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time and resources required which otherwise would be available for these standards;

(2) Modify any policies and practices which interfere with or compromise a school’s capability to achieve and maintain these standards;

(3) Invite non-Federal agencies to evaluate the effects current policies and procedures have had on complying with the requirements of this part; and

(4) Submit annually to the Director a copy of the summative evaluation.

Subpart G—Homeliving Programs

AUTHORITY: 25 U.S.C. 13; 25 U.S.C. 2008; Pub. L. 107–110 (115 Stat. 1425).

SOURCE: 72 FR 68498, Dec. 5, 2007, unless otherwise noted.

§ 36.70 What terms do I need to know?

The following definitions apply to this subpart:

Behavioral health professional means a State licensed or State certified Social Worker, School Counselor, Drug and Alcohol Counselor, School Psychologist, or School Psychometrist responsible for coordinating a broad range of needs including:

- (1) Support groups;
(2) Individual counseling;
(3) Crisis intervention;
(4) Preventive activities; and
(5) Coordination of referrals and outside services with appropriate providers.

Behavioral Health Program means a homeliving based service designed to decrease barriers to learning or increase positive, personal well-being by:

- (1) Providing early intervention services, coordinating crisis intervention and prevention services;
(2) Promoting a positive social and emotional environment;
(3) Reducing the incidence of problems; and
(4) Referring students with behavioral needs that require professional medical care to an appropriate residential care facility.

Behavioral health services means the services provided by a school behavioral health program as defined in this section.

Homeliving Manager means the employee responsible for direct super-

vision of the homeliving program staff and students.

Homeliving 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 in the community in which they reside; 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 a homeliving program provided to all students who are provided room and board in a boarding school or dormitory.

Homeliving Program Staff means the employee(s) responsible for direct supervision of students in the homeliving area.

Homeliving Supervisor means the employee with overall administrative responsibility for supervising students, programs, and personnel in the homeliving area.

§ 36.71 What is the purpose of this part?

The purpose of this part is to establish standards for homeliving programs.

STAFFING

§ 36.75 What qualifications must homeliving staff possess?

(a) Homeliving staff must possess the qualifications shown in the following table:

Table with 2 columns: Position and Required training. Rows include Homeliving Supervisor, Homeliving Manager, and Homeliving Program Staff with their respective training requirements.

(b) A person employed as a homeliving program staff:

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(1) Should meet the requirements of paragraph (a) of this section by the 2009–2010 school year; and

(2) May, upon showing good cause, petition the school supervisor (or the homeliving supervisor for peripheral dorms) for a waiver from the new qualifications.

**§ 36.76 Who is in charge of all homeliving operations?**

One staff member who has the authority to ensure the successful functioning of all phases of the homeliving program should be designated as in charge of all homeliving operations. All staff should be advised of the lines of authority through an organizational chart approved by the local board responsible for operations of the homeliving program.

**§ 36.77 What are the homeliving staffing requirements?**

Homeliving programs must meet the staffing requirements of this section.

(a) Effective with the 2009–2010 school year, each homeliving program must maintain the following student minimum supervisory requirements on weekdays:

Grade level	Time of day	Ratio
Elementary (Grade 1–6)	Morning .....	1:20.
	During school .....	As school needs.
	Evening .....	1:20.
	Night .....	1:40.
High School (Gr. 7–12)	Morning .....	1:20.
	During school .....	As school needs.
	Evening .....	1:30.
	Night .....	1:50.

(b) The following staffing ratios apply on weekends:

Grade level	Time of day	Ratio
Elementary (Grade 1–6) .....	Morning/day .....	1:20.
	Evening .....	1:20.
	Night .....	1:40.
High School (Gr. 7–12) .....	Morning/day .....	1:40.
	Evening .....	1:40.
	Night .....	1:50.

**§ 36.78 What are the staffing requirements for homeliving programs offering less than 5 nights service?**

For homeliving programs providing less than 5 nights service, the staffing levels from 36.77 apply. To fill this requirement, the program must use only

employees who work a minimum of 20 hours per week.

