

Public Law 100-297
100th Congress

An Act

Apr. 28, 1988
[H.R. 5]

To improve elementary and secondary education, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Augustus F.
Hawkins-Robert
T. Stafford
Elementary and
Secondary
School
Improvement
Amendments of
1988.
State and local
governments.
20 USC 2701
note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Augustus F Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988”.

(b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

TITLE I—ELEMENTARY AND SECONDARY EDUCATION PROGRAM
AUTHORIZED

Sec. 1001. Amendments to the Elementary and Secondary Education Act of 1965

“Sec. 1. Short title.

“TITLE I—BASIC PROGRAMS

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CHILDREN

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services provided to address children's handicapping conditions or limited English proficiency, in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the students' programs.

“SEC. 1013. ELIGIBLE SCHOOLS.

Disadvantaged
persons.
20 USC 2723.

“(a) GENERAL PROVISIONS.—

“(1) Subject to subsection (b), a local educational agency shall use funds received under this chapter in school attendance areas having high concentrations of children from low-income families (hereinafter referred to as ‘eligible school attendance areas’), and where funds under this chapter are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest within each grade span grouping or for the entire local educational agency, according to relative degree of concentration of children from low-income families. A local educational agency may carry out a program or project assisted under this chapter in an eligible school attendance area only if it also carries out such program or project in all other eligible school attendance areas which are ranked higher under the first sentence of this paragraph.

“(2) The same measure of low income, which shall be chosen by the local educational agency on the basis of the best available data and which may be a composite of several indicators, shall be used with respect to all school attendance areas within a grade span grouping or for the entire local educational agency, both to identify the areas having high concentrations of children from low-income families and to determine the ranking of each area.

“(3) The requirements of this subsection shall not apply in the case of a local educational agency with a total enrollment of less than 1,000 children, but this paragraph does not relieve such an agency from the responsibility to serve eligible children according to the provisions of section 1014.

“(b) LOCAL EDUCATIONAL AGENCY DISCRETION.—Notwithstanding subsection (a)(1) of this section, a local educational agency shall have discretion to identify and rank eligible attendance areas as follows:

“(1) A local educational agency may designate as eligible and serve all of its attendance areas within a grade span grouping or in the entire local educational agency if the percentage of children from low-income families in each attendance area of the agency is within 5 percentage points of the average percentage of such children within a grade span grouping or for the entire local educational agency.

“(2) A local educational agency may designate any school attendance area in which at least 25 percent of the children are from low-income families as an eligible school attendance area if the aggregate amount expended under this chapter and under a State program meeting the requirements of section 1018(d)(1)(B) in that fiscal year in each school attendance area of that agency eligible under subsection (a) in which projects assisted under this chapter were carried out in the preceding fiscal year equals or exceeds the amount expended from those sources in that area in such preceding fiscal year if such

attendance areas qualify for such amounts under subsection (c)(1).

“(3) A local educational agency may, with the approval of the State educational agency, designate as eligible and serve school attendance areas with substantially higher percentages of educationally deprived children before such areas with higher concentrations of children from low-income families, but this paragraph shall not preclude the provision of services to more school attendance areas than otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of services to educationally deprived children from low-income families in project areas served by the local educational agency.

“(4) Funds received under this part may be used to provide services to educationally deprived children who are in a school which is not located in an eligible school attendance area when the ratio of children from low-income families in average attendance in such school is substantially equal to the ratio of such children in an eligible school attendance area served by such agency.

“(5) If an eligible school attendance area or eligible school so designated and served in accordance with subsection (c)(3) in the immediately preceding fiscal year, it may continue to be designated for the subsequent fiscal year even though it does not qualify as eligible under such subsection in such subsequent year.

“(6) With the approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions or numbers of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this part, except that (A) the number of children attending private elementary and secondary schools who receive services under this part shall be determined on an out-of-pocket basis for non-Federal compensatory education funds to serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this part shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

“(c) ALLOCATIONS.—

“(1) Except as provided in paragraph (2), a local educational agency shall allocate funds under this part among project areas or schools on the basis of the number and needs of children to be served as determined in accordance with section 1014.

“(2) Children in eligible schools, who receive services under this part and subsequently become ineligible due to their academic achievement attributable to such services, may continue to be considered eligible for 2 additional years only for the purpose of determining the allocation of funds among schools under paragraph (1). Any funds so allocated shall not be used to provide services to any children determined to be ineligible under section 1014.

"SEC. 1014. ELIGIBLE CHILDREN.

Disadvantaged
persons.
20 USC 2724.

"(a) GENERAL PROVISIONS.—

"(1) Except as provided in subsections (c) and (d) of this section and section 1015, a local educational agency shall use funds received under this part for educationally deprived children, identified in accordance with subsection (b) as having the greatest need for special assistance, in school attendance areas or schools satisfying the requirements of section 1013.

"(2) The eligible population for services under this part are—

"(A) those children up to age 21 who are entitled to a free public education through grade 12, and

"(B) those children who are not yet at a grade level where the local educational agency provides a free public education, yet are of an age at which they can benefit from an organized instructional program provided in a school or other educational setting.

"(b) ASSESSMENT OF EDUCATIONAL NEED.—A local educational agency may receive funds under this part only if it makes an assessment of educational needs each year to (1) identify educationally deprived children in all eligible attendance areas; (2) identify the general instructional areas on which the program will focus; (3) select those educationally deprived children who have the greatest need for special assistance, as identified on the basis of educationally related objective criteria established by the local educational agency, which include written or oral testing instruments, that are uniformly applied to particular grade levels throughout the local educational agency; and (4) determine the special educational needs (and library resource needs) of participating children with specificity sufficient to ensure concentration on such needs.

"(c) LOCAL EDUCATIONAL AGENCY DISCRETION.—(1) Educationally deprived children who begin participation in a program or project assisted under this part, in accordance with subsections (a) and (b) but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this part, may, if the local agency so determines, continue to participate in a program or project funded under this part for the duration of that same school year.

"(2) In providing services under this part a local educational agency may skip educationally deprived children in greatest need of assistance who are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this part.

"(3) A child who, in the previous year, was identified as being in greatest need of assistance, and who continues to be educationally deprived, but who is no longer identified as being in greatest need of assistance, may participate in a program or project assisted under this part while continuing to be educationally deprived for a maximum of 2 additional years.

"(d) SPECIAL RULES.—(1) Children receiving services to overcome a handicapping condition or limited English proficiency shall also be eligible to receive services under this part, if they have needs stemming from educational deprivation and not related solely to the handicapping condition or limited English proficiency. Such children shall be selected on the same basis as other children identified as eligible for and selected to receive services under this part. Funds

under this part may not be used to provide services that are otherwise required by law to be made available to such children.

