20 (2019). There are two permits in South Dakota that allow for Native language speakers to teach the language without having a teaching degree. S.D. ADMIN. R. 24:28:09:04 (2020). They have a “K-12 Eminent Scholar Lakota, Dakota, Nakota language permit” and a “Native American Lakota, Dakota, Nakota Language and Culture Permit. <i>Id.</i> These permits, however, require not only tribal recommendation for licensure, but also proof of proficiency and recommendation from an accredited university program in Lakota. <i>Certification: Information about Educator Permits</i> , S.D. DEP’T OF EDUC., https://doe.sd.gov/certification/EdPermits.aspx (last visited June 13, 2022). These areas of specialty can be added to teacher certifications held by people as an endorsement, according to the listing under the Educator Permit Endorsements. <i>Course Offerings for Endorsements and Alternative Certification</i> , S.D. DEP’T OF EDUC., https://doe.sd.gov/certification/prep.aspx (last visited June 13, 2022).
Wisconsin	Various	Wisconsin has a time-limited statute on the books stating that the “state superintendent shall permanently certify any applicant to teach Wisconsin native American languages and culture who has successfully completed the university of Wisconsin-Milwaukee school of education approved Wisconsin native American languages and culture project certification program at any time between January 1, 1974, and December 31, 1977.” WIS. STAT. § 118.19(3)(b) (2021). Wisconsin also allows for Native language instruction via American Indian Language and Culture Education Programs established in an area that serves

Native students. See WIS. STAT. § 115.72 (2019); see also *American Indian Language and Culture Education Licenses*, WIS. STATE DEP'T OF PUB. INSTRUCTION, <https://dpi.wi.gov/amind/language-culture-education> (last visited June 12, 2022). The school board will designate which school hosts this program. § 115.72(3). The State Superintendent is also responsible for “[e]stablish[ing] by rule standards for certifying the abilities of teachers participating in American Indian language and culture education programs . . . to read and write or speak an American Indian language and to possess knowledge of American Indian history and culture.” § 115.28(17).

No Provisions

State	Commentary
Alabama	Many other languages exist for various credentials, but none are for Native languages according to the endorsements listed under the provided links for Miscellaneous Documents. <i>Teacher Certification</i> , ALA. STATE DEP'T OF EDUC., https://www.alabamaachievers.org/teacher-center/teacher-certification/ (last visited June 13, 2022); see https://www.alabamaachievers.org/wp-content/uploads/2021/03/Endorsements-10.1.2020.pdf (listing all of the endorsements possible).
Arkansas	Although there is German, Spanish, French, Italian, Latin, and Japanese, there is no provision for a Native language. <i>Additional Licensure Plans</i> , ARK. DEP'T OF EDUC.: DIV. OF ELEMENTARY & SECONDARY EDUC., https://dese.ade.arkansas.gov/Offices/educator-effectiveness/educator-licensure/additional-licensure-plans-alp (last visited June 13, 2022).
Connecticut	Many world languages are listed, including Russian and Portuguese, but no specific Native language certification is available. <i>Endorsement Codes</i> , CONN. STATE DEP'T OF EDUC., https://portal.ct.gov/SDE/Certification/Endorsement-Codes (last visited June 8, 2022). There is an “Other Languages” endorsement but it is unclear whether this would be an avenue for Native languages. <i>Id.</i>
Delaware	Also has no certificate specific to Native languages. The only potential window for establishing one within the existing areas would be to submit the Native language within the World Languages certification area. 14 DEL. ADMIN. CODE § 1565. This would mean showing they studied the language at a university and that they pass the ACTFL proficiency guidelines in that language (which would mean an aligned assessment in that language must exist). <i>Id.</i> at (4.1.1.2), (4.1.2.2).

