

## Bureau of Indian Affairs, Interior

## § 39.2

39.1101 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

### Subpart L—Contract School Operation and Maintenance Fund

39.1200 Definitions.

39.1201 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.

39.1202 Distribution of funds.

39.1203 Future consideration of contract school operation and maintenance funding.

AUTHORITY: 25 U.S.C. 13, 2008; Public Law 107-110, 115 Stat. 1425.

SOURCE: 44 FR 61864, Oct. 26, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### Subpart A—General

SOURCE: 70 FR 22205, Apr. 28, 2005, unless otherwise noted.

#### § 39.1 What is the purpose of this part?

This part provides for the uniform direct funding of Bureau-operated and tribally operated day schools, boarding schools, and dormitories. This part applies to all schools, dormitories, and administrative units that are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

#### § 39.2 What definitions apply to terms in this part?

*Act* means the No Child Left Behind Act, Public Law 107-110, enacted January 8, 2002. The No Child Left Behind Act reauthorizes and amends the Elementary and Secondary Education Act (ESEA) and the amended Education Amendments of 1978.

*Agency* means an organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

*Agency school board* means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the

affected tribes, except that, in agencies serving a single school, the school board of such school shall fulfill these duties.

*Assistant Secretary* means the Assistant Secretary of Indian Affairs, Department of the Interior, or his or her designee.

*At no cost* means provided without charge, but does not preclude incidental fees normally charged to non-disabled students or their parents as a part of the regular education program.

*Average Daily Membership (ADM)* means the aggregated ISEP-eligible membership of a school for a school year, divided by the number of school days in the school's submitted calendar.

*Basic program* means the instructional program provided to all students at any age level exclusive of any supplemental programs that are not provided to all students in day or boarding schools.

*Basic transportation miles* means the daily average of all bus miles logged for round trip home-to-school transportation of day students.

*Bureau* means the Bureau of Indian Affairs in the Department of the Interior.

*Bureau-funded school* means

(1) Bureau school;

(2) A contract or grant school; or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

*Bureau school* means a Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school.

*Count Week* means the last full week in September during which schools count their student enrollment for ISEP purposes.

*Director* means the Director of the Office of Indian Education Programs in the Bureau of Indian Affairs or a designee.

*Education Line Officer* means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

*Eligible Indian student* means a student who:

(1) Is a member of, or is at least one-fourth degree Indian blood descendant

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of a member of, a tribe that is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians;

(2) Resides on or near a reservation or meets the criteria for attendance at a Bureau off-reservation home-living school; and

(3) Is enrolled in a Bureau-funded school.

*Home schooled* means a student who is not enrolled in a school and is receiving educational services at home at the parent's or guardian's initiative.

*Homebound* means a student who is educated outside the classroom.

*Individual supplemental services* means non-base academic services provided to eligible students. Individual supplemental services that are funded by additional WSUs are gifted and talented or language development services.

*ISEP* means the Indian School Equalization Program.

*Limited English Proficient (LEP)* means a child from a language background other than English who needs language assistance in his/her own language or in English in the schools. This child has sufficient difficulty speaking, writing, or understanding English to deny him/her the opportunity to learn successfully in English-only classrooms and meets one or more of the following conditions:

(1) The child was born outside of the United States or the child's Native language is not English;

(2) The child comes from an environment where a language other than English is dominant; or

(3) The child is an American Indian or Alaska Native and comes from an environment where a language other than English has had a significant impact on the child's level of English language proficiency.

*Local School Board* means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school. For a school serving a substantial number of students from different tribes:

(1) The members of the local school board shall be appointed by the tribal governing bodies affected; and

(2) The Secretary shall determine number of members in consultation with the affected tribes.

*OIEP* means the Office of Indian Education Programs in the Bureau of Indian Affairs.

*Physical education* means the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adapted physical education, movement education, and motor development.

*Resident* means a student who is residing at a boarding school or dormitory during the weeks when student membership counts are conducted and is either:

(1) A member of the instructional program in the same boarding school in which the student is counted as a resident; or

(2) Enrolled in and a current member of a public school or another Bureau-funded school.

*Residential program* means a program that provides room and board in a boarding school or dormitory to residents who are either:

(1) Enrolled in and are current members of a public school or Bureau-funded school; or

(2) Members of the instructional program in the same boarding school in which they are counted as residents and:

(i) Are officially enrolled in the residential program of a Bureau-operated or -funded school; and

(ii) Are actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory.

*Secretary* means the Secretary of the Interior or a designated representative.

*School* means a school funded by the Bureau of Indian Affairs. The term "school" does not include public, charter, or private schools.

*School bus* means a passenger vehicle that is:

(1) Used to transport day students to and/or from home and the school; and

(2) Operated by an operator in the employ of, or under contract to, a Bureau-funded school, who is qualified to

operate such a vehicle under Tribal, State or Federal regulations governing the transportation of students.

*School day* means a day as defined by the submitted school calendar, as long as annual instructional hours are as they are reflected in §39.213, excluding passing time, lunch, recess, and breaks.

*Special education* means:

(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes each of the following, if it meets the requirements of paragraph (1) of this definition:

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(1) Travel training; and

(2) Vocational education.

*Specially designed instruction* means adapting, as appropriate, to the needs of an eligible child under this part, the content, methodology, or delivery or instruction:

(1) To address the unique needs of the child that result from the child's disability; and

(2) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children

*Three-year average* means:

(1) For academic programs, the average daily membership of the 3 years before the current year of operation; and

(2) For the residential programs, the count period membership of the 3 years before the current year of operation.

*Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

(1) Develop an awareness of the environment in which they live; and

(2) Learn the skills necessary to move efficiently and safely from place to place within that environment (*e.g.*,

in school, in the home, at work, and in the community).

*Tribally operated school* means an elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of 25 U.S.C. 450 *et seq.*, or under the Tribally Controlled Schools Act of 1988.

*Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

*Unimproved roads* means unengineered earth roads that do not have adequate gravel or other aggregate surface materials applied and do not have drainage ditches or shoulders.

*Weighted Student Unit* means:

(1) The measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula; and

(2) The factor used to adjust the weighted student count at any school as the result of other adjustments made under this part.

### § 39.3 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part contains in §§39.410 and 39.502 collections of information subject to the PRA. These collections have been approved by OMB under control number 1076-0163.

### Subpart B—Indian School Equalization Formula

SOURCE: 70 FR 22205, Apr. 28, 2005, unless otherwise noted.