“(2) A student who at any time in the previous 2 years was receiving services under subpart 3 of part D of this chapter or under subpart 3 of part B of title I of the Elementary and Secondary Education Act (as amended by chapter 1 of the Education Consolidation and Improvement Act of 1981) shall be considered eligible for services under this part, and may be served subject to the provisions of subsections (a) and (b).

Disadvantaged
persons.
20 USC 2725.

“SEC. 1015. SCHOOLWIDE PROJECTS.

“(a) USE OF FUNDS FOR SCHOOLWIDE PROJECTS.—In the case of any school serving an attendance area that is eligible to receive services under this part and in which, for the first year of the 3-year period of projects assisted under this section, not less than 75 percent of the children are from low-income families or any eligible school in which not less than 75 percent of the children enrolled in the school are from low-income families, the local educational agency may carry out a project under this part to upgrade the entire educational program in that school if the requirements of subsections (b), (c), (d), and (e) are met.

“(b) DESIGNATION OF SCHOOLS.—A school may be designated for a schoolwide project under subsection (a) if—

“(1) a plan has been developed for that school by the local educational agency and has been approved by the State educational agency which—

“(A) provides for a comprehensive assessment of educational needs of all students in the school, in particular the special needs of educationally deprived children;

“(B) establishes goals to meet the special needs of all students and to ensure that educationally deprived children are served effectively and demonstrate performance gains comparable to other students;

“(C) describes the instructional program, pupil services, and procedures to be used to implement those goals;

“(D) describes the specific uses of funds under this part as part of that program; and

“(E) describes how the school will move to implement an effective schools program as defined in section 1471, if appropriate;

“(2) the plan has been developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, librarians, education aides, pupil services personnel, and administrators (and secondary students if the plan relates to a secondary school);

“(3) the plan provides for consultation among individuals described in paragraph (2) as to the educational progress of all students and the participation of such individuals in the development and implementation of the accountability measures required by subsection (e);

“(4) appropriate training is provided to parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable them effectively to carry out the plan;

“(5) the plan includes procedures for measuring progress, as required by subsection (e), and describes the particular measures to be used; and

- (1) The term "Native Hawaiian" means any individual who is—
- (A) a citizen of the United States,
 - (B) a resident of the State of Hawaii, and
 - (C) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii, as evidenced by—
 - (i) genealogical records,
 - (ii) Kupuna (elders) or Kama'aina (long-term community residents) verification, or
 - (iii) birth records of the State of Hawaii.
- (2) The term "Secretary" means the Secretary of Education.
- (3) The term "Native Hawaiian Educational Organization" means a private nonprofit organization that—
- (A) serves the interests of Native Hawaiians,
 - (B) has a demonstrated expertise in the education of Native Hawaiian youth, and
 - (C) has demonstrated expertise in research and program development.
- (4) The term "Native Hawaiian Organization" means a private nonprofit organization that—
- (A) serves the interests of Native Hawaiians, and
 - (B) is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or portion of programs) for the benefit of Native Hawaiians.
- (5) The term "elementary school" has the same meaning given that term under section 1471(7) of this Act.
- (6) The term "local educational agency" has the same meaning given that term under section 1471(10) of this Act.
- (7) The term "secondary school" has the same meaning given that term under section 1471(7) of this Act.

TITLE V—INDIAN EDUCATION

PART A—BUREAU AND CONTRACT SCHOOLS

SEC. 5101. SHORT TITLE.

This part may be cited as the "Indian Education Amendments of 1988".

SEC. 5102. PROHIBITION ON TRANSFERS OF BUREAU AND CONTRACT SCHOOLS.

Section 1121 of the Education Amendments of 1978 (25 U.S.C. 2001) is amended—

- (1) by adding at the end of subsection (g) the following new paragraph:

"(5) The Secretary may terminate, contract, transfer to any other authority, or consolidate or substantially curtail the operation or facilities of—

"(A) any Bureau funded school that is operated on or after April 1, 1987, or

"(B) any program of such a school that is operated on or after April 1, 1987,

only if the tribal governing body approves such action."

Indian
Education
Amendments of
1988.
25 USC 2001
note.

(2) by striking "Such standards and procedures shall require that whenever" in subsection (g)(3) and inserting in lieu thereof "Whenever",

(3) by inserting "transfer to any other authority," after "close," and after "closure," each place either term appears in paragraphs (3) and (4) of subsection (g), and

(4) by adding at the end thereof the following new subsection:
 "(j) For purposes of this section, the term 'tribal governing body' means, with respect to any school, the tribal governing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school."

SEC. 5103. REPORT ON TEMPORARY ACTIONS TAKEN FOR A YEAR.

Section 1125 of the Education Amendments of 1978 (25 U.S.C. 2005) is amended—

(1) by redesignating subsection (d) as subsection (e),

(2) by inserting after subsection (c) the following new subsection:

Safety.

"(d)(1) A Bureau school may be closed or consolidated, and the programs of a Bureau school may be substantially curtailed, by reason of plant conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau determines that such conditions exist at the Bureau school.

"(2)(A) In making determinations described in paragraph (1) before July 1, 1989, health and safety officers of the Bureau shall use the health and safety guidelines of the Bureau that were in effect on January 1, 1988.

Regulations.

"(B) Upon the enactment of the Indian Education Amendments of 1988, the Secretary shall conduct a review of the guidelines used by the Bureau in determining whether plant conditions at a Bureau school constitute an immediate hazard to health and safety. By no later than June 30, 1989, the Secretary shall publish in the Federal Register the final form of regulations which shall be used by health and safety officers of the Bureau in making such determinations.

Federal Register, publication.

"(C)(i) If—

"(I) the Secretary fails to publish in the Federal Register in final form the regulations required under subparagraph (B) before July 1, 1989, and

"(II) action described in paragraph (1) is taken after June 30, 1989, and before the date on which such regulations are published in final form in the Federal Register by reason of the condition of any plant,

an inspection of the condition of such plant shall be conducted by an appropriate tribal, county, municipal, or State health and safety officer to determine whether conditions at such plant constitute an immediate hazard to health and safety. Such inspection shall be completed by no later than the date that is 30 days after the date on which the action described in paragraph (1) is taken.

"(ii) The inspection required under clause (i) shall be conducted by a health and safety officer designated jointly by the Secretary and the tribes affected by the action described in paragraph (1). If the Secretary and such tribes are unable to agree on the designation of the health and safety officer, the Secretary shall designate the health and safety officer and shall provide notice of such designation to each of such tribes before the inspection is conducted by such officer.

“(iii) If the health and safety officer conducting an inspection of a plant required under clause (i) determines that conditions at the plant do not constitute an immediate hazard to health and safety, any consolidation or curtailment that was made by reason of conditions at the plant shall immediately cease and any school closed by reason of conditions at the plant shall be reopened immediately.