Florida	Like the others prior, there are many potential certifications for world languages, including less commonly taught languages such as Farsi, Turkish, and Haitian Creole. <i>Certificate Subjects: World Language Areas</i> , FLA. DEPT OF EDUC., https://www.fldoe.org/teaching/certification/certificate-subjects/#language (last visited June 13, 2022). Native languages are not a certification area, however. <i>Id.</i>
Georgia	There is no Native language certification. There are many other languages, including Korean, Hindi, Swahili, and Urdu, but not Native languages. <i>See Teaching</i> , GA. PRO. STANDARDS COMM'N, https://www.gapsc.com/Certification/CertFieldsAndEndorsements/teaching.aspx (last visited June 13, 2022).
Illinois	Per the licensure testing system, which is where candidates can find the required tests for their certification, there is none for Native language certification although numerous others for bilingual endorsements. <i>See Tests</i> , ILL. LICENSURE TESTING SYSTEM, http://www.il.nesinc.com/PageView.aspx?f=GEN_Tests.html (last visited June 13, 2022).
Indiana	Similar to Delaware, there is no specific mention of Native language certification areas, although there is an “other language” and a “language for heritage speakers” category under World Languages that might suffice as an avenue. <i>See Educator Licensing</i> , IND. DEPT OF EDUC., https://www.in.gov/doe/educators/educator-licensing/ (last visited June 13, 2022); <i>see also</i> https://www.in.gov/doe/files/All-AC-Sections-5.12.2022.pdf .
Iowa	Nothing on the books here, either, even when searching their list of possible endorsements. <i>Endorsements List</i> , IOWA BD. OF EDUC. EXAM'R, https://boee.iowa.gov/endorsements/endorsements-list (last visited June 13, 2022).
Kansas	Few languages, all of them world languages, are available for Kansas candidates and none are Native languages. <i>Inst. Endorsements</i> , KAN. DEPT OF EDUC., https://www.ksde.org/Portals/0/TLA/HigherEd/Directory%20App%20Progs%20Endorsements%2005042022.pdf?ver=2022-05-04-095224-860 (last visited June 13, 2022).
Kentucky	No native language certification areas, only foreign languages. <i>Kentucky Teaching Certificates</i> , DIV. OF EDUCATOR LICENSURE & QUALITY, http://www.epsb.ky.gov/mod/page/view.php?id=92 (last visited June 13, 2022).
Louisiana	Using Teach Louisiana’s certification area finder tool, there are no hits for Native languages. <i>See Certification</i> , TEACH LA., https://www.teachlouisiana.net/teachers.aspx?PageID=12311121&Display=2 (last visited June 13, 2022).

Maryland	None, unless there is a way for Native language teachers to be counted under World Languages. <i>See Educator Certification Areas</i> , MD. STATE DEPT OF EDUC., https://www.marylandpublicschools.org/about/Pages/DEE/Certification/Certification-Areas.aspx (last visited June 13, 2022).
Massachusetts	Using their licensure requirements tool, it is evident there are numerous languages for the Academic Teacher role (including Armenian and Hmong) but none are Native languages. MASS. DEPT OF ELEMENTARY & SECONDARY EDUC., https://gateway.edu.state.ma.us/elar/licensurehelp/LicenseRequirementsCriteriaPageControl.ser (last visited June 13, 2022).
Mississippi	No Native language certification. <i>Licensure Guidelines K12</i> , MISS. DEPT OF EDUC., https://www.mdek12.org/licensure (last visited June 13, 2022) (noting there is nothing listed under the “Guidelines for Mississippi Educator Licensure K-12 November 2021” link provided on the page).
Missouri	There is no Native language certification in this state. All possible certifications and their requirements are listed in Missouri’s code. MO. CODE REGS. tit. 5 §§ 20-400.510 to 20-400.700.
New Hampshire	No certification for Native languages, although others are possible. The list was last updated in April 2022 to reflect new numbers in the administrative code. Christine Zinkand, <i>Endorsements Available and Requirements</i> , https://nhdoepm.atlassian.net/wiki/spaces/CHD/pages/193954145/Endorsements+Available+and+Requirements (last visited June 13, 2022).
New Jersey	Like the other states, there are many potential certifications for other languages, including Hebrew, Korean, and Greek, but none for Native languages. Certifications and Endorsements, STATE OF N.J. DEPT OF EDUC., https://nj.gov/cgi-bin/education/license/endorsement.pl?string=999&maxhits=1000&field=2 (last visited June 13, 2022). It is possible one could argue for the “other world language” category, although this would require formal testing requirements and college coursework. <i>Other Foreign Languages Certificate of Eligibility with Advanced Standing</i> , https://nj.gov/education/license/endorsements/1590CEAS.pdf (last visited June 13, 2022).
New York	At the time of this writing, New York has no formally recognized teacher certification of record for a Native language, although two languages (Seneca and Mohawk) are listed as available certificates for grades 5-6 on the TEACH website as foreign language classroom teacher extensions. <i>See supra</i> note 180. However, in February 2023, the New York State Department of Education announced the proposal of “the creation of the Indigenous Culture and Language Studies