**§ 36.79 What are the homeliving behavioral professional staff/student ratio requirements?**

Behavioral health professional(s) is necessary in homeliving programs to address issues, such as abuse, neglect, trauma, cultural conflict, and lack of school success. Each homeliving program must provide a minimum of one half-time behavioral health professional for every 50 students.

(a) The program may fill the staffing requirements of this section by using contract services, other agencies (including the Indian Health Service) or private/nonprofit volunteer service organizations.

(b) Off-reservation homeliving programs should consider providing one full-time behavioral health professional for every 50 students.

(c) For purposes of this section, a one half-time behavioral health professional is one that works for the homeliving program a minimum of 20 hours per week.

(d) For purposes of this section, in instances where the behavioral health services are obtained through other programs, the behavioral health professional must be available at the request of the homeliving program.

**§ 36.80 If a school or dormitory has separated boys' and girls' homeliving programs, may the same behavioral professional be used for each program?**

Yes, a program may use the same behavioral professional for both boys' and girls' programs. However, behavioral health staffing requirements are based on the combined enrollment during the homeliving count period.

**§ 36.81 May a homeliving program use support staff or teachers to meet behavioral health staffing requirements?**

No, a homeliving program must not use support staff or teachers to meet behavioral health staffing requirements. The only exception is if the individual support staff employee or teacher has the appropriate behavioral health license or certification.

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**§ 36.82 May behavioral health professional(s) provide services during the academic school day?**

Behavioral health professional(s) must average at least 75 percent of their work hours with students in their dormitories. These work hours must occur outside of the academic school day, except in emergency situations as deemed by the administrative head of the homeliving program or designee. The purpose of this requirement is to maximize contact time with students in their homeliving setting.

**§ 36.83 How many hours can a student be taken out of the academic setting to receive behavioral health services?**

A student may spend no more than 5 hours per week out of the academic setting to receive behavioral health services from the homeliving behavioral health professional(s), except for emergency situations.

**§ 36.84 Can a program hire or contract or acquire by other means behavioral health professionals to meet staffing requirements?**

A program may hire or contract behavioral health professionals to meet staffing requirements or acquire such services by other means such as through a Memorandum of Understanding with other programs.

(a) At least one individual must be a licensed or certified school counselor or a social worker who is licensed/certified to practice at the location where the services are provided.

(b) For additional staffing, other individuals with appropriate certifications or licenses are acceptable to meet staffing requirements.

**§ 36.85 Is a nurse required to be available in the evenings?**

No, a program is not required to make a nurse (LPN or RN) available in the evenings. However, this is encouraged for homeliving programs with an enrollment greater than 300 or for programs that are more than 50 miles from available services.

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**§ 36.86 Are there staff training requirements?**

(a) All homeliving program staff as well as all employees that supervise students participating in homeliving services and activities must have the appropriate certification or licensing requirements up to date and on file. Programs must provide annual and continuous professional training and development appropriate to the certification and licensing requirements.

(b) All homeliving program staff as well as all employees who supervise students participating in homeliving services and activities must receive annual training in the topics set out in this section before the first day of student occupancy for the year.

(1) First Aid/Safety/Emergency & Crisis Preparedness;

(2) CPR—Automated External Defibrillator;

(3) Student Checkout Policy;

(4) Confidentiality (Health Information Privacy Act and the Family Education Right to Privacy Act.);

(5) Medication Administration;

(6) Student Rights;

(7) Child Abuse Reporting Requirements and Protection Procedures; and

(8) Suicide Prevention.

(c) Homeliving staff as well as all employees that supervise students participating in homeliving services and activities must be given the following training annually:

(1) De-escalation/Conflict Resolution;

(2) Substance Abuse Issues;

(3) Ethics;

(4) Parenting skills/Child Care;

(5) Special Education and Working with Students with Disabilities;

(6) Student Supervision Skills;

(7) Child Development (recognizes various stages of development in the student population);

(8) Basic Counseling Skills; and

(9) Continuity of Operations Plan (COOP).

**PROGRAM REQUIREMENTS**

**§ 36.90 What recreation, academic tutoring, student safety, and health care services must homeliving programs provide?**

All homeliving programs must provide for appropriate student safety, academic tutoring, recreation, and

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health care services for their students, as deemed necessary by the local school board or homeliving board.