“(3) If—

“(A) a Bureau school is temporarily closed or consolidated, or the programs of a Bureau school are substantially curtailed, by reason of plant conditions that constitute an immediate hazard to health and safety, and

“(B) the Secretary estimates that the closure, consolidation, or curtailment will be more than 1 year in duration, Reports.
the Secretary shall submit to the Congress, by no later than the date that is 6 months after the date on which the closure, consolidation, or curtailment is initiated, a report which sets forth the reasons for such temporary actions and the actions the Secretary is taking to eliminate the conditions that constitute the hazard.”.

SEC. 5104. ELIGIBILITY AND EXPANSION OF BUREAU FUNDED SCHOOLS.

Section 1121 of the Education Amendments of 1978 (25 U.S.C. 2001) is amended—

(1) by striking out “Indian controlled contract schools (hereinafter referred to as ‘contract schools’)” in subsection (a) and inserting in lieu thereof “contract schools”, and

(2) by adding at the end thereof the following new subsection:

“(k)(1)(A) The Secretary shall only consider the factors described in subparagraphs (B) and (C) in reviewing—

“(i) applications from any tribe for the awarding of a contract or grant for a school that has not previously received funds from the Bureau,

“(ii) applications from any tribe or Bureau school board for—

“(I) a school which has not previously been operated or funded by the Bureau, or

“(II) the expansion of any program currently funded by the Bureau which would increase the amount of funds received by the Indian tribe or school board under section 1128.

The Secretary shall give consideration to all of such factors, but none of such applications may be denied based primarily upon the geographic proximity of public education.

“(B) The Secretary shall consider the following factors relating to the program that is the subject of an application described in subparagraph (A):

“(i) the adequacy of facilities or the potential to obtain or provide adequate facilities;

“(ii) geographic and demographic factors in the affected areas;

“(iii) adequacy of the applicant’s program plans or, in the case of a Bureau operated program, of projected needs analysis done either by a tribe or by Bureau personnel;

“(iv) geographic proximity of comparable public education; and

“(v) the stated needs of all affected parties, including (but not limited to) students, families, tribal governments at both the central and local levels, and school organizations.

“(C) The Secretary shall consider with respect to applications described in subparagraph (A) the following factors relating to all

the educational services available at the time the application is considered:

“(i) geographic and demographic factors in the affected areas;

“(ii) adequacy and comparability of programs already available;

“(iii) consistency of available programs with tribal educational codes or tribal legislation on education; and

“(iv) the history and success of these services for the proposed population to be served, as determined from all factors and not just standardized examination performance.

“(2)(A) The Secretary shall make a determination of whether to approve any application described in paragraph (1)(A) by no later than the date that is 180 days after the day on which such application is submitted to the Secretary.

“(B) If the Secretary fails to make the determination described in subparagraph (A) with respect to an application by the date described in subparagraph (A), the application shall be treated as having been approved by the Secretary.

“(3)(A) Any application described in paragraph (1)(A) may be submitted to the Secretary only if—

“(i) the application has been approved by the tribal governing body of the students served by (or to be served by) the school or program that is the subject of the application, and

“(ii) written evidence of such approval is submitted with the application.

“(B) Each application described in paragraph (1)(A)—

“(i) shall provide information concerning each of the factors described in paragraph (1)(B), and

“(ii) may provide information concerning the factors described in paragraph (1)(C).

“(4) Whenever the Secretary makes a determination to deny approval of any application described in paragraph (1)(A), the Secretary shall—

“(A) state the objections in writing to the applicant by no later than the date that is 180 days after the day on which the application is submitted to the Secretary,

“(B) provide assistance to the applicant to overcome stated objections, and

“(C) provide the applicant a hearing, under the same rules and regulations pertaining to the Indian Self-Determination and Education Assistance Act, and an opportunity to appeal the objections raised by the Secretary.

“(5)(A) Except as otherwise provided in this paragraph, the action which is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective with the commencement of the academic year succeeding the fiscal year in which the application is approved, or at an earlier date determined by the Secretary.

“(B) If an application is treated as having been approved by the Secretary by reason of paragraph (2)(B), the action that is the subject of the application shall become effective on the date that is 18 months after the date on which the application is submitted to the Secretary, or at an earlier date determined by the Secretary.

“(6)(A) Any application for expansion of the grade levels offered by a tribally controlled school which has been submitted to the Secretary prior to the date of enactment of this Act shall be reviewed under the regulations and guidelines in effect on the date

on which such application was submitted, unless the applicant elects to have the provisions of this subsection apply to the review of such application.

“(B) Notwithstanding any other provision of law, if the school board of the Bureau funded schools at the Pueblo of Zia and the Tama Settlement vote within the 2-year period beginning on the date of enactment of the Indian Education Amendments of 1988 to expand each of the schools to include kindergarten through grade 8, the schools shall be so expanded at the beginning of the next school year occurring after the vote.”.

SEC. 5105. DORMITORY CRITERIA.

Section 1122 of the Education Amendments of 1978 (25 U.S.C. 2002) is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

“(d)(1) The criteria established under this section may be waived in the same manner as the standards provided under section 1121(b) may be waived under section 1121(d).

“(2) No school in operation on or before January 1, 1987 (regardless of compliance or noncompliance with the criteria established under this section) may be closed, transferred to another authority, consolidated or have its program substantially curtailed for failure to meet the criteria.

“(3) By no later than May 1, 1989, the Secretary shall submit to the Congress a report detailing the costs associated with, and the actions necessary for, complete compliance with the criteria established under this section.”.

Reports.

SEC. 5106. REGULATIONS.

Section 1123 of the Education Amendments of 1978 (25 U.S.C. 2003) is amended to read as follows:

“REGULATIONS

“SEC. 1123. (a) The provisions of part 32 of title 25 of the Code of Federal Regulations, as in effect on January 1, 1987, are hereby incorporated into this Act and shall be treated as though such provisions are set forth in this subsection. Accordingly, such provisions may be altered only by means of an amendment to this subsection that is contained in an Act or joint resolution which is enacted into law. To the extent that such provisions of part 32 do not conform with this Act or any statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act and the provisions of such other statutory law shall govern.

“(b) The provisions of parts 31, 33, 36, 39, 42, and 43 of title 25 of the Code of Federal Regulations, as in effect on January 1, 1987, shall be applied by the Federal Government and shall not, before July 1, 1989, be amended, revoked, or altered in any manner. No officer or employee of the Executive Branch shall have the authority to issue any other regulations, prior to July 1, 1989, that supersede, supplement, or otherwise affect the provisions of such parts. To the extent that the provisions of such parts do not conform with this Act or any statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act and the provisions of such other statutory law shall govern.