(All Grades) certificate for teachers.” *State Education Department Proposes Indigenous Culture and Language Studies Certification for Teachers*, <http://www.nysed.gov/news/2023/state-education-department-proposes-indigenous-culture-and-language-studies-certification>.

Ohio	No provisions for a Native language certificate, as evidenced by the list of available endorsements. <i>Licensure Types and Codes</i> , https://education.ohio.gov/getattachment/Topics/Teaching/Licensure/Apply-for-Certificate-License/Teaching-Field-Codes.pdf.aspx?lang=en-US (last visited June 13, 2022).
Pennsylvania	Languages such as Pashto and Lithuanian have teacher certifications in Pennsylvania, but no Native language certification. <i>Certificates in Pennsylvania Types and Codes</i> , DEP’T OF EDUC., https://www.education.pa.gov/Educators/Certification/PAEducators/PACerts.aspx (last visited June 13, 2022).
Rhode Island	No apparent Native language certification area listed. <i>Rhode Island Certification Tests and Passing Scores</i> , https://www.ride.ri.gov/Portals/0/Uploads/Documents/Teachers-and-Administrators-Excellent-Educators/Educator-Certification/Cert-main-page/RI_Required_Certification_Tests.pdf?ver=2022-06-01-104323-910 (last visited June 13, 2022).
South Carolina	Has many foreign language endorsements, but none are for Native languages. <i>Adding Certification Fields & Endorsements</i> , S.C. DEP’T OF EDUC., https://ed.sc.gov/educators/certification/add/ (last visited June 13, 2022).
Tennessee	Despite having many possible languages to teach, candidates do not have an option for teaching a Native language according to the state’s list of endorsements. <i>Licensure Resources: Endorsement Code Listings, Academic</i> , TENN. DEP’T OF EDUC., https://www.tn.gov/content/tn/education/licensing/licensure-resources.html (last visited June 13, 2022).
Texas	Texas has many languages, including Urdu, Korean, and Russian, and even a bilingual supplemental endorsement in Mandarin, Spanish, and Vietnamese, but none are for Native languages. This can be viewed in the Educator Certification Online System’s approved certification area drop down selector at https://secure.sbec.state.tx.us/SBECOnline/approvedprogram.s.asp?s=1&sid= .
Utah	There is no endorsement for a Native language specifically outlined at their endorsements page. <i>Educator Endorsements</i> , UTAH STATE BD. OF EDUC., https://www.schools.utah.gov/licensing/endorsements?mid=5266&tid=1 (last visited June 13, 2022).

Vermont	Vermont has no Native language endorsement. <i>Vermont Approved Educator Endorsement Codes</i> , https://education.vermont.gov/sites/aoe/files/documents/educator-quality-endorsement-codes.pdf (last visited June 13, 2022).
Virginia	Virginia’s administrative code lists all possible endorsements, and a Native language is not one of them. <i>See</i> 8 VA. ADMIN. CODE § 20-23-120–610 (2018).
West Virginia	There are no Native language endorsements according to their list. <i>West Virginia Licensure Testing Directory</i> , https://wvde.us/wp-content/uploads/2022/04/WVLicensureTestingDirectory_Effective-20220413.pdf (last visited June 13, 2022).