### **§ 36.91 What are the program requirements for behavioral health services?**

(a) The homeliving behavioral health program must make available the following services:

- (1) Behavioral Health Screening/Assessment;
- (2) Diagnosis;
- (3) Treatment Plan;
- (4) Treatment and Placement;
- (5) Evaluation; and
- (6) Record of Services (if applicable, in coordination with the student's Individual Education Plan).

(b) Each homeliving behavioral health program must have written procedures for dealing with emergency behavioral health care issues.

(c) Parents or guardians may opt out of any non-emergency behavioral health services by submitting a written request.

(d) Parents or guardians must be consulted before a child is prescribed behavioral health.

(e) Medication in a non-emergency situation.

### **§ 36.92 Are there any activities that must be offered by a homeliving program?**

Yes, a homeliving program must make available the following activities:

- (a) One hour per day of scheduled, structured physical activity Monday through Thursday, and two hours of scheduled physical activities on the weekends for any students who are in residence on the weekends;
- (b) One hour per day of scheduled, structured study at least four days per week for all students, and additional study time for students who are failing any classes;
- (c) Tutoring during study time;
- (d) Native language or cultural activities; and
- (e) Wellness program that may include character, health, wellness, and sex education.

### **§ 36.93 Is a homeliving handbook required?**

Yes, each program must publish a homeliving handbook, which may be incorporated into a general student handbook. During the first week the students and staff are in the dormitory, the homeliving program must:

- (a) Provide each student with a copy of the handbook that contains all the provisions in 36.94;
- (b) Provide all staff, students, and parents or guardians with a current and updated copy of student rights and responsibilities;
- (c) Conduct an orientation for all students on the handbook and student rights and responsibilities; and
- (d) Ensure that all students, school staff, and to the extent possible, parents and guardians confirm in writing that they have received a copy of and understand the homeliving handbook.

### **§ 36.94 What must a homeliving handbook contain?**

A homeliving handbook must contain all of the following, and may include additional information:

- (a) Mission/Vision Statement;
- (b) Discipline Policy;
- (c) Parent/Student Rights and Responsibilities;
- (d) Confidentiality;
- (e) Sexual Harassment Policy;
- (f) Violence/Bullying Policy;
- (g) Homeliving Policies and Procedures;
- (h) Services Available;
- (i) Personnel and Position Listing;
- (j) Emergency Procedures and Contact Numbers;
- (k) Bank Procedures;
- (l) Transportation Policy;
- (m) Check-Out Procedures;
- (n) Dress Code;
- (o) Drug/Alcohol Policy;
- (p) Computer Usage Policy;
- (q) Medication Administration Policy and Procedure; and
- (r) Isolation/Separation Policy.

### **§ 36.95 What sanitary standards must homeliving programs meet?**

Each homeliving program must meet all of the following standards:

- (a) Restrooms, showers, and common areas must be cleaned daily;
- (b) Rooms must be cleaned daily;

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- (c) Linens must be changed and cleaned weekly;
- (d) Linens are to be provided;
- (e) Basic Toiletries must be provided; and
- (f) Functional washing machines and dryers must be provided.

**§ 36.96 May students be required to assist with daily or weekly cleaning?**

Yes, students can be required to assist with daily or weekly cleaning. However, the ultimate responsibility of cleanliness rests with the homeliving supervisor and local law or rules regarding chemical use must be followed.

**§ 36.97 What basic requirements must a program's health services meet?**

- (a) A homeliving program must make available basic medical, dental, vision, and other necessary health services for all students residing in the homeliving program, subject to agreements between the BIE and the Indian Health Service or between a tribally-operated homeliving program and the Indian Health Service or tribal health program.
- (b) A homeliving program must have written procedures for dealing with emergency health care issues.
- (c) Parents or guardians may opt out of any non-emergency services by submitting a written request.
- (d) The homeliving supervisor or designee must act *in loco parentis* when the parent or guardian cannot be found.

**§ 36.98 Must the homeliving program have an isolation room for ill children?**

Yes, the homeliving program must have an isolation room(s) available for ill students. The isolation room (or rooms, if needed) must be made available for use by students with contagious conditions. Contagious boys and girls should have separate rooms. The isolation room(s) should have a separate access to shower and restroom facilities. Students isolated for contagious illness must be supervised as frequently and as closely as the circumstances and protocols require, but at least every 30 minutes.