“(c) After June 30, 1989, no regulation prescribed for the application of any program provided under this title shall become effective unless—

“(1) the regulation has been published as a proposed regulation in the Federal Register,

“(2) an opportunity of no less than 90 days has been afforded the public to comment on the published proposed regulation, and

“(3) the regulation has, after such period for public comment, been published in the Federal Register as a final regulation.

“(d) For purposes of this section, the term ‘regulation’ means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by any officer or employee of the Executive Branch.”.

SEC. 5107. FORMULA MODIFICATIONS.

(a) IN GENERAL.—

(1) Paragraph (1) of section 1128(c) of the Education Amendments of 1978 (25 U.S.C. 2008(c)(1)) is amended to read as follows:

“(1) For fiscal year 1990, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) to—

“(A) use a weighted unit of 1.2 for each eligible Indian student enrolled in the seventh and eighth grades of the school in considering the number of eligible Indian students served by the school;

“(B) consider a school with an average daily attendance of less than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools; and

“(C) take into account the provision of residential services on a less than 9-month basis at a school when the school board and supervisor of the school determine that a less than 9-month basis will be implemented for the school year involved.”.

(2) Subsection (c) of section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008(c)) is amended by adding at the end thereof the following new paragraphs:

“(4)(A) The Secretary shall adjust the formula established under subsection (a) to use a weighted unit of 2.0 for each eligible Indian student that—

“(i) is gifted and talented (as determined pursuant to section 5324 of the Indian Education Amendments of 1988), and

“(ii) is enrolled in the school on a full-time basis, in considering the number of eligible Indian students served by the school.

“(B) The adjustment required under subparagraph (A) shall be used for the later of the following fiscal years and for each fiscal year succeeding such later fiscal year:

“(i) the second fiscal year succeeding the fiscal year in which the Secretary of Education makes the report required under section 5324(c)(6)(B) of the Indian Education Act of 1988, or

“(ii) the first fiscal year for which an increase in the amount of funds appropriated for allotment under this section is designated by the law that appropriates such funds as the amount necessary to implement such adjustment without reducing allotments made under this section to any school.

“(5) For each of the fiscal years 1989 and 1990, the Secretary shall adjust the formula established under subsection (a) to provide funding to schools operated by Indian tribes that are treated under State law as political subdivisions of the State in an amount sufficient to enable the schools to meet standards imposed by the State.”.

(b) STUDY.—

20 USC 1411
note.

(1) The Comptroller General of the United States (hereafter in this subsection referred to as the “Comptroller General”) shall conduct a study to determine—

(A) the number of children who—

(i) are 3 or 4 years of age,

(ii) are eligible for services provided by the Bureau of Indian Affairs of the Department of the Interior, and

(iii) are handicapped children (within the meaning of section 602(1) of the Education of the Handicapped Act (20 U.S.C. 401(1))),

(B) the geographic disbursement of such children,

(C) the number of such children who the Comptroller General estimates will receive services under the pre-school set-aside program under Public Law 99-457,

(D) the sufficiency of the pre-school services described in subparagraph (C),

(E) the unmet needs of such children,

(F) the number of such children who the Comptroller General estimates will attend education programs (schools or residential programs) funded by the Bureau, and

(G) the information described in subparagraphs (B), (C), (D), and (E) with respect to the children described in subparagraph (F).

(2) By no later than the date that is 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Congress a report on the study conducted under paragraph (1).

Reports.

SEC. 5108. ADMINISTRATIVE COST.

(a) IN GENERAL.—The Education Amendments of 1978 (25 U.S.C. 2008) is amended by inserting after section 1128 (25 U.S.C. 2008) the following new section:

“ADMINISTRATIVE COST GRANTS

“SEC. 1128A. (a)(1) The Secretary shall, subject to the availability of appropriated funds, provide grants to each tribe or tribal organization operating a contract school in the amount determined under this section with respect to the tribe or tribal organization for the purpose of paying the administrative and indirect costs incurred in operating contract schools in order to—

25 USC 2008a.

“(A) enable tribes and tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program, to provide all related administrative

overhead services and operations necessary to meet the requirements of law and prudent management practice, and

“(B) carry out other necessary support functions which would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

“(2) Amounts appropriated to fund the grants provided under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract schools.

“(b)(1) The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate of the tribe or tribal organization to each of the direct cost education programs operated by the tribe or tribal organization for which funds are received from or through the Bureau.

“(2) The Secretary shall—

“(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by an Indian tribe or tribal organization under any Federal education program included in the direct cost base of the tribe or tribal organization, and

“(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

“(c) For purposes of this section, the administrative cost percentage rate for a contract school for a fiscal year is equal to the percentage determined by dividing—

“(1) the sum of—

“(A) the amount equal to—

“(i) the direct cost base of the tribe or tribal organization for the fiscal year, multiplied by

“(ii) the minimum base rate, plus

“(B) the amount equal to—

“(i) the standard direct cost base, multiplied by

“(ii) the maximum base rate, by

“(2) the sum of—

“(A) the direct cost base of the tribe or tribal organization for the fiscal year, plus

“(B) the standard direct cost base.

The administrative cost percentage rate shall be determined to the one hundredth of a decimal point.

“(d)(1)(A) Funds received by a contract school as grants under this section for tribal elementary or secondary educational programs may be combined by the contract school into a single administrative cost account without the necessity of maintaining separate funding source accounting.

“(B) Indirect cost funds for programs at the school which share common administrative services with tribal elementary or secondary educational programs may be included in the administrative cost account described in subparagraph (A).

“(2) Funds received as grants under this section with respect to tribal elementary or secondary education programs shall remain

available to the contract school without fiscal year limitation and without diminishing the amount of any grants otherwise payable to the school under this section for any fiscal year beginning after the fiscal year for which the grant is provided.

“(3) Funds received as grants under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or agreement shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

“(e) For purposes of this section—

“(1)(A) The term ‘administrative cost’ means the costs of necessary administrative functions which—

“(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program,

“(ii) are not customarily paid by comparable Bureau operated programs out of direct program funds, and

“(iii) are either—

“(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds, or

“(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

“(B) The term ‘administrative cost’ may include, but is not necessarily limited to—

“(i) contract (or other agreement) administration;

“(ii) executive, policy, and corporate leadership and decisionmaking;

“(iii) program planning, development, and management;

“(iv) fiscal, personnel, property, and procurement management;

“(v) related office services and record keeping; and

“(vi) costs of necessary insurance, auditing, legal, safety and security services.

“(2) The term ‘Bureau elementary and secondary functions’ means—

“(A) all functions funded at Bureau schools by the Office of Indian Education Programs of the Bureau;

“(B) all programs—

“(i) funds for which are appropriated to other agencies of the Federal Government, and

“(ii) which are administered for the benefit of Indians through Bureau schools; and

“(C) all operation, maintenance, and repair funds for facilities and government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

“(3) The term ‘tribal elementary or secondary educational programs’ means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are expended through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administra-

tive cost functions, that are operated directly by a tribe or tribal organization under a contract or agreement with the Bureau.

“(4)(A) Except as otherwise provided in this paragraph, the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

“(i) the second fiscal year preceding such fiscal year, or

“(ii) if such programs have not been operated by the tribe or tribal organization during the 2 preceding fiscal years, the first fiscal year preceding such fiscal year.

“(B) In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

“(5) The term ‘maximum base rate’ means 50 percent.

“(6) The term ‘minimum base rate’ means 11 percent.

“(7) The term ‘standard direct cost base’ means \$600,000.

“(f)(1) Upon the enactment of the Indian Education Amendments of 1988, the Secretary shall—

“(A) conduct such studies as may be needed to establish an empirical basis for determining relevant factors substantially affecting the required administrative costs of tribal elementary and secondary educational programs, using the formula set forth in subsection (c), and

“(B) a study to determine—

“(i) a maximum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the smallest tribal elementary or secondary educational programs,

“(ii) a minimum base rate which ensures that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of the largest tribal elementary or secondary educational programs, and

“(iii) a standard direct cost base which is the aggregate direct cost funding level for which the percentage determined under subsection (c) will—

“(I) be equal to the median between the maximum base rate and the minimum base rate, and

“(II) ensure that the amount of the grants provided under this section will provide adequate (but not excessive) funding of the administrative costs of tribal elementary or secondary educational programs closest to the size of the program.

“(2) The studies required under paragraph (1) shall—

“(A) be conducted in full consultation (in accordance with section 1130) with—

“(i) the tribes and tribal organizations that are affected by the application of the formula set forth in subsection (c), and

“(ii) all national and regional Indian organizations of which such tribes and tribal organizations are typically members;

“(B) be conducted on-site at a representative statistical sample of the tribal elementary or secondary educational programs under a contract entered into with a nationally reputable public accounting and business consulting firm;

“(C) take into account the availability of skilled labor, commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found substantially to affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied in order to assure that all required administrative activities can reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such formula;

“(D) identify, and quantify in terms of percentages of direct program costs, any general factors arising from geographic isolation, or numbers of programs administered, independent of program size factors used to compute a base administrative cost percentage in such formula; and

“(E) identify any other incremental cost factors substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied and determine whether the factors are of general applicability to other such programs, and (if so) how they may effectively be incorporated into such formula.

“(3) Determinations described in paragraph (2)(C) shall be based on what is pragmatically possible to do at each location studied, given prudent management practice, irrespective of whether required administrative services were actually or fully delivered at these sites, or other services were delivered instead, during the period of the study.

“(4) Upon completion of the studies conducted under paragraph (1), but in no case later than October 1, 1989, the Secretary shall submit to the Congress a report on the findings of the studies, together with determinations based upon such findings that would affect the definitions of terms used in the formula that is set forth in subsection (c).

“(5) The Secretary shall include in the Bureau's justification for each appropriations request for each fiscal year beginning after fiscal year 1989, a projection of the overall costs associated with the formula set forth in subsection (c) for all tribal elementary or secondary educational programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

“(6) For purposes of this subsection, the size of tribal elementary or secondary educational programs is determined by the aggregate direct cost program funding level for all Bureau funded programs which share common administrative cost functions.

“(g)(1) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

“(2) If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under subsection (b) for a fiscal year exceeds the amount of funds appro-

Reports.

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priated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under subsection (b) for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grant determined under subsection (b) bears to the total of all grants determined under subsection (b) for all tribes and tribal organizations for such fiscal year.

“(h)(1) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1989 shall—

“(A) in lieu of being determined under subsection (b), be determined for each tribal elementary or secondary educational program on the same basis that indirect costs were determined for such programs for fiscal year 1988, and

“(B) be subject to the provisions of subsection (d).

“(2) Notwithstanding any other provision of this section, the amount of the grant provided under this section for fiscal year 1990 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

“(A) if the amount of the grant determined under subsection (b) for fiscal year 1990 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1988 (or fiscal year 1989 if such program was not operated by the tribe or tribal organization during fiscal year 1988), the sum of—

“(i) such amount received, plus

“(ii) one-third of the excess of—

“(I) such amount determined under subsection (b), over

“(II) such amount received, or

“(B) if such amount received exceeds such amount determined under subsection (b), the excess of—

“(i) such amount received, over

“(ii) an amount equal to one-third of the excess of—

“(I) such amount received, over

“(II) such amount determined under subsection (b).

“(3) Notwithstanding any other provision of this section, the amount of the grants provided under this section for fiscal year 1991 with respect to each tribal elementary and secondary educational program that was operated by a tribe or tribal organization in fiscal year 1989 shall be equal to—

“(A) if the amount of the grant determined under subsection (b) for fiscal year 1991 with respect to such program exceeds the amount received by the tribe or tribal organization with respect to such program for administrative costs for fiscal year 1990, the sum of—

“(i) such amount received, plus

“(ii) one-half of the excess of—

“(I) such amount determined under subsection (b), over

“(II) such amount received, or

“(B) if such amount received exceeds such amount determined under subsection (b), the excess of—

“(i) such amount received, over

“(ii) an amount equal to one-half of the excess of—

“(I) such amount received over,

“(II) such amount determined under subsection (b).”.

(b) **SCHOOL BOARD TRAINING.**—Paragraph (3) of section 1128(c) of the Education Amendments of 1978 (20 U.S.C. 2008(c)(3)) is amended to read as follows: 25 USC 2008.

“(3)(A) The Secretary shall reserve for national school board training 0.133 percent of the funds appropriated for each fiscal year for distribution under this section. Such training shall be conducted through the same organizations through which, and in the same manner in which, the training was conducted in fiscal year 1986. If the contract for such training is not awarded before May 1 of each fiscal year, the contract under which such training was provided for the fiscal year preceding such fiscal year shall be renewed by the Secretary for such fiscal year. The agenda for the training sessions shall be established by the school boards through their regional or national organizations.

Contracts.

“(B) For each year in which the Secretary uses a weighted unit formula established under subsection (a) to fund Bureau schools, a Bureau school which generates less than 168 weighted units shall receive an additional 2 weighted units to defray school board activities.

“(C) From the funds allotted in accordance with the formula established under subsection (a) for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of—

“(i) \$4,000, or

“(ii) 2 percent of such allotted funds,

for school board activities for such school, including but not limited to, and notwithstanding any other provision of law, meeting expenses and the cost of membership in, and support of, organizations engaged in activities on behalf of Indian education.”.