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**§ 36.99 Are immunizations required for residential program students?**

Each student must have all immunizations required by State, local, or tribal governments before being admitted to a homeliving program. Annual flu shots are not required, but are encouraged.

**§ 36.100 Are there minimum requirements for student attendance checks?**

Yes, there are minimum requirements for student attendance checks as follows:

- (a) All students must be physically accounted for four times daily;
- (b) Each count must be at least two hours apart;
- (c) If students are on an off-campus activity, physical accounts of students must be made at least once every two hours or at other reasonable times depending on the activity;
- (d) At night all student rooms should be physically checked at least once every hour;
- (e) If a student is unaccounted for, the homeliving program must follow its established search procedures; and
- (f) When homeliving staff is aware of a student who is going to be absent from school, the homeliving program is required to notify the school.

**§ 36.101 How often must students who have been separated for emergency health or behavioral reasons be supervised?**

Students who have been separated for emergency behavioral or health reasons must be supervised as frequently and as closely as the circumstances and protocols require. No student will be left unsupervised for any period until such factors as the student's health based on a medical assessment, the safety of the student, and any other applicable guidance for dealing with behavior or health emergencies are considered.

**§ 36.102 What student resources must be provided by a homeliving program?**

The following minimum resources must be available at all homeliving programs:

(a) Library resources such as access to books and resource materials, including school libraries and public libraries which are conveniently available;

(b) A copy of each textbook used by the academic program or the equivalent for peripheral dorms; and

(c) Reasonable access to a computer with Internet access to facilitate homework and study.

**§36.103 What are the requirements for multipurpose spaces in homeliving programs?**

Homeliving programs must provide adequate areas for sleeping, study, recreation, and related activities.

PRIVACY

**§36.110 Must programs provide space for storing personal effects?**

Yes, students are entitled to private personal spaces for storing their own personal effects, including at least one lockable closet, dresser drawer, or storage space. However, all drawers, dressers, storage space, or lockable space are the property of the homeliving program and are subject to random search.

WAIVERS AND ACCOUNTABILITY

**§36.111 Can a tribe, tribal governing body, or local school board waive the homeliving standards?**

A tribal governing body or local school board may waive some or all of the standards established by this part if the body or board determines that the standards are inappropriate for the needs of the tribe's students.

(a) If a tribal governing body or school board waives standards under this section, it must, within 60 days, submit proposed alternative standards to the Director, BIE.

(b) Within 90 days of receiving a waiver and proposal under paragraph (a) of this section, the Director must either:

(1) Approve the submission; or

(2) Deliver to the governing body or school board a written explanation of the good cause for rejecting the submission.

(c) If the Director rejects a submission under paragraph (c) of this section, the governing body or school

board may submit another waiver and proposal for approval. The standards in this part remain in effect until the Director approves alternative standards.

**§36.112 Can a homeliving program be closed, transferred, consolidated, or substantially curtailed for failure to meet these standards?**

No, a homeliving program cannot be closed, transferred to any other authority, consolidated, or its programs substantially curtailed for failure to meet these standards.

**§36.120 What type of reporting is required to ensure accountability?**

The homeliving program must provide to the appropriate local school board or alternative board such as a homeliving board, the tribal governing body, BIE, and the Secretary of the Interior, an annual accountability report within 45 days following the end of the school year consisting of:

(a) Enrollment figures identified by the homeliving count period;

(b) A brief description of programs offered;

(c) A statement of compliance with the requirements of this part and, if the program is not in compliance, recommendations for achieving compliance; and

(d) Recommendations to improve the homeliving program including identification of issues and needs.

**PART 37—GEOGRAPHIC BOUNDARIES**

Sec.

37.100 What is the purpose of this part?

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**Subpart A—All Schools**

37.110 Who determines geographic attendance areas?

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37.112 Must each school have a geographic attendance boundary?

**Subpart B—Day Schools, On-Reservation Boarding Schools, and Peripheral Dorms**

37.120 How does this part affect current geographic attendance boundaries?