(c) **PERCENTAGE OF FUNDS NOT SUBJECT TO FISCAL YEAR LIMITATION.**—Section 1128 of the Education Amendments of 1978 (20 U.S.C. 2008) is amended by adding at the end thereof the following new subsection:

25 USC 2008.

“(h) At the election of the local school board made at any time during the fiscal year, a portion equal to no more than 15 percent of the funds allocated with respect to a school under this section for any fiscal year shall remain available to the school for expenditure without fiscal year limitation.”.

SEC. 5109. LOCAL PROCUREMENT.

Paragraph (4) of section 1129(a) of the Education Amendments of 1978 (25 U.S.C. 2009) is amended to read as follows:

“(4) Notwithstanding any law or regulation, the supervisor of a Bureau school may expend an aggregate of no more than \$25,000 of the amount allotted the school under section 1128 to acquire supplies and equipment for the school without competitive bidding if—

“(A) the cost for any single item purchased does not exceed \$10,000;

“(B) the school board approves the procurement;

“(C) the supervisor certifies that the cost is fair and reasonable;

“(D) the documents relating to the procurement executed by the supervisor or other school staff cite this paragraph as authority for the procurement; and

“(E) the transaction is documented in a journal maintained at the school clearly identifying when the transaction occurred,

what was acquired and from whom, the prices paid, the quantities acquired, and any other information the supervisor or school board considers relevant.”

SEC. 5110. COORDINATED PROGRAMS.

Section 1129 of the Education Amendments of 1978 (25 U.S.C. 2009) is amended by adding at the end thereof the following new subsection:

Contracts.

“(f)(1) From funds allotted to a school under section 1128, the Secretary shall, if specifically requested by the tribal governing body (within the meaning of section 1121(j)) whose children are served by a program operated by the Bureau, implement any cooperative agreement entered into between the tribe, the Bureau school board, and the local public school district which meets the requirements of paragraph (2) and involves education programs operated by the Bureau. The tribe, the Bureau school board, and the local public school district shall determine the terms of the agreement. Such agreement may encompass coordination of all or any part of the following:

“(A) Academic program and curriculum, if a facility operated by the Bureau which is currently accredited by a State or regional accrediting entity would continue to be accredited.

“(B) Support services, including procurement and facilities maintenance.

“(C) Transportation.

“(2) Each agreement entered into pursuant to the authority provided in paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed, though this requirement shall not be construed so as to require equal expenditures or an exchange of similar services.”

SEC. 5111. CONSULTATION.

Section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010) is amended—

(1) by striking out “Bureau” the first time it appears and inserting in lieu thereof “the Secretary and the Bureau”,

(2) by striking out “It shall” and inserting in lieu thereof “(a) It shall”, and

(3) by adding at the end thereof the following new subsection:

“(b)(1) All actions under this Act shall be done with active consultation with tribes.

“(2) The consultation required under paragraph (1) means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties. During such discussions and joint deliberations, interested parties (including, but not limited to, tribes and school officials) shall be given an opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau. All interested parties shall be given an opportunity to participate and discuss the options presented or to present other alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information educed or presented during the discussions, that there is a substantial reason for another course of action. The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Sec-

retary which is not consistent with the views of the interested parties.”.

SEC. 5112. INDIAN EMPLOYMENT PREFERENCE.

(a) **APPLICANTS.**—Subsection (f)(1) of section 1131 of the Education Amendments of 1978 (25 U.S.C. 2011) is amended by striking out “an employee” and inserting in lieu thereof “an applicant or employee”

(b) **PROVIDERS OF SUPPORT SERVICES.**—

(1) Subparagraph (A) of section 1131(n)(1) of the Education Amendments of 1978 (25 U.S.C. 2011(n)(1)(A)) is amended—

(A) by striking out “or” at the end of clause (ii), and

(B) by adding at the end thereof the following new clause:

“(iv) support services at, or associated with, the site of the school; or”.

(2) The amendments made by paragraph (1) shall apply with respect to an individual who is employed by the Bureau of Indian Affairs of the Department of the Interior on the date of enactment of this Act only if such individual elects, in such form and at such time as the Secretary of the Interior may prescribe, the application of such amendments with respect to such individual.

25 USC 2011
note.

SEC. 5113. PERSONNEL COMPENSATION, RECRUITMENT, AND RETENTION STUDIES.

25 USC 2011
note.

(a) **IN GENERAL.**—The Secretary shall conduct such studies and gather such information as may be necessary to prepare a report that the Secretary shall submit to the Congress by no later than the date that is 6 months after the date of enactment of this Act. The report shall compare personnel compensation in Bureau funded schools with—

Reports.

(1) nearest public schools that—

(A) have successful educational programs, and

(B) are comparable in size, geographic location, grade levels, and student population characteristics to Bureau funded schools, and

(2) schools operated within the United States by the Department of Defense.

(b) **INCLUSIONS.**—The report required under subsection (a) shall include—

(1) detailed information on the current salaries and personnel benefits for comparable positions in the Bureau funded schools and the schools described in paragraphs (1) and (2) of subsection (a),

(2) a comparison of starting salaries, tenure, length of service, educational and certification requirements, length of work year and work day, and fringe benefits between Bureau funded schools and the schools described in paragraphs (1) and (2) of subsection (a),

(3) a projection of the compensation factors described in paragraphs (1) and (2) for Bureau funded schools and the schools described in paragraphs (1) and (2) of subsection (a) over the next five years, and

(4) such additional information and analysis as the Secretary deems appropriate.

(c) **FUNDING AND STAFF.**—

(1) The cost of the studies and the report required under subsection (a) (including, but not limited to, costs for all con-

tracts, travel, and staff assigned to the study) shall be paid from amounts appropriated to the Bureau's Management and Administration subactivity of the General Administration activity, except that the salaries and personnel benefits of employees detailed to the study from the Office of Indian Education of the Bureau may continue to be charged to the amounts appropriated to the Bureau's Education account.

(2) If the Secretary does not conduct the studies required under subsection (a) by contract, the staff detailed to work on the studies and report required under subsection (a) shall include not less than two career employees from the Office of Indian Education of the Bureau who have substantial experience in the administration (at the level of an agency office) of school operations and in the drafting of personnel regulations, including but not limited to those under this Act.

(d) **CONTRACTS.**—The Secretary may conduct part or all of the studies required under subsection (a) through contracts entered into with one or more Indian education organizations.

(e) **ADDITIONAL STUDIES.**—The Secretary shall conduct such other studies of personnel compensation and recruitment in Bureau funded and public schools as are desirable in carrying out the purposes of title 11 of the Education Amendments of 1978.

(f) **DEFINITIONS.**—For purposes of this section—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

SEC. 5114. REGULAR COMPENSATION OF BUREAU EDUCATORS; NONVOLUNTARY FURLOUGHS.

(a) **COMPENSATION.**—Paragraph (1) of section 1131(h) of the Education Amendments of 1978 (25 U.S.C. 2011(h)(1)) is amended—

(1) by inserting "or on the basis of the Federal Wage System schedule in effect for the locality" after "is applicable",

(2) by striking out "The Secretary shall" and inserting in lieu thereof "(A) Except as otherwise provided in this section, the Secretary shall", and

(3) by adding at the end thereof the following new subparagraphs:

"(B) By no later than the close of the 6-month period beginning on the date of enactment of the Indian Education Amendments of 1988, the Secretary shall establish, for contracts for the 1991-1992 academic year, and thereafter, the rates of basic compensation, or annual salary rates, for the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rates of basic compensation applicable (on the date of enactment of such Amendments and thereafter) to comparable positions in overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act, unless the Secretary establishes such rates within such 6-month period through collective bargaining with the appropriate union representative of the education employees that is recognized by the Bureau.

"(C) By no later than the close of the 6-month period described in subparagraph (B), the Secretary shall establish the rates of basic compensation or annual salary rates for the positions of teachers and counselors (including dormitory and home-living counselors)—

“(i) for contracts for the 1989-1990 academic year, at rates which reflect one-third of the changes in the rates applicable to such positions on the date of enactment of the Indian Education Amendments of 1988 that must be made to conform the rates to the rates established under subparagraph (B) for such positions for contracts for the 1991-1992 academic year, and

“(ii) for contracts for the 1990-1991 academic year, at rates which reflect two-thirds of such changes.

“(D) The establishment of rates of basic compensation and annual salary rates by the Secretary under subparagraphs (B) and (C) shall not preclude the use of regulations and procedures used by the Bureau before the enactment of the Indian Education Amendments of 1988 in making determinations regarding promotions and advancements through levels of pay that are based on the merit, education, experience, or tenure of the educator.

“(E)(i) Except as provided in clause (ii), the establishment of rates of basic compensation and annual salary rates by the Secretary under subparagraphs (B) and (C) shall not affect the continued employment or compensation of any individual employed in an education position on the day before the date of enactment of the Indian Education Amendments of 1988 if this paragraph did not apply to such individual on such day.

“(ii) Any individual described in clause (i) may, during the 5-year period beginning on the date on which the Secretary establishes rates of basic compensation and annual salary rates under subparagraph (B), make an irrevocable election to have the basic compensation rate or annual salary rate of such individual determined in accordance with this paragraph.

“(iii) If an individual makes the election described in clause (ii), such election shall not affect the application to the individual of the same retirement system and leave system that applies to the individual during the fiscal year preceding the fiscal year in which such election is made.

“(F) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each of the fiscal years 1990, 1991, and 1992 a written statement by the Secretary which specifies—

President of U.S.

“(i) the amount of funds the Secretary needs to pay basic compensation and the annual salaries of educators for such fiscal year, and

“(ii) the amount of funds the Secretary estimates would be needed to pay basic compensation and the annual salaries of educators for such fiscal year if the amendments made to this paragraph by the Indian Education Amendments of 1988 had not been enacted.”

(b) FURLOUGHS.—Section 1131 of the Education Amendments of 1978 (20 U.S.C. 2011) is amended by adding at the end thereof the following new subsection:

“(p)(1) No educator whose basic compensation is paid from funds allocated under section 1128 may be placed on furlough (within the meaning of section 7511(a)(5) of title 5, United States Code) without the consent of such educator for an aggregate of more than 4 weeks within the same calendar year, unless—

“(A) the supervisor, with the approval of the local school board (or of the agency superintendent for education upon

appeal under paragraph (2)), of the Bureau school at which such educator provides services determines that a longer period of furlough is necessary due to a shortage of funds, and

“(B) all educators (other than principals and clerical employees) providing services at such Bureau school are placed on furloughs of equal length.

“(2) The supervisor of a Bureau school may appeal to the appropriate agency superintendent for education any refusal by the local school board to approve any determination of the supervisor that is described in paragraph (1)(A) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be approved. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, approve the determination of the supervisor. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such local school board and to the supervisor identifying the reasons for approving such determination.”

SEC. 5115. POST DIFFERENTIALS.

Paragraph (3) of section 1131(h) of the Education Amendments of 1978 (25 U.S.C. 2011(h)(3)) is amended—

(1) by striking out “The Secretary” and inserting in lieu thereof “(A) The Secretary”, and

(2) by adding at the end thereof the following new subparagraph:

“(B)(i) Upon the request of the supervisor and the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide one or more post differentials under subparagraph (A) unless the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that certain of the requested post differentials should be disapproved or decreased because there is no disparity of compensation for the involved employees or positions in the Bureau school, as compared with the nearest public school, that is either—

“(I) at least 5 percent, or

“(II) less than 5 percent and affects the recruitment or retention of employees at the school.

The request under this subparagraph shall be deemed granted as requested at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time it is approved, approved with modification, or disapproved by the Secretary.

“(ii) The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential authorized by reason of this subparagraph at the beginning of a school year after either—

“(I) the local school board requests that it be discontinued or decreased, or

“(II) the Secretary or the supervisor determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

“(iii) On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and grants of

Reports.

authority under this subparagraph during the previous fiscal year and listing the positions contracted under those grants of authority.”.

SEC. 5116. EARLY CHILDHOOD DEVELOPMENT PROGRAM.

Title XI of the Education Amendments of 1978 is amended—

- (1) by striking out part C, and
 (2) by adding at the end of part B the following new section:

20 USC 241aa
 note, 241bb-1.

“EARLY CHILDHOOD DEVELOPMENT PROGRAM

“SEC. 1141. (a) The Secretary shall provide grants to tribes, tribal organizations, and consortia of tribes and tribal organizations to fund early childhood development programs that are operated by such tribes, organizations, or consortia.

Grants.
 25 USC 2022a.

“(b)(1) The total amount of the grants provided under subsection (a) with respect to each tribe, tribal organization, or consortium of tribes or tribal organizations for each fiscal year shall be equal to the amount which bears the same relationship to the total amount appropriated under the authority of subsection (f) for such fiscal year (less amounts provided under subsection (e)) as—

“(A) the total number of children under 6 years of age who are members of—

- “(i) such tribe,
 “(ii) the tribe that authorized such tribal organization, or
 “(iii) any tribe that—

“(I) is a member of such consortium, or

“(II) authorizes any tribal organization that is a member of such consortium, bears to

“(B) the total number of all children under 6 years of age who are members of any tribe that—

- “(i) is eligible to receive funds under subsection (a),
 “(ii) is a member of a consortium that is eligible to receive such funds, or
 “(iii) authorizes a tribal organization that is eligible to receive such funds.

“(2) No grant may be provided under subsection (a)—

- “(A) to any tribe that has less than 500 members,
 “(B) to any tribal organization which is authorized—
 “(i) by only one tribe that has less than 500 members, or
 “(ii) by one or more tribes that have a combined total membership of less than 500 members, or

“(C) to any consortium composed of tribes, or tribal organizations authorized by tribes, that have a combined total tribal membership of less than 500 members.

“(c)(1) A grant may be provided under subsection (a) to a tribe, tribal organization, or consortia of tribes and tribal organizations only if the tribe, organization or consortia submits to the Secretary an application for the grant at such time and in such form as the Secretary shall prescribe.

“(2) Applications submitted under paragraph (1) shall set forth the early childhood development program that the applicant desires to operate.

“(d) The early childhood development programs that are funded by grants provided under subsection (a)—

- “(1) shall coordinate existing programs and may provide services that meet identified needs of parents and children under 6

years of age which are not being met by existing programs, including—

- “(A) prenatal care,
- “(B) nutrition education,
- “(C) health education and screening,
- “(D) educational testing, and
- “(E) other educational services,

“(2) may include instruction in the language, art, and culture of the tribe, and

“(3) shall provide for periodic assessment of the program.

“(e) The Secretary shall, out of funds appropriated under the authority of subsection (f), include in the grants provided under subsection (a) amounts for administrative costs incurred by the tribe or tribal organization in establishing and maintaining the early childhood development program.

Appropriation
authorization.

“(f) There are authorized to be appropriated for fiscal year 1989, and for each succeeding fiscal year, \$15,000,000 for the purpose of carrying out the provisions of this section.”

SEC. 5117. DEFINITIONS.

Section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019) is amended—

(1) by striking out paragraph (3) and inserting in lieu thereof the following:

“(3) the term ‘Bureau funded school’ means—

“(A) a Bureau school;

“(B) a contract school; or

“(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988;”

(2) by redesignating paragraphs (4) through (10) as paragraphs (6) through (12), respectively, and

(3) by inserting after paragraph (3) the following new paragraphs:

“(4) the term ‘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;

“(5) the term ‘contract school’ means an elementary or secondary school or a dormitory which receives financial assistance for its operation under a contract or agreement with the Bureau under section 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d).”

SEC. 5118. SEQUESTRATION ORDERS.

Subsection (a) of section 1129 of the Education Amendments of 1978 (25 U.S.C. 2009(a)) is amended by adding at the end thereof the following new paragraph:

“(5) If a sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 reduces the amount of funds available for allotment under section 1128 for any fiscal year by more than 7 percent of the amount of funds available for allotment under section 1128 during the preceding fiscal year—

“(A) the Secretary may, notwithstanding any other provision of law, use—

“(i) funds appropriated for the operation of any Bureau school that is closed or consolidated, and

“(ii) funds appropriated for any program that has been curtailed at any Bureau school, to fund allotments made under section 1128, and

“(B) the Secretary may waive the application of the provisions of section 1121(g) with respect to the closure or consolidation of a school, or the curtailment of a program at a school, during such fiscal year if the funds described in clauses (i) and (ii) of subparagraph (A) with respect to such school are used to fund allotments made under section 1128 for such fiscal year.”.

SEC. 5119. TRIBAL DEPARTMENTS OF EDUCATION.

Grants.

Part B of title XI of the Education Amendments of 1978 is amended by adding at the end thereof the following new section:

“TRIBAL DEPARTMENTS OF EDUCATION

“SEC. 1142. (a) Subject to the availability of appropriations, the Secretary shall provide grants and technical assistance to tribes for the development and operation of tribal departments of education for the purpose of planning and coordinating all educational programs of the tribe.

25 USC 2022b.

“(b) Grants provided under this section shall—

“(1) be based on applications from the governing body of the tribe,

“(2) reflect factors such as geographic and population diversity,

“(3) facilitate tribal control in all matters relating to the education of Indian children on Indian reservations and on former Indian reservations in Oklahoma,

“(4) provide for the development of coordinated educational programs on Indian reservations (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) by encouraging tribal administrative support of all Bureau funded educational programs as well as encouraging tribal cooperation and coordination with all educational programs receiving financial support from State agencies, other Federal agencies, or private entities,

“(5) provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs, and

“(6) otherwise comply with regulations for grants under section 104(a) of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450h) that are in effect on the date application for such grants are made.

“(c)(1) In approving and funding applications for grants under this section, the Secretary shall give priority to any application that—

“(A) includes assurances from the majority of Bureau funded schools located within the boundaries of the reservation of the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools, including (but not limited to) the submission to each applicable agency of a unified application for funding for all of such schools which provides that—

“(i) no administrative costs other than those attributable to the individual programs of such schools will be associated with the unified application, and

“(ii) the distribution of all funds received under the unified application will be equal to the amount of funds provided by the applicable agency to which each of such schools is entitled under law,

“(B) includes assurances from the tribal governing body that the tribal department of education funded under this section will administer all contracts or grants (except those covered by the other provisions of this title and the Tribally Controlled Community College Assistance Act of 1978) for education programs administered by the tribe and will coordinate all of the programs to the greatest extent possible,

“(C) includes assurances for the monitoring and auditing by or through the tribal department of education of all education programs for which funds are provided by contract or grant to ensure that the programs meet the requirements of law, and

“(D) provides a plan and schedule for—

“(i) the assumption over the term of the grant by the tribal department of education of all assets and functions of the Bureau agency office associated with the tribe, insofar as those responsibilities relate to education, and

“(ii) the termination by the Bureau of such operations and office at the time of such assumption, but when mutually agreeable between the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

“(2) Subject to the availability of appropriated funds, grants provided under this section shall be provided for a period of 3 years and the grant may, if performance by the grantee is satisfactory to the Secretary, be renewed for additional 3-year terms.

“(d) The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

“(e) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.”.

Appropriation
authorization.

SEC. 5120. SCHOOL BOUNDARIES.

Subsection (b) of section 1124 of the Education Amendments of 1978 (25 U.S.C. 2004(b)) is amended—

(1) by striking out “On or after” and inserting in lieu thereof

“(1) Except as provided in paragraph (2), on or after”, and

(2) by adding at the end thereof the following new paragraph:

“(2) In any case where there is more than one Bureau funded school located on an Indian reservation, at the direction of the tribal governing body, the relevant school boards of the Bureau funded schools on the reservation may, by mutual consent, establish the relevant attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.”.